

COMMONWEALTH OF AUSTRALIA

# Official Committee Hansard

## **SENATE**

LEGAL AND CONSTITUTIONAL AFFAIRS  
LEGISLATION COMMITTEE

**Estimates**

TUESDAY, 24 OCTOBER 2017

CANBERRA

BY AUTHORITY OF THE SENATE

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**SENATE**

**LEGAL AND CONSTITUTIONAL AFFAIRS LEGISLATION COMMITTEE**

**Tuesday, 24 October 2017**

**Members in attendance:** Senators Abetz, Bushby, Dodson, Fawcett, Hanson, Hinch, Hume, Kakoschke-Moore, Kitching, Leyonhjelm, Lines, Ian Macdonald, McKim, Pratt, Rice, Singh, Watt, Wong, Xenophon.



**ATTORNEY-GENERAL'S PORTFOLIO****In Attendance**

Senator Brandis, Attorney-General

Senator Scullion, Minister for Indigenous Affairs

**Attorney-General's Department**

Mr Chris Moraitis PSM, Secretary

Mr Iain Anderson, Deputy Secretary, Criminal Justice Group

Mr John Reid, Acting Deputy Secretary, Civil Justice and Corporate Group

Ms Sarah Chidgey, Acting Deputy Secretary of the National Security and Emergency Management Group

**Australian Government Solicitor**

Mr Michael Kingston, Australian Government Solicitor

Ms Louise Vardanega PSM, Chief Operating Officer

Mr Daryl Adam, National Manager

**Civil Justice Policy and Programs Division**

Mr Cameron Gifford, First Assistant Secretary

Mrs Toni Pirani, Assistant Secretary, Commonwealth Representation (Royal Commissions) Branch

Ms Kathleen Denley, Assistant Secretary, Legal Assistance Branch

Ms Sara Samios, Acting Assistant Secretary, Legal Assistance Branch

Ms Petra Gartmann, Assistant Secretary, Office of Legal Services Coordination

Dr Albin Smrdel, Assistant Secretary, Courts, Tribunals and Administrative Law Branch

Ms Ashleigh Saint, Acting Assistant Secretary, Family Law Branch

Ms Dianne Orr, Principal Legal Officer, Family Law Branch

Ms Esther Bogaart, Acting Assistant Secretary, Family Violence Taskforce

**Criminal Justice Policy and Programs Division**

Mr Andrew Walter, Acting First Assistant Secretary, Criminal Justice Policy and Programs Division

Ms Kelly Williams, Assistant Secretary, Criminal Law Policy Branch

Mr Adrian Breen, Assistant Secretary, Transnational Crime Branch

**Emergency Management Australia**

Mr Mark Crossweller AFSM, Director General

Mr Aaron Verlin, Assistant Secretary, Disaster Recovery Branch

Mr Luke Brown, Acting Assistant Secretary, Disaster Resilience Strategy Branch

Mr Robert Cameron, Assistant Secretary, Crisis Management Branch

Mr Joe Buffone, Director, Crisis Management Branch

**Civil Law Unit**

Ms Autumn O'Keeffe, Acting Assistant Secretary

**Office of Constitutional Law**

Mr David Lewis, Acting General Counsel (Constitutional)

**Strategy and Delivery Division**

Ms Jamie Lowe, First Assistant Secretary

Ms Alexandra Mathews, Acting First Assistant Secretary

Ms Emma Appleton, Acting Assistant Secretary

**Corporate Services Division**

Mr Stephen Lutze, Chief Financial Officer

**Counter Terrorism Division**

Mr Anthony Coles, Acting First Assistant Secretary

Mr David Chick, Acting Assistant Secretary, Capability and Engagement Branch

Ms Elizabeth Quinn, Assistant Secretary, International Engagement Branch

**Countering Violent Extremism Centre**

Mr Pablo Carpay, First Assistant Secretary

Mr Samuel Grunhard, Assistant Secretary

Ms Anna Sherburn, Acting Assistant Secretary

Ms Elizabeth Brayshaw, Assistant Secretary

**International and Auscheck Division**

Mr Stephen Bouwhuis, acting First Assistant Secretary, International and AusCheck Division

Mr Michael Pahlow, Assistant Secretary, AusCheck

Ms Karen Moore, Assistant Secretary, International Legal Assistance

Ms Leanne Loan, acting Assistant Secretary, International Law Enforcement Cooperation

Ms Kate White, acting Assistant Secretary, International Law Enforcement Cooperation

**Office of International Law**

Mr Jesse Clarke, Acting First Assistant Secretary

Mr Michael Johnson, Acting Assistant Secretary

Ms Frances Anggadi, Acting Assistant Secretary

**Cyber and Infrastructure Security Division**

Mr Andrew Warnes, Acting Assistant Secretary

Ms Tamsyn Harvey, Assistant Secretary

**Intelligence and Identity Security Division**

Ms Anna Harmer, First Assistant Secretary

Mr Andrew Rice, Assistant Secretary, Identity and Protective Security Branch

Ms Tara Inverarity, Assistant Secretary, Espionage and Foreign Interference Taskforce

Ms Anne Sheehan, Assistant Secretary, Communications Security and Intelligence Branch

**Australian Criminal Intelligence Commission and Australian Institute of Criminology**

Ms Nicole Rose PSM, Acting Chief Executive Officer  
Mr Col Blanch, Acting Deputy Chief Executive Officer  
Mr Paul Williams, Executive Director Capability  
Mr Richard Grant APM, Acting Executive Director Intelligence  
Mr Matt Jones, Acting Executive Director Technology and Innovation  
Dr Rick Brown, Deputy Director

**Australian Security Intelligence Organisation**

Mr Duncan Lewis AO DSC CSC, Director-General of Security  
Dr Wendy Southern, Deputy Director-General

**Australian Human Rights Commission**

Emeritus Professor Rosalind Croucher, President  
Ms June Oscar, Aboriginal and Torres Strait Islander Social Justice Commissioner  
Mr Alastair McEwin, Disability Discrimination Commissioner  
Ms Padma Raman, Executive Director

**Australian Transaction Reports and Analysis Centre**

Mr Peter Clark, Acting Chief Executive Officer  
Mr Gavin McCairns, Deputy Chief Executive Officer, Corporate  
Mr Bradley Brown, Acting Deputy Chief Executive Officer, International and Policy  
Ms Angela Jamieson, Acting Deputy Chief Executive Officer, Operations  
Mr Ric Walters, Chief Finance Officer  
Ms Kathryn Haigh, National Manager, Legal Strategy and Solutions

**Australian Financial Security Authority**

Mr Hamish McCormick, Chief Executive and Inspector General in Bankruptcy  
Mr David Bergman, Acting Chief Operating Officer and Acting Registrar of Personal Property Securities  
Mr Mark Organ, Acting Chief Finance Officer  
Mr Andrew Sellars, General Counsel

**Australian Federal Police**

Mr Andrew Colvin, Commissioner  
Ms Sue Bird, Acting Chief Operating Officer  
Mr Michael Phelan, Deputy Commissioner National Security  
Ms Leanne Close, Deputy Commissioner Operations  
Mr Ramzi Jabbour, Deputy Commissioner Capability  
Mr Ray Johnson, Assistant Commissioner Reform Culture and Standards  
Ms Tarnya Gersbach, Acting Chief Financial Officer  
Ms Justine Saunders, Chief Police Officer, ACT

**Australian Commission for Law Enforcement Integrity**

Mr Michael Griffin AM, Integrity Commissioner  
Ms Sarah Marshall, Executive Director Operations  
Ms Penny McKay, General Counsel  
Mr Craig Furry, Chief Financial Officer

**Commonwealth Director of Public Prosecutions**

Ms Sarah McNaughton SC, Commonwealth Director of Public Prosecutions  
Ms Andrea Pavleka, Commonwealth Solicitor for Public Prosecutions

**Office of Parliamentary Counsel**

Mr Peter Quiggin PSM, First Parliamentary Counsel  
Ms Aasha Swift, General Manager Publishing

**National Archives of Australia**

Ms Anne Lyons, Acting Director-General

**Family Court of Australia**

Ms Patricia Christie, Chief Executive Officer and Acting Principal Registrar

**Federal Court of Australia**

Mr Warwick Soden, Chief Executive Officer and Principal Registrar  
Mr Rob Powrie, Acting Registrar, National Native Title Tribunal  
Ms Catherine Sullivan, Executive Director  
Ms Kathryn Barber, Chief Financial Officer

**Federal Circuit Court of Australia**

Dr Stewart Fenwick, Chief Executive Officer and Principal Registrar  
Mr Steve Agnew, Executive Director Operations

**Office of the Australian Information Commissioner**

Mr Timothy Pilgrim PSM, Australian Information Commissioner  
Ms Angelene Falk, Deputy Commissioner  
Mr Andrew Solomon, Assistant Commissioner Dispute Resolution

**Royal Commission into Institutional Responses to Child Sexual Abuse**

Mr Phillip Reed, Chief Executive Officer

**Royal Commission into the Protection of Children in the Northern Territory**

Ms Kirsty Windeyer, Official Secretary, Royal Commission into the Protection of Children in the Northern Territory

**Committee met at 09:04**

**CHAIR (Senator Ian Macdonald):** I welcome everyone to inquiry of the Legal and Constitutional Affairs Legislation Committee into the supplementary budget estimates. I welcome the Attorney and the Commissioner, Mr Moraitis, and everyone else, and all of my colleagues. As you know, the Senate has referred to the committee particulars of the proposed



expenditure for 2017-18 in this portfolio. We've set 8 December 2017 as the date by which answers to questions on notice are to be returned. We've also asked that written questions on notice be provided to the secretariat no later than 5 pm on Friday, 3 November.

All evidence must be taken in public. This includes answers to questions on notice. Witnesses are aware that they are protected by parliamentary privilege, and what that involves. I think most of our witnesses are well familiar with the proceedings of these committees, but if anyone does have any queries they should raise them and the secretariat will be able to assist. Any questions going to the operations of financial positions or of departments and agencies which are seeking funds are legitimate and relevant questions for the purposes of estimates. There are no areas in connection with the expenditure of public funds where any person has discretion to withhold details or explanations from parliament, unless the parliament has otherwise expressly provided.

Officers of a department should not be asked to give opinions on matters of policy, but should be given reasonable opportunity to refer questions asked to superior officers or to the minister. This resolution of the Senate prohibits only questions asking for opinions on matters of policy and does not relate to questions asking for explanations of policies or factual questions about how and when the policies were adopted.

Claims for public interest—I think we've been through before. It's not sufficient just to say you are claiming public interest. Witnesses are required to provide some specific indication of the harm to public interest that could result from the disclosure of information, and very often that's better done as a question on notice, and the claim on notice.

*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)

Attorney, did you want to make any opening statement, or, if not, did you, Mr Moraitis?

**Senator Brandis:** No, thank you.

**CHAIR:** Mr Moraitis? No. We will move on to the Australian Federal Police.

**Australian Federal Police**

[09:07]

**CHAIR:** Commissioner, would you like to make an opening statement?

**Mr Colvin:** No, we're happy to take questions.

**CHAIR:** We have quite a number of senators wanting to ask questions of the AFP, so we've set aside from now until 11 am for the AFP. This program is indicative only, under the rules of the Senate, but we do ask senators to try to abide by that. In fairness to everybody we might set a 10-minute limit for each senator's questions, but bearing in mind that we can all come back again later to try to get everyone through. My usual approach is to go to the opposition, to the government, to the opposition, to the government, and then to the crossbenchers. That's a general proposition to try to provide fairness, in accordance with the numbers in the Senate.

**Senator PRATT:** Just to clarify, some brackets of questions might require more than 10 minutes. We will do our best.

**CHAIR:** We can come back. As you know, the rules are that we ask questions as long as senators want to. We have a long list of senators who are asking questions.

**Senator PRATT:** But, as you are aware, you can get a block of questions done in 15 minutes on a topic, but 10 minutes can be disruptive. We will do our best.

**CHAIR:** I want to be fair to all senators. All the senators are experienced people who know how to ask questions and cross-examine people.

**Senator WONG:** We have wasted nearly 10 minutes, so let's start. Commissioner, as usual I again start by thanking you and officers and staff for your work.

**Mr Colvin:** Thank you.

**Senator WONG:** We appreciate it, particularly at these times. I think on the last occasion I asked a range of questions of you or Mr—

**Mr Colvin:** Mr Wood.

**Senator WONG:** He's not here?

**Mr Colvin:** No. He's no longer with the AFP. He is with the Department of Human Services.

**Senator WONG:** Who is the new 'Mr Wood'?

**Mr Colvin:** Acting Chief Operating Officer Ms Sue Bird.

**Senator WONG:** In relation to the budget paper measures and what the movement in allocation between the budget years was between the 2016-17 year and over the forward estimates, I think I then asked a question which is—is it BE-1164?

**Mr Colvin:** Question on notice?

**Senator WONG:** Yes.

**Mr Colvin:** We'll have a different number.

**Senator WONG:** I just want to confirm that shows \$184 million reduction in funding over the forward estimates.

**Mr Colvin:** We have it as a different number, I think.

**Ms Bird:** I think you asked a couple of questions about the movement of funds.

**Senator WONG:** No, I have a question. This is what I've been given. It has a table: year; funding for outcome 1; difference compared to 2016-17. It was an updated table, because you were correcting a prior answer and you were confirming what I'd put to you, which I think hadn't been conceded but was then subsequently agreed in this answer, which was that it was a \$184 million reduction over the forwards.

**Ms Bird:** Apologies, Senator. Yes, we've got that table.

**Senator WONG:** The reference is right? Are we right, Ms Bird?

**Ms Bird:** Yes, I believe we are.

**Senator WONG:** The confirmation, which was a correction to, I think, a different question, was that, in terms of outcome 1, compared against 2016-17 as a base year, there was a total reduction in funding of \$184,367,000. Is that right?

**Ms Bird:** Yes, that's right. Regarding the reduction, I think there was one error in the table that we were provided—

**Senator WONG:** Correct.

**Ms Bird:** and we corrected that error, and the total difference was \$184,367,000.

**Senator WONG:** Yes. Thank you for that. Now, Commissioner, I think, in the estimates, we had a conversation about areas that might be affected by cuts in funding to outcome 1. You referenced fraud work, organised crime work and drug work as areas which might be affected. I'm just checking the *Hansard* to see if it was you or another officer.

**Mr Colvin:** That would be correct. Those discretionary parts of the business that aren't tied to specific funding is where we can make those discretionary budget priority movements.

**Senator WONG:** What are the areas to which you would look essentially to make up the \$184 million plus reduction in funding for the AFP?

**Mr Colvin:** It is those areas that you just mentioned. Within the AFP's budget, we have discretionary funding and we have tied funding. Obviously, reductions in our budget mostly apply to our discretionary funding. That is, areas that fund a large portion of our antinarcotics work, our organised crime work, our general operational work—our fraud and anticorruption, our child exploitation; a range. Obviously, we want to reduce the impact on any one area. We would have to look at our own prioritisation within the organisation and reduce accordingly.

**Senator WONG:** Child exploitation is one of the areas that is included in the discretionary funding category.

**Mr Colvin:** Yes, it is.

**Senator WONG:** That is not immune from reduction in resources.

**Mr Colvin:** No.

**Senator WONG:** Potentially, we're looking at a reduction in resources to anticorruption, organised crime, child exploitation and I think you described it as general anticorruption work?

**Mr Colvin:** Fraud and anticorruption.

**Senator WONG:** What are the sorts of numbers? How does the reduction in funding manifest itself in terms of resources? Do you use ASL?

**Mr Colvin:** It depends on which set of papers we're looking at, but headcount, as well—

**Senator WONG:** Does it affect headcount?

**Mr Colvin:** It does, yes. Our drop in headcount from last year to this year is in the order of 117 individual people. Now, of course, that number can vary, because, if we can move funding around the organisation to retain FTE, we will. But it really does vary. But it is in the order of 117 people.

**Senator WONG:** Is that 117 people over the forward estimates?

**Mr Colvin:** No, that's just from last year to this year.

**Senator WONG:** From 2016-17—

**Mr Colvin:** To 2017-18.

**Senator WONG:** to 2017-18 you're looking at a reduction of 117 in what you describe as headcount. Is that the correct metric?

**Mr Colvin:** Yes.

**Senator WONG:** And what does the headcount include? Sorry, remind me again, Commissioner—I apologise—of the nomenclature you use between officers and other staff.

**Mr Colvin:** Headcount for the AFP is how many people—this is the way I describe it to myself—are drawing a salary from the AFP. They may not be full-time individuals; they may be part time, but they are the people on our books that we have as staff. That will be higher than our full-time equivalent, because obviously our full-time equivalent will be lower, based on part-time workers. But the number of people drawing a salary from the AFP is our headcount

**Senator WONG:** Is it sworn officers and—

**Mr Colvin:** Professional staff.

**Senator WONG:** Have you allocated as between those two cohorts for the 117?

**Mr Colvin:** I can give you the breakdown—

**Senator WONG:** Yes, thank you.

**Mr Colvin:** but, again, that varies according to where we think our priorities sit. That 117 for the current financial year is a reduction of 98 police, an increase of 44 Protective Service officers, a reduction of 65 professional staff and two additional staff to what we call the Asia/Pacific Group on Money Laundering. So it varied—there are ons and offs within that 117.

**Senator WONG:** Have the reductions been disaggregated across functions or across areas?

**Mr Colvin:** We'd be able to get that data, but I don't have it in front of me.

**Senator WONG:** Could you do that for me?

**Mr Colvin:** Yes.

**Senator WONG:** If not here, perhaps you could provide it on notice. Of the 98, I want to know where they're coming from, if that's possible, particularly what sort of work they're involved in. Thank you. What's your total headcount?

**Mr Colvin:** AFP current staff—this is not headcount; I believe this is full-time equivalent—is 6,525. Sorry, that is headcount, my apologies. There you go, I get confused myself.

**Senator WONG:** Was there anything else on the reduction, Commissioner, that you wanted to talk to us about?

**Mr Colvin:** No, I think we gave quite comprehensive answers in our response from last estimates.

**Senator WONG:** Yes, I appreciated that.

**Mr Colvin:** There's been no substantive change to our budget since the last discussion that we had, so those answer will be current and correct.

**Senator WONG:** Do you have concerns about the effect of the reduction, in police particularly but in total headcount, at the AFP as a result of this budget cut?

**Mr Colvin:** Of course. Any reduction in staffing for police leads to priority decisions that I have to make internally about where I think the resource can best be pointed. What I would

say, though, is that we are in a constant discussion with government about the funding envelope that we have. I've been getting a very receptive hearing from government about that. You would have seen in the last budget that there was quite a significant announcement of new funding to the organisation for core capabilities, which was important to me. I think every police commissioner would like more resources, but it's a reality that we have to deal with what we have.

**Senator WONG:** You said you've had a sympathetic hearing. Have you raised concerns with your minister?

**Mr Colvin:** That's a constant discussion between the minister and me about our budget.

**Senator WONG:** What does 'constant discussion' mean?

**Mr Colvin:** It's ongoing. As you would expect, the minister takes an interest in our budget position. Through various stages throughout the year, we have requests for new funding, we have new policy initiatives and we have general budget considerations. So it's an ongoing discussion.

**Senator WONG:** And this is Minister Keenan, not Senator Brandis?

**Mr Colvin:** Minister Keenan, that's correct.

**Senator WONG:** Have you had any conversations about this with Senator Brandis as the senior minister?

**Mr Colvin:** From time to time, but not detailed discussions. I have those discussions with my minister.

**Senator WONG:** Who's the minister for the purposes of the budget process? Who takes an NPP to cabinet in relation to the AFP? Is it the senior minister or Mr Keenan?

**Mr Colvin:** It will often be Mr Keenan, invited into the cabinet.

**Senator WONG:** Does Mr Keenan share your concerns about the effect on the AFP's operational capacity of this budget cut?

**Mr Colvin:** I think that's a question for Mr Keenan.

**Senator WONG:** Has he expressed them to you?

**Mr Colvin:** We have a constant discussion about the needs of the budget and how I will prioritise the budget.

**Senator WONG:** You mentioned that there was tied funding—the majority of your funding is tied.

**Mr Colvin:** Not the majority, but a large portion is tied.

**Senator WONG:** What proportion is currently tied and what's the effect of that?

**Mr Colvin:** I might check with my CFO, but in the order of 40 per cent of our budget is tied. The effect of that is that I'm on a measure—it's normally a four-year terminating or lapsing measure—that I'm required to deliver a certain outcome on for the government, for the community. So there is less discretion for me to change that funding prioritisation because I'm tied to a particular measure. The 60 per cent of my budget which I would describe as more discretionary—it's not tied funding—is where I can move resources around a little bit simpler.

**Senator WONG:** When you say you're required to deliver a particular outcome for government in the tied funding, can you give me some examples.

**Mr Colvin:** It could be the national anti-gangs measure; it could be a measure for the Solomon Islands police cooperation program, or PNG cooperation. So they're specific measures of government that they've asked the Australian Federal Police to deliver.

**Senator WONG:** When you say it's tied, has that been expressed in terms of an ERC decision? It's presumably not in legislation.

**Mr Colvin:** No. They'll be ERC decisions.

**Senator WONG:** An ERC decision which says, 'This NPP is granted or funded, but it is only to achieve these outcomes'?

**Mr Colvin:** Well, it's in response to an NPP that goes up to, say, 'To deliver this service, this is what it will cost.'

**Senator WONG:** And have you sought approval from Minister Keenan to, I suppose, free up any of that 40 per cent to deal with some of these issues? Obviously the anti-terrorism national security issues are in a category of their own, but some might argue that child exploitation and organised crime are high-priority areas. Have you had a discussion with Minister Keenan about the possibility of freeing up some of the tied funding to allocate to high priorities?

**Mr Colvin:** The answer to the question is yes. In the announcement from government earlier this year around the \$321 million to support the AFP to improve our specialisation, there was also a commitment from the government to work with us to come back at the end of this year with a broader look at the sustainable funding model for the AFP that was announced by the Prime Minister in the announcement of the budget measure.

**Senator WONG:** In part, that sustainable funding model is also how you are funded—there's quantum, but it's also how?

**Mr Colvin:** It is quantum and how, that's correct.

**Senator WONG:** Do you accept a certain proportion being in tied funding, or is it your view that there should be discretion across the board?

**Mr Colvin:** I think that's the question of how we are funded. I accept there are measures that the government will, quite rightly and appropriately, want the AFP to deliver, and there needs to be a mechanism for them to do that. At the moment, that mechanism is through tied funding, which can at times tie my hands in terms of a flexibility to move among crime priorities. That's a discussion we're having with government about what would be a different model. We haven't landed that discussion, and I don't think it would be appropriate for me to talk about any detail now, because it's an ongoing discussion.

**Senator WONG:** That's fine. Can you just confirm the AFP recently voted no to a proposed enterprise agreement?

**Mr Colvin:** That's correct, yes.

**Senator WONG:** Was this your first EB vote?

**Mr Colvin:** Yes, it was.

**Senator WONG:** Sorry, I should say—

**Mr Colvin:** The first of this particular bargaining process.

**Senator WONG:** When did the current agreement expire?

**Mr Colvin:** The nominal expiry date was 8 March 2016.

**Senator WONG:** So we are a year and a half beyond the nominal expiry date?

**Mr Colvin:** Yes.

**Senator WONG:** So people have been paid in accordance with an expired EB for 18 months?

**Mr Colvin:** Correct.

**Senator WONG:** Without a pay increase?

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

**Senator WONG:** And this agreement was in accordance with the government bargaining framework?

**Mr Colvin:** We bargained in accordance with the government bargaining framework, that's right.

**Senator WONG:** What was the wage increase, the upper parameter?

**Mr Colvin:** What was offered that was rejected by the workforce was a two, two, two pay rise.

**Senator WONG:** Can you tell me the numbers in terms of the vote?

**Mr Colvin:** It was an overwhelming rejection of the enterprise agreement, with an 81 per cent no vote.

**Senator WONG:** 81 per cent?

**Mr Colvin:** Yes.

**Senator WONG:** Really?

**CHAIR:** Senator Wong, do you have many more questions on this subject?

**Senator WONG:** I have more on this, but that's fine.

**Mr Colvin:** The actual rate of participation was very high as well. I think it was in the order of 86 or 87 per cent of the organisation.

**Senator WONG:** I'm happy to come back to it, Chair, if you want to go to someone else.

**CHAIR:** Thanks, Senator Wong. We will come back to you after I ask a few questions. I've been approached by the Australian Christian Lobby about a matter that we've discussed previously, Commissioner.

**Mr Colvin:** Yes.

**CHAIR:** I acknowledge that the person involved has since passed away.

**Mr Colvin:** Yes.

**CHAIR:** I extend sympathies to his family. The concern of the Australian Christian Lobby, though, is that evidence given by, I think, Commander Walters immediately following the incident was that Mr Duong had responded to officers when he was asked why he chose the Australian Christian Lobby as the place to attempt to blow himself up, and his comment



according to documents filed in court, I'm told, was, 'Because I dislike the Australian Christian lobby, because religions are failed.' The officer then said in a media interview:

As a result of our conversations with the male individual last night, we are confident ... that the incident is not politically, religiously or ideologically motivated ...

The question that concerns the Australian Christian Lobby is that clearly, if that other information is correct that he said, 'Because I dislike the Australian Christian Lobby, because religions are failed,' there's a disconnect between Mr Duong's answers and the media conference by Commander Walters saying that there was no political, religious or ideological motivation. How far did the investigation go and, particularly, what findings were arrived at, particularly in relation to the Australian Christian Lobby and the religious motivation for the place where the person chose to try to kill himself?

**Mr Colvin:** I certainly understand the concerns of the ACL. I don't share their view of the facts. In their defence, they are not, of course, aware of the entirety of the investigation or the details. I have said previously in this committee that I was quite conscious of the fact that he knew that it was the Australian Christian Lobby. I should said at this point that I also extend my condolences to his family. The issue for police, of course, is what we can prove at law. We proceeded with a charge that was consistent and based on all of the inquiries that we made in what was a thorough investigation. That was consistent as well with the comments of Commander Walters shortly after. While we know that the individual concerned knew that the location was the Australian Christian Lobby, we were not convinced then and we are not convinced now—and I must say that the DPP at the highest levels in the ACT considered the evidence available and concurred with the charges that we laid and that a charge relating to political motivation or religious motivation was not appropriate in this matter. There are a range of circumstances and factors. I understand the Christian Lobby's concerns, but I reject their statements that he was religiously motivated. Yes, he said certain things, but it needed to be taken in the context of everything else that he had done before and everything else that our investigation had uncovered.

**CHAIR:** The argument of the Australian Christian Lobby is that the day after the incident he said, amongst other things, 'Because I dislike the Australian Christian Lobby, because religions are failed.' I understand the sequence is that the following day Commander Walters, in giving a press interview, said at a very early stage:

As a result of our conversations ... we are confident ... that the incident is not ... religiously ... motivated ...

Their concern, as I understand it, is: how was Commander Walters able to come to that conclusion very shortly after the investigation, before full investigations had been completed and before there had been further interrogation of the person? The Christian Lobby feel that apparently the officers involved had already come to a conclusion before the investigation was conducted, which concerns them. They are, as you would know, Commissioner, very concerned for their own safety and the safety of their staff. They were very concerned at the way the investigation went and the conclusions that came very soon after the event, before the investigation could have been anywhere near completed.

**Mr Colvin:** I understand those concerns. I understand that the commander, who needed to give a press conference the following day to ensure that the public were aware of what had occurred, based his comments on the entirety of what was known to us at the time, including

the person of interest's comments to us in the hospital—as well as other matters that we had taken into account at that stage.

**CHAIR:** Can you tell us what those matters are at this stage, now that it's all concluded?

**Mr Colvin:** There is a coronial investigation that is still ongoing. The coroner will, I'm sure, want to take a very close look at motivation and the events leading up to it, so I would rather not go into detail on the investigation.

**CHAIR:** That's fair enough.

**Mr Colvin:** Chair, what I will say: I understand the ACL's concerns, I understand their concerns for safety, and we are working with them, through the ACT police, on those concerns for safety. If they've got information that is specific to threats, I encourage them to bring it forward. However, I believe the comments of the commander that following morning have since been supported in every further step of that investigation, including the consideration of the Commonwealth DPP. We have said all along that we believed his motivation, his primary motivation, was to take his own life. That is a tragic set of circumstances, which unfortunately has borne out to be true.

**CHAIR:** So without pre-empting the coroner's finding, you're suggesting that it was a mental health problem rather than any deliberate motivation for other purposes?

**Mr Colvin:** Chair, we have said that from day one, yes.

**CHAIR:** What were the incidents surrounding this person's demise? He wasn't in custody at the time, was he?

**Mr Colvin:** When he took his life?

**CHAIR:** Yes.

**Mr Colvin:** No, he was not, but he was before the court.

**CHAIR:** And, as a result of his passing, there are no other conclusions coming from that except, I guess you'd say, to enforce your original conclusion?

**Mr Colvin:** Chair, I want to be very sensitive to the family, of course, but I think the tragic circumstances of his passing confirm, or reinforce, what we believe was the principle motivation all along. The coroner now will look at this in a detailed way, I'm sure, and that's an appropriate response.

**CHAIR:** Okay. I might leave that there, but I have got a few minutes left. Did anyone else have—

*Senator Abetz interjecting—*

**Senator HINCH:** Mine is on the same topic; it will take five minutes.

**CHAIR:** We might go back to the Labor Party for 10 minutes and then next, instead of government—well, perhaps I might start with Senator Abetz and you can share around the next 10 minutes. We're trying to do this in 10-minute blocks. Back to you, Senator Wong.

**Senator WONG:** Thank you, Chair. I will try to finish this quickly. I know Senator Singh has a couple of questions; we will try to do both in the 10-minute block if we can. I want to go back to your EB. We have an 81 per cent no vote with an 86 per cent participation rate: that's a pretty comprehensive rejection. Did you raise any of the concerns staff had expressed about the EB, or concerns about the content of the agreement, with the minister?

**Mr Colvin:** Certainly I kept the minister broadly aware of negotiations and discussions and what we were ultimately, after bargaining, in a position to offer, but this was my responsibility. It was an EB effectively between me and the organisation.

**Senator WONG:** So did the minister express concerns about the content of the EB?

**Mr Colvin:** In what way, Senator?

**Senator WONG:** Sorry. Did the minister know or was the minister aware that it was unlikely that officers were going to accept the pay increase on the table?

**Mr Colvin:** Certainly the minister was aware that I had reservations about the ability of the staff to say—that I was concerned, because of the way the bargaining had gone, that we were likely to get a no vote.

**Senator WONG:** Right. Does it remain your view that its rejection won't be turned around while you have a pay increase of the quantum that is being put on the table thus far?

**Mr Colvin:** Senator, we are in the middle of bargaining again—we went straight back into bargaining—and we are reaching the conclusion of the bargaining. We have put to our bargainers, so our union representatives as well as our independent bargainers, a range of measures that we hope—we are very hopeful, very optimistic—will get us a yes vote. We have offered a different pay rate, still in accordance with the government's bargaining guidelines, and we have been bargaining on the terms of the EA that we felt, and that the organisation told us, were the main sticking points, if you like, as to why we got the no vote last time.

**Senator WONG:** There was an article earlier in the year suggesting that AFP officers were forced to work second jobs to make ends meet. You provided comment to that. Do you recall that, Commissioner?

**Mr Colvin:** I do recall the article, yes.

**Senator WONG:** Is it the case that there are officers in the AFP who are forced to take up second jobs to make ends meet?

**Mr Colvin:** I don't know that I could say they are 'forced'. We have a lot of officers who have approved secondary employment. That's a personal decision for them. I can't comment on their financial positions. AFP members are very aware and very conscious of what their pay is, and what their potential for earning in the future is as well.

**Senator WONG:** Okay. Rather than spending time now looking for it, Ms Bird, I will come back—I want to look at the employee benefits line item in your PBS at page 105. If you look at the employee benefits line, I want to confirm that the reduction over the forward estimates, compared to the 2016-17 level, is \$77,217,000. Do you want to check that we are in agreement about the quantum and where it's located in the papers, and I will come back to that? I also want to confirm, if you look at budget paper No. 4, which is agency resourcing, that there is a change in ASLs of 151. When I come back I would like to correlate that, unless you can do it now with the 117 figure that the commissioner gave me?

**Mr Colvin:** I will stand corrected, but effectively the ASL figure that we put in the budget papers is a formal figure, but as I move budget around between employee and operating, to try and minimise the effect on FTE, that number will change year to year.

**Senator WONG:** So the headcount is actually higher than the reduction you budgeted for?

**Mr Colvin:** Yes.

**Senator WONG:** Chair, I will come back later. Senator Singh can finish the opposition's component now.

**Senator SINGH:** Are you aware, Commissioner, of the incident involving Outlaws Motorcycle Club members at Hobart Airport just this past Sunday, 22 October? I understand there were six persons identified as Rebels that were on a Qantas flight. They made comments to cabin crew about violence if their luggage was touched, and the captain refused to take off with them on the flight, which meant the flight was delayed by an hour while that incident was resolved.

**Mr Colvin:** I saw the media reporting on that, yes.

**Senator SINGH:** Can you confirm whether these were interstate Outlaw motorcycle group members?

**Mr Colvin:** I can't, Senator. I believe that was a matter dealt with by Tasmania Police. It wasn't a matter dealt with by the AFP.

**Senator SINGH:** So what assistance did the AFP provide in this instance?

**Mr Colvin:** I would have to take that on notice, Senator. As I said, I saw it in the media reporting. It wasn't something that was reported to me as an AFP response. We have been working with Tasmania Police, as have all states and territories, because there was a particular OMCG run—what we call a bikie run—in Tasmania on the weekend, but I don't believe we provided any assistance in terms of this disturbance at Hobart airport.

**Senator SINGH:** You didn't provide any assistance and you can't confirm whether these were interstate Outlaw motorcycle groups?

**Mr Colvin:** No, I'd have to take that on notice. I don't have their identity details.

**Senator SINGH:** But normally if there is an incident with organised crime at a capital city airport, wouldn't the AFP respond?

**Mr Colvin:** We are the police responsible for counterterrorism and first response at the designated airports. Hobart Airport is not a designated airport, so, like other airports around the country, of which there are 80 or so, they are the responsibility of the local police.

**Senator SINGH:** But the AFP are the experts in national security and organised crime. Is that correct?

**Mr Colvin:** Senator, thank you, but I think our state and territory colleagues would also claim a certain degree of expertise in organised crime in their local area and national security.

**Senator SINGH:** So the AFP are not experts in national security and organised crime?

**Mr Colvin:** I think what I'm saying is 'Yes', but I don't believe that that's at the expense of Tasmanian police. The members on this flight who caused the disturbance, I'm sure their names will have been shared with the national task force that looks at outlaw motorcycle gangs. I am sure we have intelligence on them. We may not know them, I don't know. It is a joint effort between state and Commonwealth agencies.

**Senator SINGH:** But it wasn't joint in this instance, is that what you are saying?

**Mr Colvin:** That's right. I believe the response at the airport was a Tasmanian police response.

**Senator SINGH:** So in this instance, it was a Tasmania police response because of the cuts to the AFP at Hobart airport in 2014? Therefore, there was no longer any AFP police presence. Is that correct?

**Mr Colvin:** We are not present at the Hobart airport. It's not a designated airport; we are responsible police at the designated airports.

**Senator Brandis:** I should add to that, Senator Singh. You asked about the decision made in 2014. The Office of Transport Security undertook a comparative security-risk analysis in late 2014, as a result of which Hobart airport was removed from the list of designated airports because the Office of Transport Security determined that Hobart airport's security arrangements were sufficiently serviced by the Tasmanian police. I see Senator Abetz nodding in agreement with that proposition.

**Senator SINGH:** Thank you, Senator. I actually knew that.

**Senator Brandis:** If I may finish without being interrupted, please. As the Commissioner has pointed out to you, state police also have expertise in national security-related policing.

**Senator SINGH:** To follow on from Senator Brandis's contribution about the Office of Transport Security's assessment in 2014: Commissioner, when is the next assessment due into Hobart airport's security risks from the Office of Transport Security?

**Mr Colvin:** I think you need to ask the Office of Transport Security for the details, but I am aware there is a broader review by the Inspector of Transport Security at the moment into airport security arrangements.

**Senator SINGH:** So it is going on at this moment?

**Mr Colvin:** I can't categorically say to you that Hobart is a focus or a part of what he will be looking at. I presume it is. The Office of Transport Security is much better at being able to give you details of that.

**Senator SINGH:** So you have not been provided a list by the Office of Transport Security as to which airports are going through an assessment process of their security risks?

**Mr Colvin:** I don't know. It is an assessment process of particular airports. There is a broader review of airport security arrangements that's been undertaken by the Inspector of Transport Security. That report is due, I believe, some time next year. I'm sure he'll take into account regional airport security and I'm sure it will probably include Hobart.

**Senator SINGH:** So a reassessment has been going on since 2014 assessment into Hobart's airport security risks. Have you been provided with detail or information that Hobart is being reassessed in relation to that?

**Mr Colvin:** No, Senator, we haven't. We are working with the Transport Safety Inspector, his office, on that review, but I don't believe we've been asked for specific details about Hobart.

**Senator SINGH:** I'm not after specific details, but just whether or not Hobart is included?

**Mr Colvin:** I am assuming it is, because it's a look at regional airports.

**Senator SINGH:** Is that a 'yes', Commissioner? I need a yes or no.

**Mr Colvin:** I'm not the right person to answer the question. If you want to know what is in that report, you need to talk to the Office of Transport Security. I haven't been told specifically that Hobart is a focus of that review, but I know it is reviewing a range of airports.

**Senator Brandis:** I think, Senator Singh, these questions are best directed at the agency that's conducting the review, which is not an agency in this portfolio.

**Senator SINGH:** Finally, Commissioner, was the AFP aware that, according to reports, this was the largest ever gathering of bikie gangs in Tasmania?

**Mr Colvin:** I don't know whether I would say that we were aware that it was the largest ever, but, as I said before, along with other colleagues from policing across the country, we provided support to Tasmania Police as a result of the gathering.

**Senator SINGH:** Access to some parts of Hobart airport requires an ASIC, an airside identification card?

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

**Senator SINGH:** Previously at Hobart airport, AFP officers had access but state police did not have full access when they took over—meaning they had to be escorted onto and off the airside areas. Do Tasmania Police now have access throughout the airport or are there areas still that have been left unpatrolled because of this?

**Mr Colvin:** I couldn't answer that. I would imagine that the arrangements are the same for every airport that are not one of the nine designated airports in the country. I don't know if they have ASICs or not.

**Senator SINGH:** Did the AFP provide training to Tasmania Police when it was removed from Hobart airport because of budget constraints?

**Mr Colvin:** Yes, we did provide training to Tasmania Police.

**CHAIR:** We will have to come back to you if you have more questions on that.

**Senator ABETZ:** Welcome to representatives of the AFP. The Office of Transport Security was not called by the Australian Labor Party or any senator in the rural and regional affairs committee. If that was a matter of concern, one would have thought that, rather than getting cheap headlines, the Labor Party may have called for the Office of Transport Security to appear to find out what's going on. Having been on the aeroplane in question that Senator Singh has sought to ask questions about, can I ask: what was the full complement of the Australian Federal Police presence in the past at Hobart?

**Mr Colvin:** The full complement was in the order of 28 police officers.

**Senator ABETZ:** How many were on duty at any one time?

**Mr Colvin:** To give you an exact answer, I would have to take that on notice. It would have been a patrol strength of probably five to six officers.

**Senator ABETZ:** If you could take that on notice, because the police complement on the tarmac was quite sizeable on Sunday afternoon with, I think, three paddy wagons. It was a lot higher than three or four Federal Police officers. When operating at domestic airports, do officers of the AFP have greater powers than the local police?

**Mr Colvin:** No, we have effectively the same powers.

**Senator ABETZ:** To your knowledge, the threat assessment for Hobart airport, without going into detail, does not require an AFP presence, and is it the same for Launceston airport, Devonport airport and Wynyard airport?

**Mr Colvin:** It is, yes.

**Senator ABETZ:** Do the same sized aeroplanes, in general, fly into Hobart as fly into Launceston airport, to your knowledge?

**Mr Colvin:** From my experience, yes, but I am not an expert on aircraft.

**Senator ABETZ:** Having an Australian Federal Police presence at Hobart airport may be very interesting, but aeroplanes of a similar size and similar carrying capacity fly in and out, what, only about two hours up the road?

**Mr Colvin:** Yes, that's correct.

**Senator ABETZ:** Nobody seems to be arguing for a Federal Police presence at Launceston airport. What sort of equipment did the Australian Federal Police have whilst they were present at Hobart airport? By that, I mean how many paddy wagons, for example, did they have?

**Mr Colvin:** I would have to take that on notice to check. It wasn't an excessive presence of police there. We would have had one or two vehicles that would have rotated around our shifts. We had access to our police canines for drug detection and the like.

**Senator ABETZ:** So the reality is with this Rebel presence at Hobart airport on Sunday, the Australian Federal Police, if they had been there, would have required the support of Tasmania Police?

**Mr Colvin:** Our standard operating procedures would have been to call for local support; that's correct.

**Senator ABETZ:** Yes. And the operation could not have been undertaken until such time as that back-up from the local Tasmanian police had arrived?

**Mr Colvin:** It would depend on the nature of the operation.

**Senator ABETZ:** But this particular operation that required the removal of Rebel motorcyclists from the Qantas flight?

**Mr Colvin:** That would be my sense. Our first responding officers would only have been two, or possibly three. They would have required back-up, and that back-up most likely would have come from the Tasmanian police.

**Senator ABETZ:** Finally, on the airport, are there any issues that have arisen at Hobart Airport since 2014 that needed an AFP presence, to your knowledge?

**Mr Colvin:** No. We haven't responded to any incidents beyond occasionally supporting Tasmania Police with our permanent presence in Hobart.

**Senator ABETZ:** Because, thankfully, thus far Hobart Airport is a relatively tame place. Can I quickly go back to the unfortunate situation with Jaden Duong, who committed suicide—the fellow that presented himself to the Australian Christian Lobby with a van and gas bottles. Is it correct that after the explosion police asked Mr Duong why he had picked the location and he responded, 'Because I dislike the Australian Christian Lobby'? Is that correct?

**Mr Colvin:** I am not sure of the exact words, but it was words to that effect.

**Senator ABETZ:** Right. Of all the places to commit that which you assert was suicide, he chose the Australian Christian Lobby because he disliked the Australian Christian Lobby?

**Mr Colvin:** No. I think there are other circumstances. I've just asked the Chief Police Officer of the ACT to come forward, who knows this matter far better than I. I don't believe it was his first choice of location, let me say that. I believe it was a location of convenience as much as anything else, with his stated intention—his principal intention was to take his own life. But I'll ask the CPO—

**Senator ABETZ:** So that is why he looked up the Australian Christian Lobby online? Is that why he looked up bomb making online? Is that why he took issue with the Australian Christian Lobby online? All as part of this bizarre plan to commit suicide?

**Mr Colvin:** As I explained to one of your colleagues a little earlier, there is a range of factors that need to be taken into account in terms of what would be evidence for us, in terms of the charge that we would apply. I believe that the course that we took, the charges that we laid and the conclusions that we reached in terms of his motivation have been consistent throughout the investigation, even post the circumstances of his death. I have no reason to question or doubt the investigators who came to those conclusions. There is a totality of evidence and information available to police—

**Senator ABETZ:** You keep saying that, with respect, Mr Colvin, but when he was specifically asked why he had picked the location, the answer was 'because I dislike the Australian Christian lobby.' So, that would suggest that the Australian Christian Lobby was targeted for this explosion. Can I ask you to take on notice, if you are the appropriate body, how many people in Australia have actually sought to commit suicide privately by explosion?

**Mr Colvin:** That would be an almost impossible answer for me to find.

**Senator WONG:** It says something about the priorities of some senators.

**Senator ABETZ:** It would be on the public record.

**CHAIR:** Is there a point of order?

**Senator WONG:** I think that is a really inappropriate question to ask an officer.

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

**Senator Brandis:** Senator Abetz—

**CHAIR:** There's no point of order, Minister. There's no need to take it up.

**Senator Brandis:** I'll take your point of order. I'm responding to the question. Senator Abetz, we'll take on notice whether statistics are collected about the cause of suicides. We do know that this particular man did have suicidal tendencies, because a matter of some weeks or months later he committed suicide.

**Senator ABETZ:** Yes, and prior to this incident I understand he had suicidal tendencies as well. That does not mean that a person with suicidal inclinations or tendencies might not combine that with another motivation, which is to take out an organisation with which he vehemently disagrees, having been described, as I understand it, as quite a radical gay activist in the United States before he came to Australia.

**Senator Brandis:** I think these three facts are not in controversy. One is that the man had suicidal tendencies. Secondly, that he didn't like the Australian Christian Lobby. Third, that



he attempted to explode a bomb, causing himself harm, in the proximity of the Australian Christian Lobby's offices. I don't think any of those facts are in controversy.

**Senator ABETZ:** Thank you for that, minister.

**Senator Brandis:** Different people might make whatever they make of those facts.

**Senator ABETZ:** Is it also a fact that Mr Duong, when asked why he had picked the location for the detonation of this bomb—we are agreed there was a bomb that he detonated, allegedly for the purpose of including suiciding—that the reason he picked of all the possible locations in Australia, the one he picked, and when he was asked why he had picked the location, 'because I dislike the Australian Christian Lobby.' So one can have more than just one motivation, Mr Colvin, in relation to a particular event. Suicidal tendency is clearly there, but the evidence is very clear, out of the deceased's own mouth, that he had picked the location because he disliked the Australian Christian lobby. That's not in dispute, is it?

**Mr Colvin:** A few things—there are a number of questions in there. Firstly, can I go back to what we have taken on notice and be very clear. I don't believe there is a central repository in the country that details all of the suicides or attempted suicides. To get that I would need to go to coroners' offices who have dealt with suicides and to state and territory jurisdictions.

**Senator ABETZ:** Don't bother. I'll ask the Parliamentary Library whether there is a such a list. We do have, for example, evidence that people, sadly, commit suicide by hanging—

**Mr Colvin:** The statistics on suicide—

**Senator ABETZ:** by running into trucks deliberately, sadly, and so the list goes on. Those statistics are collected.

**CHAIR:** There is a point of order.

**Senator WONG:** I will just ask you, Chair, if it would be possible—there is quite a lot of literature about the appropriateness of speaking about methods of committing suicide.

**CHAIR:** That is not a point of order.

**Senator WONG:** This is a human being issue, not a technical issue.

**CHAIR:** I'm here as a chairman of a Senate estimates committee, and there is no point of order.

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

**CHAIR:** Yes, Senator Pratt.

**Senator PRATT:** Within our standing orders, it should be appropriate to respect the way suicide is talked about, so that it is managed in an appropriate way, so that suicidal ideation is not encouraged.

**CHAIR:** That's not a point of order. Senator Abetz.

**Senator LEYONHJELM:** Discussing the method of suicide is appropriate.

**CHAIR:** Senator Leyonhjelm, I ruled there is no point of order. You have another couple of minutes, Senator Abetz. Let Commissioner Colvin complete.

**Senator ABETZ:** I can get information via the Parliamentary Library. All I'm saying is it seems somewhat bizarre, in relation to this particular matter, that the Australian Federal Police were so quick to discount the targeting of the Australian Christian Lobby, when out of

the deceased's own mouth, of all the places he could have parked and detonated his van, he said, as to why he chose the Australian Christian Lobby, 'because I dislike the Australian Christian Lobby'.

**CHAIR:** What is the question, please?

**Senator ABETZ:** Why did the police come to such a very quick conclusion before this statement was actually taken from him; or, indeed, had it been taken from him prior to the police statement?

**Mr Colvin:** I'm sorry, I'm not sure what you're inferring by that last statement.

**Senator ABETZ:** Don't worry about what I'm inferring. Your task is to answer.

**Mr Colvin:** I'm not too sure what the question is. We spoke to the person concerned at the hospital shortly after he had attempted to kill himself. That's the statement that you're referring to. Then there has been a subsequent investigation, as there was at the time. I'm not sure what you mean about talking to him prior to the statement.

**Senator ABETZ:** When did he say, 'because I disliked the Australian Christian Lobby'? Was that evidence given to you at the hospital?

**Mr Colvin:** I believe it was given to us at the hospital.

**Ms Saunders:** That particular statement was made at the hospital shortly after the events, but from an investigative point of view we took that comment in the context of broader statements made during that conversation with him, as well as information he also provided to medical staff at that time and subsequent to the event. So if I could just clarify, noting that this is the subject of a coronial request currently, so I am really conscious of what I am saying here. I am also very conscious that Mr Duong is now deceased and I obviously I respect his family's privacy in this instance. I want to make the point that this was not his first suicide attempt. In fact the evidence revealed that he had spent some one to two months planning his suicide leading up to this event. He had explored a range of options which he was considering as to how he might take his own life, including what occurred in this instance. Then on the actual day this occurred, he actually explored and drove to a number of locations—

**Senator PRATT:** Point of order, chair. I do wonder whether in the public interest these questions should be asked on notice. As the AFP would be aware, it is recognised by mental health experts that it is appropriate to minimise the details about the death, including the method, including the location, and to promote help-seeking rather than to promote public discussion of the way people commit suicide. The AFP would be well aware of this. They are under an obligation to answer questions—

**CHAIR:** Senator Pratt, I have allowed you to make the point. It is not a point of order that I as chairman of a Senate estimates committee will rule on.

**Ms Saunders:** To clarify: the facts I'm referring to are facts that have been put before the court in the ACT. As I indicated, Mr Duong did drive to some locations, but because there were too many people at those locations, he drove to a location where he could park in the car park, where there were no other people, with the intent of taking his own life. Yes, he did make a comment in the conversation at the hospital as to why he chose that location, and he did indicate he did dislike the ACL, but that was not his motivation for taking the action that he did. I make the point that establishing the fact that a person may have certain views is not

the same as establishing that any given actions they undertake are necessarily motivated by those same views.

**Senator ABETZ:** Look, that is fine, but when you've got such a very clear statement made on the day of the event, where a bomb was detonated, and the person says, 'I dislike the Australian Christian Lobby'—

**CHAIR:** Senator Abetz, that's not a question. We're not here for a debate. We're here for questions. Your time has really expired.

**Senator ABETZ:** Alright. Thanks, Chair.

**Mr Colvin:** I think this is the importance of taking the context of things that are said. That's what the Chief Police Officer of the ACT has just attempted to give the committee. I am uncomfortable that we are talking in such detail about what is a matter before the coroner. We are trying to be helpful to the committee because we feel obliged to do that, but I think we need to keep in context the totality of the investigation.

**CHAIR:** Thanks, Commissioner. Now, time for the crossbenchers by arrangement. I am going to move to Senator Hinch, who is not here. Senator Leyonhjelm on the same subject, I think.

**Senator LEYONHJELM:** I had some questions on that, but I think they have largely been dealt with. In the October estimates I asked questions about Mossack Fonseca and the Panama Papers issue. I raised it again in February estimates, and in February you advised that no-one has been charged. You also indicated that the silver bullion was still being held because the investigation is ongoing. Is that still the case? Has anyone been charged? Are you holding the silver bullion?

**Mr Colvin:** Nobody has been charged. They are matters dealt with under the Serious Financial Crime Task Force, in partnership with other agencies. I don't believe we have handed back the silver bullion. No, we have not.

**Senator LEYONHJELM:** Do you anticipate charges will be laid?

**Mr Colvin:** We're investigating the matters. If we didn't believe that the investigation could end in charges, we would drop the investigation. So, by the fact that we still have it under investigation we are anticipating that charges may be appropriate.

**Senator LEYONHJELM:** If you didn't lay charges, would it be appropriate to continue holding the bullion?

**Mr Colvin:** No. Well, it depends on whether there were other matters, civil matters, brought in terms of potential proceeds of crime. But, if we came to the conclusion that there was no further investigation, no further matters to be taken forward, in terms of potential proceeds of crime, then of course the silver bullion would be returned.

**Senator LEYONHJELM:** Are you making a good return on it?

**Mr Colvin:** It's not something that the AFP invests, if that's what you're saying. It's probably held in our evidence storage locker. We can take on notice what we've done with it.

**Senator LEYONHJELM:** All right. I want to talk about gun seizures. On 16 March this year Mr Keenan stated in a media release that, since 2013, the joint federal and state squads of the National Anti-Gangs Squad seized more than 5,600 illegal firearms. In the June edition of the *Australian Shooter* magazine, Kate Fantinel reported that, following her inquiries, it

appears that these 5,600 items included 4,785 items seized in the United States, which were seized by US agencies, rather than the Australian squads referred to in the media release. Only six of these 4,785 items were firearms, as opposed to firearm parts. Only 303 of the 5,600 items were found in Australia, and it appears these were mostly, if not all, firearm parts, rather than firearms. I accept that the minister does his own press releases, rather than the AFP. Given that caveat, can you explain why the claim of 5,600 illegal firearms being seized by Australian squads has not been corrected?

**Mr Colvin:** I will have to take that on notice. I will make the point, though, that I'm not necessarily going to take it as a given that what was in the *Australian Shooter* magazine is accurate. I will just have to take on notice what the 5,600 illegal firearms that were announced in March comprised.

**Senator LEYONHJELM:** On 28 September Minister Keenan referred again in a media release to the National Anti-Gangs Squad partnership led by the AFP, in partnership with state and territory police, and said that together they have seized more than 5,700 illegal firearms and firearm parts. Again, there are independent reports suggesting that just 308 of these 5,700 items were firearms. Can you confirm this?

**Mr Colvin:** I will take that on notice.

**Senator LEYONHJELM:** Can you confirm how many of the 308 firearms were operational?

**Mr Colvin:** I will take it all on notice.

**Senator LEYONHJELM:** Can you confirm that, contrary to the media release, the great majority of these items were seized by Australian police?

**Mr Colvin:** I assume that is the case, but we will take that on notice to be absolutely clear about what the 5,700 and the earlier 5,600 firearms actually constituted.

**Senator LEYONHJELM:** On the assumption that the evidence from the other sources is suggesting that these were seized in other countries, why do you conclude that those items were bound for Australia?

**Mr Colvin:** I'm not sure that I agree with the assumption. I'll have to take on notice where that material has been derived from.

**Senator LEYONHJELM:** That's fine. I look forward to your answers on notice. Thank you, Commissioner.

**Mr Colvin:** Thank you.

**Senator PRATT:** Can I ask whether you have got guidelines around the public discussion of suicide and whether you might provide them to us on notice, please?

**Mr Colvin:** I will check with our organisational health team. We certainly have expectations about how we deal with suicide internally.

**Senator PRATT:** I mean how the AFP reports suicide in terms of preventing copycats et cetera. You're supposed to minimise discussion of the method and the location. That's what mental health experts say.

**Mr Colvin:** Yes. It's an accepted principle that we minimise what we say about suicide, for those reasons. But I'll check if we have formal guidelines about that.

**Senator PRATT:** Thank you. On another topic, the Minister for Justice said last year: ... international law enforcement cooperation is ... important because there's big organised criminal gangs involved particularly in the peddling of drugs that are targeting the Australian market ... Do you agree with that statement?

**Mr Colvin:** Yes, I do.

**Senator PRATT:** *The Australian* reports there were just 72 AFP officers stationed overseas in 2016-17, which is down from 95 in the previous year. Did the AFP ask for the number of personnel to be wound back?

**Mr Colvin:** No. The bulk of that is as a result of the funding measures I was talking about earlier with Senator Wong, measures coming to a conclusion that funded specific positions overseas. Our numbers overseas, in an international liaison capacity, have dropped over the last few years.

**Senator PRATT:** When you characterise the government's priorities, objectives and the shifting resources, is the reduction in the staff overseas a reflection of that?

**Senator Brandis:** No, that's not right and you know that's not right. The commissioner has explained before that, within the resources made available to the Australian Federal Police, the Australian Federal Police prioritise according to their judgement of operational needs. These are not policy choices; these are operational choices. I should say, Senator Pratt, by the way, to complete the record, since you are taking this matter up, that, in this year's budget, the government increased funding to the Australian Federal Police by \$321.4 million.

**Senator PRATT:** How much of that—

**Senator Brandis:** If I may—

**Senator PRATT:** My question is about—

**Senator Brandis:** If I may finish my answer without being interrupted, please.

**Senator PRATT:** You're not answering my question.

**CHAIR:** Order!

**Senator PRATT:** My question is about overseas resources.

**CHAIR:** Order! Minister, you have the call. You are answering the question.

**Senator Brandis:** So you wouldn't have noticed from Senator Wong's or indeed from your question, but actually we increased the AFP's budget by \$321.4 million. I can also advise you that the government has invested in, including in the AFP: \$1.5 billion to combat terrorism—that's across all agencies including the AFP; \$128 million to fund the Serious Crime Taskforce; \$116 in the national anti-gang squad; \$25 million to expand the AFP—

**Senator PRATT:** This was not my question.

**Senator Brandis:** national forensics lab; \$21 million to extend the trade union royal commission taskforce; and \$15 million to support the fraud and anti-corruption centre. That's in addition to the \$320.14 million of extra money provided in this year's budget—

**Senator PRATT:** This was not my question. My question was in relation to overseas postings. Can I ask why the number of personnel in Jakarta has fallen from 20 to 10? Why was this scaled back?

**Mr Colvin:** There would be a range of reasons for that. Some will be related to funding measures; some will be related to operational prioritisation. We may move our resources to different locations overseas. We may, in fact, do our business differently. You would have heard us talk before about the taskforces that we have across the South-East Asian region, in particular, which give us an ability to force multiply our effect. We make these judgements constantly. There are ons and offs throughout the year, and there is movement between liaison locations as well.

**Senator PRATT:** So the needs in Jakarta have or have not changed?

**Mr Colvin:** The needs in Jakarta have changed, particularly around people smuggling, for instance. Two or three years ago, Jakarta was a centre for us in our effort against people smuggling. It is no longer a centre for us now in our effort against people smuggling.

**Senator PRATT:** There's been a reduction of AFP personnel in the Philippines.

**Senator Brandis:** That otherwise reflects the success of the government's border protection policies.

**Senator PRATT:** I note there was an article recently in *The Australian* that said that radicalisation in the region there is a continued threat. What impact does the reduction in the Philippines have on addressing that threat, and was this reduction in the Philippines at the request of AFP itself?

**Mr Colvin:** I'm aware of the article and where it is sourced from. As I said, these matters change constantly. We are in the process of putting additional resources into the Philippines because of our prioritisation of the threats.

**Senator Brandis:** Indeed, not merely the AFP but across the various agencies that deal with national security, including international cooperation on national security, Australia has invested more, not less, to assist the Philippines government in dealing with its domestic terrorism, particularly around the city of Marawi and the southern Philippines.

**Senator PRATT:** Was the reduction in the Philippines initially at the request of the AFP?

**Mr Colvin:** I would have to check. Perhaps Deputy Commissioner Close will have more details of the specifics of the ons and offs.

**Ms Close:** As the commissioner said, we certainly do look from an intelligence perspective at the key needs of our officers offshore. Over the years we assess each post and we look at what the key crime types are that are affecting Australia in particular. The other thing we've done in recent years is move to a more flexible model where we are able to use officers from within Australia and send them offshore for shorter term deployments. So the permanent staff overseas is 72, but we can at any point in time put people offshore for short-term deployments. That's certainly been the case from our intelligence perspective, where we are doing a lot more work with intelligence analysts offshore.

**Senator PRATT:** *The Australian* reported a drop in the number of reports. It would seem, even though you are sending more people overseas, that it's having a substantive impact on the information you're getting back. It's fallen from 358 to 134. That's a 63 per cent drop. Is that attributable to a drop in staffing numbers?

**Mr Colvin:** I will ask the deputy commissioner to answer. But I will say, just to be clear, that, while we move people in and out and there has been an overall reduction in our staff

overseas—that's correct—the work rate and the information reports that come out of it is attributable to different factors. It's not a clear reduction. I will ask the deputy commissioner to add to that.

**Ms Close:** In accordance with also having our intelligent analysts overseas, it means that our liaison officers need to put fewer intelligence reports through to our headquarters in the intel area. The analysts offshore are doing that work in a much more substantive, fulsome way. They are pulling together material. For example, in China, we have Taskforce Blaze. In Cambodia, we have Taskforce Storm and Strike Force DRAGON. The intelligence officers are doing a lot more work where previously we would just submit a small piece of information—

**Senator PRATT:** Thank you. That answers my question.

**Senator Brandis:** Senator Pratt, before you wind up—

**Senator PRATT:** No, that answers my question. I don't—

**Senator Brandis:** Senator Pratt, I am going to add to the answer. You have identified two foreign locations. You said there had been a reduction in staffing in Jakarta. Commissioner Colvin has pointed out that that is because the problem of people smuggling has largely been eliminated—

**Senator PRATT:** You don't need to repeat the answer, Senator Brandis.

**Senator Brandis:** by this government. That also, if I may add, frees up resources of the AFP in cooperation with the Indonesian police, particularly in the area of counterterrorism. You have also referred to the Philippines. You said that resources had been reduced. Resources have, in fact, been increased.

**Senator PRATT:** They are about to be increased—that was the answer.

**Senator Brandis:** They have been increased. They have already been increased across all agencies to, in particular, once again, deal with terrorism, especially in the southern Philippines.

**Senator WATT:** Commissioner, thanks again for coming along today. I have a couple of questions about the use of the BMW high-security vehicles. Is that something that you can comment upon?

**Mr Colvin:** Yes, depending on the question.

**Mr Colvin:** Sure. You may not be aware of this but back in November 2014 there was a question on notice that Senator Wong asked about the delivery of those new BMW high-security vehicles. At the time, the answer that was provided explained that the purpose of those vehicles was for the carriage of Australian high office holders, visiting foreign dignitaries and other internationally protected persons. To the best of your understanding, is that still the purpose of those vehicles?

**Mr Colvin:** That is still correct, yes.

**Senator WATT:** So they are for high office holders, visiting foreign dignitaries and other internationally protected persons. What constitutes a high office holder such that you would then have the use of one of these BMWs?

**Mr Colvin:** I think there is a description agreed between us, other departments and the government about what a high office holder is. It is generally people such as the Governor-General and the Prime Minister who obviously have permanent protection. But it can also be, on a needs basis, other members of government. That's separate to internationally protected persons, such as the US ambassador and the like. It's a risk based model.

**Senator WATT:** Other members of the government on some occasions. So ministers—

**Mr Colvin:** On some occasions. It is rare to be honest. But, yes.

**Senator WATT:** What about non-government members or senators? Are they entitled to the use of the BMWs? Would they be a high office holder?

**Mr Colvin:** No, they wouldn't technically be a high office holder. The high office holder list is quite short. Those vehicles are used by our close personal protection teams to afford protection to whoever we believe on a particular occasion needs a level of protection. They may be used in conjunction with COMCAR, for instance. It depends on the threat we're dealing with.

**Senator WATT:** But a backbench MP or senator, not a minister, would not ordinarily qualify for the use of one of those BMW?

**Mr Colvin:** I just want to be clear: it's not about qualifying for the use of the BMWs. The BMWs are a tool and a resource of the police to offer protection. If the circumstances and the nature of the threat against the individual were such that we felt it was appropriate to put them into either one of our soft-skin BMWs or the armour-plated BMWs then we would do that. As you would know, the Prime Minister doesn't drive around in our BMWs. He has COMCAR or a car provided. No one model fits every circumstance.

**Senator WATT:** But just going back to what you said before, if the purpose is for the use of Australian high office holders and certain other foreign dignitaries et cetera, as a mere backbench senator I wouldn't expect to be considered a high office holder—

**Mr Colvin:** No. That is why I said, by and large, that is who it is for. But we will use them for whatever threat we need to. If you particularly came under significant threat for some reason and it was determined that you needed AFP support, depending on the circumstances, we might use the BMW to help support you. It may be that we just followed you in our BMWs.

**Senator WATT:** Have there been instances where MPs or senators who are not ministers have been transported in these BMWs?

**Mr Colvin:** I would have to take that on notice. I don't even know that we would be able to give you a confirmed answer to that, because we're providing security on an events basis to members of parliament quite often, both government and occasionally non-government. It is principally government. How we use the BMWs in that security package that we give the individual would vary.

**Senator WATT:** Could you take that on notice for me?

**Mr Colvin:** We will take it on notice, but I don't know if we can give you a comprehensive answer.

**Senator WATT:** Do you know whether Senator Hanson has been transported in one of these BMWs?



**Mr Colvin:** I'm aware that we have provided security to Senator Hanson on occasion. Whether that has included her being in one of the BMWs, I don't know. I can check.

**Senator WATT:** I'm particularly thinking of 12 October at a committee hearing at Kalgoorlie. There may be other instances as well.

**CHAIR:** The commissioner has said he doesn't know and will take it on notice.

**Senator WATT:** I'm asking him to take that on notice.

**Senator HANSON:** I will answer that question. No, I wasn't. I just want to put your mind to rest.

**Senator WATT:** Okay. I was just asking. So, Commissioner, you are going take on notice whether Senator Hanson has been transported in one of these BMWs?

**Senator Brandis:** She is saying she hasn't been.

**Senator WATT:** I think she was talking about a particular occasion.

**Senator Brandis:** Is that what you were saying, Senator Hanson?

**Senator HANSON:** No, I wasn't transported on 12 October. It's all rubbish.

**CHAIR:** Order! It's not for you to ask the question, Minister.

**Mr Colvin:** I will take it on notice.

**Senator WATT:** Or was she accompanied by AFP officers driving in a BMW?

**Mr Colvin:** That is highly likely. It is highly possible. I will take on notice the occasions we have provided that, within reason. I don't want to put on the public record our method of operation for how we provide protection obviously or what the circumstances are. So, to the extent that I'm comfortable to answer that, I will. But certainly from my perspective and the AFP's perspective we have no reason to want to hide or disclose whether somebody has used or has been provided protection using our soft-skin or armoured BMWs. They are there as a resource.

**Senator WATT:** But, as you said, it is unusual for a nonminister to be transported.

**Mr Colvin:** It is threat and risk based, but it is unusual, yes.

**CHAIR:** If, to use a hypothetical, Senator Watt was so unpopular in his constituency in Queensland that everybody hated him and made death threats to him, would you, in that hypothetical, provide him with close personal protection?

**Senator HANSON:** That would never happen!

**Mr Colvin:** It would depend on the nature of it. We'd also be liaising with our Queensland Police colleagues. But, as I said, it is threat and risk based. If the threat is such, then the AFP can provide certain services.

**CHAIR:** Well, keep an eye on Senator Watt; he might need it!

**Senator Brandis:** That's very unfair, Senator Macdonald. I'm sure that would never happen—nobody's ever heard of Senator Watt!

**Senator WATT:** What I am aware of is that there are a number of MPs, unfortunately, who receive death threats, and it's important that we take them—

**CHAIR:** I was simply responding to your rather inappropriate questions about a particular colleague and I was just doing the same, Senator Watt. You should hear what they say about you; you might need protection!

**Senator WATT:** Are you making a threat?

**CHAIR:** Now: Commissioner, I'm not sure that you're the expert on the philosophy and learning behind suicide and whether speaking about it is a concern or not. Do you have any training in that area?

**Mr Colvin:** All police have a general level of understanding about suicide, but no, we're not experts on that. Frankly, it's not something I wish to be drawn upon. It's a medical, a clinical position that I'm not able to give.

**CHAIR:** I thought that. But it's just that during the same-sex marriage debate there were a lot of senators and members of parliament who kept talking about suicide ad infinitum in the chamber, and I was just wondering whether that was encouraging them to do it. But you're not the expert to ask about that.

**Mr Colvin:** No, I'm not.

**Senator FAWCETT:** There was quite a bit of discussion earlier about funding of programs. How many of your particular-purpose programs are term limited—perhaps for the period of estimates or a shorter period, where you then evaluate the effectiveness of the program and come back to government if you wish to continue it?

**Mr Colvin:** We'll take on notice the exact number. Nearly all our measures are what we would consider terminating or lapsing programs that give us the opportunity to evaluate them and come back to government and ask for the money to be rolled over into another measure. It could be the same measure or a slightly amended measure. Or, on some occasions, the measures actually roll into our base appropriation.

**Senator FAWCETT:** So, that's a fairly standard part of your process, that interaction with government about continuing funding?

**Mr Colvin:** It is. It's a normal part of the government budget process for all agencies and departments.

**Senator FAWCETT:** How many times have you come back to government on the National Anti-Gangs Squad? And what was the approval for the renewal of funding for that program?

**Mr Colvin:** I'd have to check how many times, but to highlight the point, regarding the National Anti-Gangs Squad, \$17.9 million was provided in the 2017-18 year. That was offset by an earlier National Anti-Gangs Taskforce initiative of \$13 million that ended this year. So it's a case that the early initiative ended. It was \$13.1 million. It was rolled on into a new initiative, substantially similar, that was \$17.9 million.

**Senator FAWCETT:** So, I'm taking the fact that it was extended in substantially similar terms to mean that you and the government were pleased with the outcomes. Can you outline briefly some of the key achievements of that?

**Mr Colvin:** Certainly. In fact, I'll hand over to the deputy commissioner, who will be able to give you a sense of what the Anti-Gangs Squad has achieved.

**Ms Close:** As at 16 March this year, over the last few years the National Anti-Gangs Squad—which includes not just the AFP but also state and territory police officers and members of the Australian Taxation Office, and we have liaison officers right across the country—has jointly worked to arrest more than 1,000 offenders. We've laid more than 3,100 charges. We talked earlier about seizure of more than 5,600 illegal guns, including replicas and parts of weapons. We've also been involved in the seizure of \$5.6 million in cash and illegal drugs, and that includes more than 170 kilograms of methamphetamine in that period.

**Senator McKIM:** I want to ask some questions around the AFP's provision of metadata internationally. The annual report of the Telecommunications (Interception and Access) Act revealed that in the financial year 2015-16 the AFP passed on metadata on 23 occasions to 21 countries. Do you have updated figures for the 2016-17 financial year?

**Mr Colvin:** I don't think we'll have updated figures. I will ask the deputy commissioner for capability, Ramzi Jabbour, to come forward. He'll be able to give you a bit more detail about that.

**Mr Jabbour:** No, I don't have updated figures, but I do have some of the destinations, if that's the nature of your question.

**Senator McKIM:** You've anticipated one of my questions, so if you could provide the destinations, that would be helpful.

**Mr Jabbour:** I know I have that. While we find it, if there's another question—I might come back to that one. I apologise.

**Senator McKIM:** That's fine. If you're unable to provide it today, I'm happy for you to take it on notice. Do you have the number of people whose metadata that was? For example, you may have provided metadata relating to one person on more than one occasion or to more than one country. So, do you have the number of persons whose metadata was provided internationally in that period?

**Mr Jabbour:** No, not specifically for international. I will need to come back to you on that one.

**Senator McKIM:** Okay. I'll ask you to take that on notice, please. Were any of the people whose metadata was provided in the 2015-16 year journalists?

**Mr Jabbour:** No, absolutely not.

**Senator McKIM:** When providing metadata, or actually before providing metadata, internationally, does the AFP go through the processes contained in the guideline on international police assistance in death penalty situations?

**Mr Jabbour:** Yes, we do. And I now have that brief. I can tell you that in 2015-16 we made 53 data authorisations for access to telecommunications data for the enforcement of a criminal law of a foreign country. Following these requests we made 23 disclosures to foreign law enforcement agencies, and the information was disclosed to the following countries: Taiwan, Hong Kong, Serbia, Switzerland, the Solomon Islands, the United Kingdom, New Zealand, Zimbabwe, Argentina, Slovenia, Canada, Germany, Singapore, Indonesia, the United States of America, Papua New Guinea, the Republic of Ireland, the Netherlands, the People's Republic of China, Spain and France.

**Senator McKIM:** All right. On a quick look at that, certainly more than one of those jurisdictions does have the capacity to impose the death penalty.

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

**Senator McKIM:** So, could you just talk me through how you comply with the protocol? My advice is that six of those countries have the capacity to apply death penalties. I am not sure whether this is one for you or the commissioner. Presumably you get a request in from a foreign jurisdiction. Is that what kickstarts the process here?

**Mr Colvin:** Yes.

**Mr Jabbour:** Yes, in the main, that's the way that it works.

**Senator McKIM:** In the main? Are there exceptions to that?

**Mr Jabbour:** Well, it depends on the nature of the inquiry. As Deputy Commissioner Close said, it may, for example, be a joint task force overseas, where we're working collaboratively in that space. Going to your direct question: yes, we do consider the death penalty guidelines in relation to any request for information or data that we receive for dissemination overseas. Those guidelines are applied very strictly in relation to request for any information, including that of metadata. So if it is likely that the information provided could lead to the arrest, detention or charge of a person overseas for an offence that carries the death penalty, then those death penalty guidelines would apply and careful consideration needs to be given in relation to the release of that information. It may be that we would need to seek ministerial authorisation in relation to it.

**Senator McKIM:** Understood. Thank you. That's how the protocol works. Was ministerial authorisation sought in any of these cases? Or was ministerial authorisation sought and not received in response to any request for sharing of metadata internationally?

**Mr Jabbour:** No to both of those questions, Sir.

**Senator McKIM:** Of the people whose metadata was shared internationally in that period were any of those people Australian citizens?

**Mr Jabbour:** That I would need to take on notice, Sir. I don't know off the top of my head.

**Senator McKIM:** I would appreciate if you would take that on notice. I appreciate that the protocol relates to jurisdictions that have the capacity to impose a death penalty, but in many of those countries—well, at least in some—the judicial system doesn't really deserve to be called the judicial system. For example, China basically runs a conviction factory in what it would describe as its judicial system. Is there any consideration given by AFP about whether or not information should be shared with countries on the basis that they basically don't operate under the rule of law?

**Mr Colvin:** Senator, I'm not going to comment on your characterisation of those judicial systems. I will ask the deputy commissioners—perhaps Deputy Commissioner Close. The factors that go into the death penalty guidelines are a range of considerations for us, but we don't necessarily share your view of those judicial systems. We have a very strict guideline, and I will ask the deputy commissioner to talk you through it.

**Senator McKIM:** I might be able to short circuit it here. I do understand the protocol, Commissioner. I thank you for your interaction with me on previous committees about that. I

do understand, I hope, in at least reasonable depth how the protocol works. I wanted to just change topics now in the short time available to me and ask about the number of AFP officers stationed in Papua New Guinea and, specifically, how many are currently on Manus Island.

**Mr Colvin:** As part of the Papua New Guinea – Australia Policing Partnership we are funded for 73 officers who are located almost entirely in Port Moresby, and there are a few in Lae. However, more recently we have put a liaison officer into Manus Island to work with Australian Border Force and our counterpart police organisation.

**Senator McKIM:** So as we sit here today there is one AFP officer on Manus Island?

**Mr Colvin:** Correct.

**Senator McKIM:** We have heard evidence yesterday that there will be no ABF people left on Manus Island as of 31 October, when basic necessities of human survival will be cut off from the Manus Island regional processing centre—that is, water, food, electricity, provision of sewerage services. Any detainees remaining there will be abandoned to the Papua New Guinea Navy, who conducted an armed assault on the camp on Good Friday this year. So I wanted to ask whether—

**CHAIR:** Senator McKim, what is your question, please? The commissioner should be aware that most of the allegations contained in the question were denied by officers of the department yesterday. He should be aware of that—

**Senator McKIM:** That's just not true. But, anyway, Commissioner, what is your intent, or the AFP's intent, in terms of the liaison officer that you currently have, given, I can assure you, we heard evidence yesterday that there will be—

**CHAIR:** You've asked the question. What's your intent, Commissioner?

**Senator McKIM:** Chair, on a point of order.

**CHAIR:** No. You're editorialising and saying things that the department has specifically denied. But that doesn't matter. You're not here to make statements; you're here to ask questions. You've asked the question. Allow the commissioner to answer what he intends to do.

**Senator McKIM:** I think the commissioner was asking Ms Close to respond.

**Mr Colvin:** I'm going to ask Ms Close to respond.

**Ms Close:** As at 31 October, that officer will no longer be on Manus Island, but we are looking to have an additional officer in Port Moresby as a liaison officer in terms of people-smuggling matters in support of our post in Port Moresby.

**Senator McKIM:** When did the liaison officer arrive on Manus Island? Is this a recent decision, or is it a longstanding position that the AFP has a liaison person on Manus Island?

**Ms Close:** No, it's recent. It was within the last few months that the officer has been engaged there, primarily as a liaison point between the officers from the Department of Immigration and Border Protection and the Royal Papua New Guinea—

**Senator McKIM:** Constabulary. The Royal PNG Constabulary.

**Ms Close:** Thank you, yes.

**Senator McKIM:** Okay. And why is it necessary that the AFP liaise between ADF and the Royal Papua New Guinea Constabulary?

**Ms Close:** We were requested by Border Force to have that liaison point, because primarily it's to look at negotiation with the RPNGC in terms of what are the best tactics, and what are the best negotiation, deconfliction and de-escalation strategies that we can have.

**Senator McKIM:** All right. You'd be aware that there was an armed assault on the Manus RPC on Good Friday this year, I'm sure, where we've heard evidence—notwithstanding anything Senator Macdonald might say—that over a hundred shots, including some from shotguns and from semiautomatic weapons, were fired by PNG naval personnel into the Manus Island RPC—

**CHAIR:** Is there a question?

**Senator McKIM:** Yes, there certainly is, Chair. I wanted to ask if the AFP is aware whether the PNG Constabulary investigation into that shooting has been completed.

**Mr Colvin:** Senator, I'll take that on notice. We're not a part of the investigation. We can always ask the question of our colleagues in Papua New Guinea and report back, but it's a local investigation that we're not a part of.

**Senator McKIM:** Yes. I make the point, Commissioner, that there were Australian citizens in the centre at the time—

**Mr Colvin:** Yes.

**Senator McKIM:** on staff, including some who were injured in that attack.

**Mr Colvin:** Yes.

**Senator McKIM:** Does that not spark the interest of the AFP into the nature and the duration of the local investigation?

**Mr Colvin:** It does. Of course we have an interest, because Australians were involved. But it doesn't change the fact that it's a local investigation and we have no authority to conduct an investigation in PNG. So we'll check with our colleagues as to the status of that investigation.

**Senator McKIM:** All right. And you'll come back about that on notice?

**Mr Colvin:** Yes.

**Senator McKIM:** Thank you. Do you have a list of projects—and, by 'projects', I mean infrastructure projects, if any—that the AFP is funding or that funding is being provided for through the AFP in Papua New Guinea?

**Mr Colvin:** Yes, we have. I think we've put quite a bit on notice as well—quite an extensive list of all the projects and infrastructure builds that we've assisted with.

**Senator McKIM:** Thank you. You did that, and I acknowledged that previously. I guess I'm asking whether there are any changes since the last time we discussed this.

**CHAIR:** Senator McKim, we might need to make this your second-last question.

**Senator McKIM:** All right. I think I can tie it up.

**Mr Colvin:** We can check on the infrastructure works up there. The nature of our deployment in PNG has changed significantly from what it was previously. It is now very much focused on supporting their capabilities to deliver a successful and safe APEC next year.

**Senator McKIM:** Yes.

**Mr Colvin:** So it's less about building infrastructure and helping them with that capacity. We can check if there has been any additional infrastructure spend.

**Senator McKIM:** Okay. This is my final question. Can I ask about the number, if any, of AFP officers on Nauru and whether there are any plans for changes to the current deployment?

**Mr Colvin:** I would imagine we would have the number. It's a small number. I'm not aware of any particular changes, but I'll get Deputy Commissioner Close to update you on that.

**Ms Close:** In respect of Nauru, we currently have five people located there, and there is no intent to change that.

**Senator McKIM:** All right. Thank you.

**CHAIR:** Before going to the Labor Party, I'll just go to Senator Hinch.

**Senator HINCH:** Commissioner Colvin, I know you have had some questions from Senator Macdonald and also Senator Abetz, and I know there's a coronial inquest coming up as well.

**Mr Colvin:** Yes.

**Senator HINCH:** But, on the ACL bombing, you said this morning you don't share the ACL's views on the facts. You were saying this was a suicide attempt. But there is evidence just now in the court saying that, a month before this happened, Mr Duong had actually gone on the internet and accessed the ACL. Isn't that correct?

**Mr Colvin:** I believe that's correct, yes.

**Senator HINCH:** Why would he do that if he didn't have some interest in the ACL?

**Mr Colvin:** We never said that he didn't have an interest in the ACL. In fact, we have consistently said we knew that is where he went that night. As the Chief Police Officer said this morning, police look at the totality of the evidence and the nature of what information is available to us. That is what progressed our investigation and determined the most appropriate charges. My concern is with the taking of specific pieces of information and forming a judgement based on that. Police can't work that way—we have to look at the totality of information that is available to us.

**Senator HINCH:** But the documents, you'll recall, also said why he did it, why he chose there—he said, 'Because I dislike the Australian Christian Lobby.'

**Mr Colvin:** As the Chief Police Officer explained earlier, that was a comment as part of a broader set of statements that he made to police, as well as statements that he made to medical staff at the hospital. We also had to take into account his other actions prior to that event, which led us to form the conclusions that we did.

**Senator HINCH:** Did those other actions that he took include smashing religious objects in his home?

**Ms Saunders:** That's correct.

**Senator HINCH:** Ornaments, statues, Buddhas and things like that, that he actually destroyed?

**Ms Saunders:** Yes, I understand he destroyed a Buddha that belonged to his mother. To give context, my understanding is this was a troubled man who was suffering from mental illness. As I led in evidence earlier, this was not the first time he had attempted suicide. In fact, our understanding is he spent one to two months preparing for this event and during that time he explored a lot of information through social media, both relating to the course of action that he took and options available to him. He certainly made statements to us that he felt that religion had failed and he had explored on social media a whole range of religious issues. So, yes, as the commissioner said, this is context: yes, he did make a comment with regard to ACL but it was in direct response to a leading question by a police officer about why he was there. He certainly said other things in that statement at the hospital immediately after which gave greater context to this, and he made it very clear that his intention was to 'blow himself up'. That is why he travelled there. Certainly the evidence that we obtained from other medical staff and others that he interacted with is that he went to other locations on the evening with a view to committing suicide and then, because other people were around at that time and he didn't believe it was appropriate to undertake that act there, he drove to where the incident occurred. Our understanding is that that was in fact spontaneous on the night—that was not pre-planned.

**Senator HINCH:** It appears to me—this is an opinion—that Mr Shelton was desperate to make the ACL martyrs in all of this. I think the ACL was quite keen for it to be seen as a target. Is this why the AFP within hours of it happening were telling journalists, were telling other people, that this was a suicide and had nothing to do with the same-sex marriage debate, had nothing to do with anything?

**Mr Colvin:** I don't want to comment on what Mr Shelton's motivations may be. I accept that he is concerned for his employees, and that is a very legitimate concern that he has. We needed to make a statement to the public in the morning to make sure that there was an appropriate level of information so that the public could understand the events of the evening. Commander Walters did a press conference. We didn't back-brief journalists; we did a press conference for everybody who was available and stated what we understood the facts to be at the time. As I said before, I am still confident that subsequent investigations, subsequent facts that have come out, have only re-enforced the view we had on that day.

**Senator HINCH:** So the fact that he had some connections, I think in San Francisco, with the LGBT community didn't affect your views?

**Mr Colvin:** Again, for us it comes down to what is the quantum of information that we have, how does that relate to evidence and what is the appropriate charge that we should be placing? I didn't want on the morning for there to be an unreasonable or ill-informed concern in the public that we were dealing with a terrorism incident in Canberra, because we were very confident from the moment that we started to make inquiries that that was not what we were dealing with.

**Senator HINCH:** You actually got that message out very well.

**Mr Colvin:** Thank you. That was the intention.

**Senator HINCH:** I will leave it there for the coronial inquiry. Thank you.

**Senator KAKOSCHKE-MOORE:** My questions to begin with will focus on the online sexual exploitation of children. Following up on some information provided to me in question



on notice 63 from the budget estimates, the AFP advised that from 1 June 2016 to 30 May 2017 it has reported 25 matters internationally that relate to child exploitation material online. Is it possible for you to advise which countries these matters related to?

**Mr Colvin:** I don't think we would have that detail with us. We'll take that on notice.

**Senator KAKOSCHKE-MOORE:** Thank you. Also, on notice, could you please advise whether it's possible to determine the type of conduct and online child sex abuse offences that these matters related to?

**Mr Colvin:** We'll take that on notice.

**Senator KAKOSCHKE-MOORE:** Thank you. I have some questions in relation to internet service providers, or ISPs. With reference to requests to telecommunications companies in relation to possible child exploitation offences, I've previously asked for information on a number of instances where law enforcement agencies have requested identifying particulars from telecommunications companies in relation to subscribers who have been detected committing a criminal offence, whether Commonwealth or state, concerning child exploitation and related offences. I've also asked about the costs of those requests and the total cost to law enforcement agencies. I was advised that determining whether those authorisations relate to child sexual abuse specifically and the costs of those requests could not be provided. Could you tell me the average cost of a request to a telecommunications company that the AFP must pay?

**Mr Colvin:** Can I just check: were they questions you'd asked us on notice? Have we responded in that way?

**Senator KAKOSCHKE-MOORE:** Yes. I did get a response on the ones in relation to ISPs. It wasn't submitted in the course of budget estimates. It's SQON488.

**Mr Colvin:** I don't think we have that with us. I would imagine the reason we have trouble answering that is there are many hundreds of internet service providers across the country and they all charge slightly differently.

**Senator KAKOSCHKE-MOORE:** So they do all charge different rates?

**Mr Colvin:** Yes, because the rate is a cost recovery of what the internet service provider needs to do to recover the information to provide us. If it's Telstra, it's very different from a small ISP. The rates do vary, though. They can be quite broad. I don't think we have anyone in the room—

**Senator KAKOSCHKE-MOORE:** Is it possible to get a range or an average?

**Mr Colvin:** We can definitely get you a range.

**Senator KAKOSCHKE-MOORE:** Thank you. Is the cost payable every time?

**Mr Colvin:** Yes, it is.

**Senator KAKOSCHKE-MOORE:** Could you tell me on notice, as part of that range, the highest cost that has been charged or could be charged?

**Mr Colvin:** To the best of our knowledge, we will, yes.

**Senator KAKOSCHKE-MOORE:** When a payment is made, is it when the ISP makes a disclosure pursuant to the legislative obligations, or is it only when the AFP requests that information?

**Mr Colvin:** We make the request pursuant to the legislative obligations that they have.

**Senator KAKOSCHKE-MOORE:** I've heard conflicting information about the level of cooperation of ISPs when it comes to requests. Has a telco or an ISP ever been charged under section 474.25 of the Criminal Code for failing to refer details of child sexual abuse material to police within a reasonable time of becoming aware of that material?

**Mr Colvin:** I'll take it on notice. Certainly not to my knowledge, and I'm confident that my knowledge goes back quite a long way on this matter.

**Senator KAKOSCHKE-MOORE:** Because it's a positive obligation on ISPs to report when they become aware, how does the AFP become aware that an ISP has failed under this section?

**Mr Colvin:** Most of our engagements with ISPs will be at our request, instigating a request for information as a result of an investigation that we have. An ISP has an obligation to report, but they're not looking at content necessarily, so they would not necessarily know what is passing across their systems.

**Senator KAKOSCHKE-MOORE:** But, where you have received information that indicates that these ISPs may have material that may be relevant to an investigation, you can then approach the ISP and request that the information be handed over?

**Mr Colvin:** That's right. As part of our investigation, it would come to our knowledge that the person we are interested in is using a particular ISP. We would then go to that service provider and request the information. Actually, we wouldn't know the individual. Mostly it would be a domain name that leads us to an ISP, who we then ask who the account holder is, for instance.

**Senator KAKOSCHKE-MOORE:** In relation to illicit tobacco, I had a relatively short but very helpful exchange with Australian Border Force last night. Looking at their annual report, you can see that the seizures of illicit tobacco have increased quite dramatically over the last few years. In the last financial year there were about 390 tonnes of illicit tobacco seized at our borders. On notice from last estimates, the AFP informed the committee that in the last 10 years the AFP has only investigated five matters relating to tobacco smuggling and made one arrest. I wanted to know why there has not been an increase in investigations, considering the evidence we have received about the increase in tonnes being seized and the connections to organised crime.

**Mr Colvin:** I agree with the final part of what you are saying—that there is an increased connection with organised crime. We are now increasingly working more with our border colleagues where matters are clearly linked to organised crime, and I think the trend is that that is becoming something that we are concerned about. But, by and large, in the past illicit tobacco has been dealt with as a revenue issue—a tax issue. So it has been dealt with by other agencies. Where it crosses over into organised crime, clearly we have an interest. This is something, as I say, that is a trend that we are watching closely.

**Senator KAKOSCHKE-MOORE:** I wanted to know if there is any procedure, agreement or understanding between the AFP and Border Force or other law enforcement agencies in relation to responsibility for and handling of illicit tobacco investigations?

**Mr Colvin:** Specifically for illicit tobacco, no, but there are a range of agreements between our agencies about how we will work cooperatively on matters at the border and on seizures at the border.

**Senator KAKOSCHKE-MOORE:** So, there is no—

**Mr Colvin:** Actually, I might take the specific question about illicit tobacco on notice, unless the deputy commissioner has an answer. But I am not aware of any that are specific to illicit tobacco.

**Ms Close:** In respect of illicit tobacco and how we determine the priorities at the border, we have joint organised crime task forces which comprise the Federal Police, Australian Border Force, all of the state and territory forces and, when relevant, officers from the tax office et cetera. The joint organised task forces are led by assistant commissioner level staff across each of our agencies, and they work through what the priorities are. That includes information from the Australian Criminal Intelligence Commission as well. That is how we determine where to put our resources and prioritise those sort of jobs. Where there is an organised crime nexus, absolutely, that takes key priority for all of our agencies.

**Mr Colvin:** Illicit tobacco would be like any other border-controlled substance. That would be a part of the consideration.

**Senator KAKOSCHKE-MOORE:** Given the AFP's success in leading and coordinating a number of major crime forces—for example, anti-gang, methamphetamine and counterterrorism—does the AFP have the capability to play a lead role in the development and implementation of a national illicit national tobacco strategy, as has been identified by the Joint Committee on Law Enforcement?

**Mr Colvin:** Capability, yes. As we talked about earlier, though, everything is around a resourcing priority decision, and we have to weigh that up.

**Senator WONG:** We had the discussion about the difference between the ASL figure and the headcount. The only thing outstanding was confirming that the employee benefits line going forward was a \$77.2 million reduction over the forward estimates.

**Ms Bird:** That's right.

**Senator WONG:** Have you budgeted in that for a pay increase?

**Ms Gersbach:** We don't budget for a pay increase, because any increase to the salary of our people needs to be offset from savings.

**Senator WONG:** So you would have to save from within the portfolio?

**Ms Gersbach:** That's correct.

**Senator WONG:** So this is on top of the reduction in funding which will affect—I am trying to use not too pejorative a word, Commissioner—the resourcing in areas such as child exploitation, organised crime, gangs and I think the other one was fraud work, was it?

**Mr Colvin:** Fraud and anti-corruption work.

**Senator WONG:** You would have to look for additional savings on top of those you are already absorbing to fund a pay increase?

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

**Senator WONG:** Have you raised with the minister the need for additional funding to fund a pay increase, particularly in light of the overwhelming rejection of the enterprise agreement?

**Mr Colvin:** As I said, the bargaining guidelines of the government are that pay increases must be offset by productivity. So we are working within those guidelines. But there is a broader discussion that we have had with government, which has been recognised publicly by the government, about our broader funding, both in its quantity and its form.

**Senator WONG:** Have you ruled out any further reduction in headcount to fund a pay increase?

**Mr Colvin:** No, I haven't ruled that out.

**Senator WONG:** Have you ruled out any cuts to conditions?

**Mr Colvin:** The conditions are, partly, a key issue at bargaining. So that is an ongoing discussion.

**CHAIR:** We will now adjourn for a short break.

**Proceedings suspended from 11:02 to 11:19**

**CHAIR:** Welcome back to the supplementary budget estimates examination of the Attorney-General's Department in the Legal and Constitutional Affairs Legislation Committee hearings. Commissioner, thank you for having the chief of police from the ACT, Commander Saunders, here. We've had discussions in the past about the relationship between the Canberra police and the AFP, which we've been through in other estimates, and I want to acknowledge that the Chief Police Officer of the ACT is here and I thank you for facilitating that.

**Mr Colvin:** Thank you, and I appreciate that understanding. It is a unique arrangement that we have. I'm sure the Legislative Assembly in the ACT looks with interest at what we might ask about local policing issues. I think it's worked well.

**Senator WATT:** I have a few staffing issues questions, but I want to pick up on something that came out of earlier questioning. You mentioned to Senator Wong some of the areas in which you'd had to reduce resources as a result of the budget cuts, things like child exploitation and organised crime. In previous hearings, we've talked about funding for the Anti-Gang Taskforce, which I think picks up some of the activity targeted at bikie gangs.

**Mr Colvin:** Correct.

**Senator WATT:** Is it the case that you've had to reduce resources to the Anti-Gang Taskforce or other anti-bikie operations?

**Mr Colvin:** It's difficult to give you a black-and-white answer on that because we deploy our resources flexibly. On any given day, I might put more resources to our Anti-Gang Taskforce than what we are funded for by the actual measure. You'll recall I said earlier today that the National Anti-Gangs Squad measure ended last year but was rolled over into a somewhat similar measure this year. But, on any given day, I'll put more resources in there if that's what they need. I'll be very careful about dropping the level below what we are funded to do, but we do move resources around flexibly. So there'll be times when I'm doing less on National Anti-Gangs Squad matters and more on counterterrorism, for instance. As I move my resources around according to whatever the challenges of the day are, that will fluctuate.

**Senator WATT:** Following up from that, is it the case that some AFP officers work across multiple teams? For example, could someone who's a member of the organised crime team be reassigned to assist at an airport if there's a particular need there?

**Mr Colvin:** Absolutely, yes.

**Senator WATT:** In recording the headcount of teams, does the AFP distinguish between people who are, if you like, permanently assigned to a team and people who are temporarily assigned to a team?

**Mr Colvin:** The headcount is the headcount. It's the total number that the AFP has. We don't work to an establishment, if you like. For a particular crime area, we don't work to, 'You have 50 people and that will never be more or less.' It's a flexible model, so I'll move people around according to what the priorities of the day are. That will mean that some officers more than others will move between crime types and between areas. But I'll also have many officers who are quite specialised and will be very focused on what they do—for instance, our fraud investigators, our financial crime investigators or our proceeds of crime litigators.

**Senator WATT:** If we're looking at the headcount by team, is it possible that someone who works across three or four teams might be showing up as an officer in the headcount of each of those teams?

**Mr Colvin:** No. The headcount is a total figure of AFP employees.

**Senator WATT:** I can appreciate that the total headcount would be, but, if you break it down by, say, organised crime, airports and whatever the different teams are—

**Mr Colvin:** No. I understand what you mean.

**Senator WATT:** So the person only shows up once in one team?

**Mr Colvin:** The person would show up once, even though they might be deployed to other parts of the organisation. They have a home location and a home position number that they sit against, and that position number doesn't change.

**Senator WATT:** The reason I'm asking is that we have heard that there's at least one AFP employee who has five positions attached their name for the purposes of headcount.

**Mr Colvin:** That shouldn't be the case. I'm not saying that our systems don't occasionally fail, like any systems across the Commonwealth, but one individual should not be getting counted five times.

**Senator WATT:** Can I turn now to some particular staffing issues in New South Wales. I understand that the AFP's Sydney office does some of the AFP's most significant investigative work. Is that a fair characterisation?

**Mr Colvin:** Yes, it is.

**Senator WATT:** What kinds of activities, in particular, do they focus on?

**Mr Colvin:** The bulk of our counterterrorism effort is in Sydney and Melbourne. They do a great deal of counterterrorism work in Sydney. The very large portion of our organised crime work is in Sydney. Our child exploitation matters, I think, are more evenly spread, as are our drug importation matters, but there's no question that our Sydney office is at the very pointy end of the work that we do.

**Senator WATT:** Can you confirm that on 1 July this year the AFP stopped paying an allowance to members based in Sydney, which was intended to attract and retain staff by offsetting the higher cost of living?

**Mr Colvin:** I can. That was the deployment allowance, which was terminated for Sydney.

**Senator WATT:** For Sydney.

**Mr Colvin:** Yes.

**Senator WATT:** Why was it only terminated for Sydney?

**Mr Colvin:** It is quite complex, Senator. The deployment allowance had been used variously across the organisation, and in our assessment, as well as independent assessments we had done, it had become an unfair application of allowance. For instance, within the Sydney office, by 1 July this year—and I can get you the exact figures, if you would like—it was being paid to probably only 30 to 40 per cent of our officers there. I had some officers who were being paid and some who weren't. The original reasons for the deployment allowance, which go back probably 20 years, had changed significantly in terms of the need for that allowance.

**Senator WATT:** What was that allowance worth?

**Mr Colvin:** I'm not sure. We would have to check. It was in the order of \$3,000 to \$5,000 pre-tax.

**Senator WATT:** What's been the impact on AFP staffing levels in Sydney since the allowance was abolished?

**Mr Colvin:** I would have to check the actual staff levels and if they have fluctuated up or down. I daresay they will have, but I wouldn't attribute it to the DAA.

**Senator WATT:** Is there anyone who can give us the figures around increases or decreases in AFP staffing in Sydney?

**Mr Colvin:** We wouldn't have that granular level of detail for Sydney, but we can get that, clearly. So I'll have to answer that on notice.

**Senator WATT:** Do you know whether the number of AFP staff in New South Wales overall is currently above or below the budgeted FTE?

**Mr Colvin:** The budgeted FTE for Sydney we set internally. We get an appropriation from government and we make decisions about how we are going to allocate that. We are always running vacancies. That's just a part of the ebb and flow of staffing. We would have to check exactly what that figure is in Sydney.

**Senator WATT:** To be clear, I'm asking not just for Sydney but for New South Wales as a whole. I understand that you get an allocation of money, which entitles you to a certain number of officers or staff.

**Mr Colvin:** Yes.

**Senator WATT:** What I'm asking is: what's the actual number by comparison to that budget?

**Mr Colvin:** Okay. We'll absolutely take that on notice. Let me say, Senator, our Sydney office is under a lot of pressure—and I have said that publicly before—as a result of the work that it is doing. That's not unusual in policing. We're always under pressure. But the Sydney

office, in particular, has had some of the biggest investigations and operations in the last 12 months that the AFP has ever undertaken, and it puts pressure on our members.

**Senator WATT:** For sure. Is it only about the nature of the investigations they do, though, or is there also an issue around resourcing and staff numbers?

**Mr Colvin:** I think it is a combination of all of that. Our investigations are becoming more complex, becoming longer and requiring more specialised resources. We are constantly adjusting our profile to make sure that we can keep up with that.

**Senator WATT:** I know that you are coming back to me with the exact figures, but are you aware of any issue regarding staff shortages in New South Wales?

**Mr Colvin:** Technical staff shortages insofar as what my budget allows me to bring to Sydney: I think we have allocated what we can allocate. Would I like to have more officers in the Sydney office? Yes, I would. There is no doubt that my officers in Sydney would feel under pressure and underresourced.

**Senator WATT:** I suppose the concern I have is that you might actually have fewer officers in Sydney and New South Wales than even what you have the budget to employ?

**Mr Colvin:** We'd have to check what our established FTE is. But, of course, I have to find resources for a range of locations, not just Sydney.

**Senator WATT:** Does that mean that at times you would redeploy people from Sydney or New South Wales to meet other needs elsewhere?

**Mr Colvin:** The reality is that very rarely do I move them from Sydney to other locations, but on an almost daily basis—certainly a weekly basis—we are moving resources from other locations into Sydney to meet the priority needs of the organisation.

**Senator WATT:** Has there been any increase in unscheduled absences in Sydney or New South Wales, say, over the last 12 months?

**Mr Colvin:** I'd have to check the exact figures, but what I can say is that I know there has been a trend of increase in unplanned absences across the AFP over the last few financial years, and that has been a very key indicator for me and a driver for many of the reforms I'm making within the organisation.

**Senator WATT:** How long back would you say that that increase has been occurring?

**Mr Colvin:** I would take it back probably five years.

**Senator WATT:** You mentioned that there are times when you move people around to meet needs. Does the AFP have what's called a flexible pool of staff?

**Mr Colvin:** We have a flexible resourcing model, yes.

**Senator WATT:** How is that used? Is that used so you can reassign people? Does that mean that you have got people who are permanently assigned to a job, but then there is a separate pool of people who can be moved around to meet wherever the needs are?

**Mr Colvin:** Within the 6,500—give or take—of the organisation, if I slice that into what they do and I remove my ACT Policing component, my corporate component, my forensics and my technical, in terms of my investigator cadre, I am left with a number of officers that I can move to whatever the priority is on any day, and that's our flexible pool.

**Senator WATT:** What types of work are the people in the flexible pool used for?

**Mr Colvin:** Our core operational work. That's everything. That is our organised crime work, cyber work, fraud and anti-corruption, child exploitation, victim based crime, and airport policing at times, if we need to surge numbers into the airport, as we did midyear, with Operation Silves—protection.

**Senator WATT:** So airport and protection.

**Mr Colvin:** Yes.

**Senator WATT:** That's protection of dignitaries and that kind of thing?

**Mr Colvin:** Yes. The only caveat I would put on that is that of course I can't surge officers to areas that they're not trained in. So I can't surge an untrained officer into protection unless they have completed protection training, for instance. But we make those ongoing daily staffing decisions.

**Senator WATT:** How many AFP personnel are there in the flexible pool in New South Wales at the moment?

**Mr Colvin:** I will take that on notice and double-check.

**Senator WATT:** I suppose what I am interested in is not only the number of people you notionally have assigned to that pool but how many officers there are actually available in the pool.

**Mr Colvin:** I understand.

**Senator WATT:** Do you know how many of those personnel in the New South Wales flexible pool are currently unassigned?

**Mr Colvin:** I doubt that there would be any that are unassigned to work. They would all be carrying a degree of work.

**Senator WATT:** Okay. So that would mean, then, that there are none available to commence a new project if a report came in about a particular drug importation ring or child exploitation ring or whatever it might be?

**Mr Colvin:** I think—or not think; I know—policing operates at 100 per cent capacity. Every police officer is engaged fully doing something every day. As new matters come in, we have to prioritise what is more important, and we will move the resources to that. If tomorrow we were to get a particular unplanned investigation or a matter that we needed to respond to internationally then we would have to make resource and priority decisions, drop some investigations, suspend investigations and move our officers to whatever the need was.

**Senator WATT:** Are you aware of any active investigations in New South Wales that have had to be ended, disrupted or put aside due to a lack of capacity—a lack of officers—in the last two years?

**Mr Colvin:** Every day we're making that decision. Every day we are rejecting matters that are referred to us, we are suspending matters that we have on books or we are finalising matters that we no longer are taking forward.

**Senator WATT:** Because of a lack of officers to pursue those leads?

**Mr Colvin:** Absolutely. I can only cut the cloth so many ways. Every police commissioner is the same. There is always going to be more crime than a police commissioner is able to put resources towards.



**Senator WATT:** I think you said operations are rejected. What does that mean?

**Mr Colvin:** They could be a matter that is referred to us by our partners at the border, the Australian Border Force. It could be a seizure of drugs at the border for which, on assessment, the AFP determines that we don't have the resources or the capacity or it doesn't trigger enough priority for us, in terms of being an organised crime matter, so we might apply a different treatment to it. It may be that we say, 'Well, the AFP won't take this matter on. It's a matter that you can refer to the state police or it might be a matter that we take the intelligence from.' There is a range of treatments that we can do, but these are the types of decisions that are being made every day in the AFP.

**Senator WATT:** You're aware of instances where drug importation cases are brought to the attention of the AFP and they decide to not investigate them due to a lack of resources?

**Mr Colvin:** Multiple instances, Senator—yes. There are more seizures at the border than any of the agencies could possibly keep up with.

**Senator WATT:** So there are drugs. Are there instances where we have child exploitation matters that are not investigated due to lack of resourcing?

**Mr Colvin:** Yes. Again, there are more—and this is a sad reflection of society—individuals accessing child abuse images online than collective police efforts around the country can possibly deal with. What we do, though, is prioritise those matters where we can have the most impact, the most effect. We obviously prioritise matters where there is a child at risk, and that's normal triaging that every police force does.

**Senator WATT:** What about terrorism matters? Are there serious reports of terrorism or potential terrorism that are not able to be investigated due to lack of resourcing?

**Mr Colvin:** Terrorism is my No. 1 priority and I move the resources to terrorism that are needed. So, if a matter comes to our attention that requires a response from the AFP, it will get the resources that it needs.

**Senator WATT:** I suppose the other kind of thing that might be happening, if we have drugs being imported by boat or something like that, you have the opportunity to either intercept—it might be Border Force that intercepts—

**Mr Colvin:** Or maybe the Navy. It depends on who we work with.

**Senator WATT:** Are any decisions ever made to intercept and disperse, if you like, rather than allow the drugs to come in—crack the drug ring onshore?

**Mr Colvin:** We will make judgements about how best to effect an outcome from the investigation that maximises the chances of us getting those people responsible. You will probably be aware that the AFP in recent years—in fact, it's many years now, but more specifically recently—has doubled our efforts overseas. I say 'double', but I don't want to give you a sense of FTE double. We have doubled our effort to disrupt. We will work with our partners offshore and we will work with our partners in the Pacific to interdict narcotics at the earliest possible point and to disrupt narcotics before they get to Australia. That's not a resourcing strategy. That's a good strategy for Australia to take, in terms of hardening Australia as a target for organised crime by strengthening our partners in the region. We will make judgements on every piece of information that we get about what the best treatment for that particular investigation is.

**Senator WATT:** Is it fair to assume, then, that, if you did have more officers in that flexible pool to deal with emerging reports, you would be able to follow up some of those leads around large drug importation matters, child exploitation, organised crime? It would be fair to assume that, if you had more flexible officers, you could deal with some of those matters?

**Mr Colvin:** Senator, the more officers I have the more work I can do.

**Senator WATT:** You mentioned that one of the uses of the flexible staff is for protection purposes—the protection of dignitaries and other things.

**Mr Colvin:** Protection of establishments.

**Senator WATT:** I know we've asked about this before, but can you remind me how many officers from the flexible pool are guarding the Prime Minister's personal residence at Point Piper?

**Mr Colvin:** Consistent with what I said previously, I won't talk about numbers that are guarding, but there is no question—and you are well informed—that there are officers from the flexible pool performing a range of protection duties around establishments, including protecting our own facilities. You would be aware of the threats against the AFP. Again, our officers will, from time to time, be required to perform protection duties, including supplementing staff at the Prime Minister's residence. It could be Kirribilli House, it could be official establishments such as Garden Island or our own offices in Sydney.

**Senator WATT:** I understand the sensitivity around exact numbers, but, without pinning you down on numbers, there are AFP officers from this flexible pool who are assigned to guard the Prime Minister's residence at Point Piper?

**Mr Colvin:** That's right. What I will say is that as a result of money that the government allocated to us, what we call Project Rampart, we are currently recruiting protective service officers so that we can move them into those positions and free up our police officers to get back to investigations.

**Senator WATT:** My understanding is that in addition to the officers you have assigned to the Prime Minister's residence at Point Piper, there are also officers assigned to guard Kirribilli House and presumably the Lodge.

**Mr Colvin:** Correct.

**Senator WATT:** I can't remember whether the Prime Minister has a personal residence in Canberra.

**Mr Colvin:** We only look after the Lodge in Canberra.

**Senator WATT:** The point being that those officers who are assigned to the Prime Minister's residence at Point Piper in addition to those assigned to Kirribilli House and the Lodge, whether he is using it or not, could be being used for some of the drug importation busts and child exploitation matters that are not able to be dealt with due to resourcing.

**Mr Colvin:** I don't want to confirm your inference that because we are providing security at the Prime Minister's premises we're not doing drug work.

**Senator WATT:** But that is a use of officers who could be being used for something else if they weren't needed at Point Piper?

**Mr Colvin:** There is a mix of officers there. Some are protective service officers and some are full police officers. Protective service officers are employed to do that work, not to do drug importations, for instance. This is consistent with the model we have always had. Not all prime ministers are from Sydney. We've always had to provide additional resources to guard prime ministers' residences. But, yes, we are currently recruiting protective service officers so that I can free up police to do investigations.

**CHAIR:** The same arrangements with protective services on prime ministers and senior government officials has applied from the year dot, including when Mr Rudd had a private house in Brisbane—I guess that would have been fully protected as well, as it should be.

**Mr Colvin:** For prime ministers, yes, we always protect their principal place of residence, whether that's an official establishment or their private residence in whatever city they come from.

**CHAIR:** Yes, and in Mr Rudd's case he would've had his private residence in Brisbane, as I recall, he would've had Kirribilli at times, he would've had the Lodge at times, so there's nothing unusual in the scenario that Senator Watt for some reason is painting.

**Mr Colvin:** We provide protection to the location that the Prime Minister is living.

**Senator XENOPHON:** I just wanted to raise issues in terms of bullying and mental health issues within the AFP and I note your statement at previous estimates where you took these concerns very seriously and your determination at the highest levels of the AFP to deal with them, and I fully accept what you have said. There is an article by News Limited's Megan Palin of 25 September this year, headed, "'It's payback': AFP investigates agent for speaking out about bullying and mental health issues within the organisation.' Are you familiar with that article?

**Mr Colvin:** I am, yes.

**Senator XENOPHON:** I and other members of the committee have had the benefit of a private briefing, which was quite useful. I don't need to traverse the names of the officers involved, I don't think that would be helpful, but in terms of the allegations made can you provide assurances that there will not be any repercussions against the officers who spoke out about these issues, particularly in terms of the allegation that they were warned, threatened, with a potential jail term. Again, I don't want to traverse that; I just wanted to get out on the record that I was quite pleased with the private briefing but I think it is important that it be out there on the public record.

**Mr Colvin:** Thank you, and thank you for taking the private briefing. As you know, that particular matter is complex. It involves members of the organisation. It wasn't an own motion investigation, if you like, that the AFP initiated. My absolute commitment, as I have said on many occasions, is to protect the welfare of AFP officers, including their mental health. I have no intention or desire to take any adversary action against officers, both current and former, who have gone to the media to disclose their experiences with the organisation on mental health. My entire intention is to improve the organisation and the only way we can do that is to bring these matters to light, which is what I have done.

**Senator XENOPHON:** That didn't happen on this occasion. There are allegations that the person was warned and that compounded the stress. What improvements will there be so that that doesn't occur in future?

Obviously, if an AFP officer disclosed details of a sensitive operation that could jeopardise the wellbeing of officers, that is a completely different issue, but that wasn't the case here. What assurances can you give us going forward that there won't be a repeat of this unfortunate set of circumstances?

**Mr Colvin:** I certainly can't give a blanket assurance for the reason you say, depending on the nature. That particular matter was unfortunate insofar as—I don't want to go into too much detail, as you'll understand.

**Senator XENOPHON:** I don't think you need to. I just want to know—

**Mr Colvin:** I think it is important, for the record, now that you have raised it. The matter was raised by another member of the organisation who felt concerned about what was placed into the media by the second member of the organisation. I am very conscious of the impact on internal professional standards investigations on our members. It is unfortunately a necessary evil that we do this to maintain the integrity, but in circumstances you have just described, I would hope we do not go down that path again. It is my intention that we should not. We have, in fact, put in a number of measures—I will ask Assistant Commissioner Johnson to talk about them—around ensuring that the mental health of our officers is a factor in determining how we go about our own professional standards internal investigations.

**Mr R Johnson:** I can outline a couple of things we are looking to do differently in our professional standards processes that mean that the process we follow might go much more smoothly than it did. Everybody who is involved in a professional standards investigation is provided information about their own welfare and how they might get support. We are in the process of enhancing how they get that information and where they get it from, and making a more direct connection with wellbeing services where we become aware or know that there are potentially mental health aspects to the issue. We have started a program of improving training for our professional standards investigators, accepting that they come and go from the team from time to time. That will be an ongoing body of work. So if they find themselves in a situation where mental health might be an issue, they are better prepared to understand it and deal with it. Our linkage with organisation health is going to be improved to make sure we have got the right people behind us when we have those interactions.

**Senator XENOPHON:** Hindsight, as they say, is a wonderful thing. There are lessons to be learnt from this particular incident, which I think are positive lessons for the AFP. Can I go to the issue of Papua New Guinea and the 2018 APEC Summit. You are probably familiar with some of the media reports in relation to that. I did ask a number of questions on notice. I asked No. 559 of the Minister for Justice on 6 September, just last month. I know the AFP has put out a statement on this, but I am concerned about the whole process involved there. For instance, there was a leaked dossier that says:

... Australia has funded the purchase of 28 motorbikes, 6 RAV4s vehicles which will be unlikely to be properly used due to the fact the PNG police do not have the training or the numbers to effectively utilise the equipment.

That is from a report from Rory Callinan in *The Australian* on 23 August of this year. It also makes reference to jet skis being purchased at a cost of more than \$100,000. The assertion is that the purchases were made despite the PNG police and the AFP not having the appropriate licensing or skills to use them. What assurance can you give us about that whole process?

Also, has there been an investigation into who leaked those documents? Will there be any disciplinary action against the person who raised these concerns?

**Mr Colvin:** I am aware of the article. It's a very complex matter and the individual concerned is known to us and is someone who is in engagement with the organisation on a range of fronts. I don't wish to discuss that publicly.

**Senator XENOPHON:** Is it an AFP officer?

**Mr Colvin:** Yes, it is. The veracity of the claims is something that we will test, but I can assure the committee that it is not in the AFP's interest not, more broadly, the Australian aid interest that we are providing equipment that my RPNGC colleagues are not appropriately trained and capable of using. We have a very extensive training program on all equipment that we provide, so I would question the claim that we are not skilled or not qualified to train on this. But that is all subject to ongoing matters at the moment.

**Senator XENOPHON:** Is any disciplinary action anticipated against the person that is known to you in respect of these matters being released to the media?

**Mr Colvin:** I will take that on notice because it is an ongoing matter. I am not going to give a commitment to that right now, because I don't know enough of the details of the matter.

**Senator XENOPHON:** Can you take on notice whether the AFP officer or agent is facing any disciplinary action or investigation in relation to that?

**Mr Colvin:** I will take it on notice.

**Senator XENOPHON:** I did ask a number of questions on notice. I will touch on a couple of those. Were the procurements subject to the procurement rules?

**Mr Colvin:** They would be, yes.

**Senator XENOPHON:** Was there a business case prepared for the jet skis purchased for the mission? Can you tell us that or take that on notice?

**Mr Colvin:** I will take that on notice, but again I will say that everything that we are providing to the RPNGC in preparation for APEC is as a result of a very extensive, comprehensive assessment that was conducted with the RPNGC at the direction of Commissioner Baki, the Commissioner of the RPNGC, about their capability needs ahead of APEC.

**Senator XENOPHON:** I expect that you may need to take this on notice. AusTender shows a significant number of contracts being awarded by the AFP in the past 24 months to Red Sea Housing Services Co. Ltd, all by way of limited tender. I will put on notice a list of contracts. I have no idea who runs that company. I have no idea where it is incorporated. There do seem to be a lot of contracts awarded to them by way of limited tender.

**Mr Colvin:** That's right. I think that was under an earlier version of our aid program in PNG. At the moment our aid program is focused on APEC. I am aware of the Red Sea contracts. I know that they built accommodation for I think recruits or people undergoing training as part of our broader capability enhancement. I can get you the details of exactly what was provided by that contract.

**Senator XENOPHON:** Commissioner, thank you for your responses. These documents that have made their way to the media—and I should emphasise that documents were sent to

me and other members of parliament as well, which I see as relevant for the purpose of parliamentary proceedings and Senate estimates in particular—

**Mr Colvin:** No, I agree.

**Senator XENOPHON:** which raises interesting issues of parliamentary privilege for the person involved. Will these allegations be investigated? If there are any governance issues that need to be dealt with, will they be dealt with? You won't punish the messenger in this case?

**Mr Colvin:** No, absolutely. I understand that there already have been a number of investigations as a result of the information that this member has brought forward where we have needed to satisfy ourselves of our internal processes, our governance and rationale. He brought that to our attention I think probably long before he brought it publicly. That matter is something that we have had extensive dealings—

**Senator XENOPHON:** You will take that into account. If someone goes through internal processes first and then feels compelled to go to the media, that is a factor that you take into account in terms of any disciplinary actions?

**Mr Colvin:** Absolutely. I am sure he felt compelled to go to the media because he felt he didn't get a satisfactory answer from the organisation. We have investigated the matter fully. I am sure there are still matters we're probably keeping an eye on.

**Senator XENOPHON:** I won't take it any further. Obviously we want APEC in Papua New Guinea to go very well. I know the AFP has a key role in that summit. Thank you very much.

**CHAIR:** I just want to clarify that you have investigated all of the allegations and found nothing in them?

**Mr Colvin:** Chair, I want to take that on notice to be absolutely clear, but I know this matter has a reasonably long history with the organisation. The issues raised are not new to us and, like everything, if there are allegations of poor governance or impropriety, we investigate them, and I know we have on these matters. It is ongoing. The reason I can't give a categorical answer is that I don't know if there have been subsequent matters that he has raised that we are also now looking at. I am very confident that the AFP has taken them seriously and has investigated. By and large, we have come to the conclusion that many of the matters he has raised have been dealt with.

**CHAIR:** I must confess that I haven't heard of the issue. Is the complaint about Australian processes or PNG processes?

**Mr Colvin:** There's a mix of issues contained within the documentation about conduct by the RPNGC. But the substance of what Senator Xenophon was going to is about Australian processes around what we have provided to the RPNGC—the training and the equipment—and why, what oversight there was, what rationale there was and what procurement process there was.

**CHAIR:** These things take time, but I'd be interested if you could give us any idea of when you might be able to report back to the committee. I only say that—and I'll explain the reason—because I'm on a parliamentary delegation to PNG. I think it's next week, the

following week or something. It might just be useful to have that information at the back of the delegation's mind before—

**Mr Colvin:** We may have it now. I daresay we can give an answer to it fairly quickly. Again, this is why the Senate estimates process exists. These are processes that need to be tested, and they are.

**CHAIR:** There are no other questions for the AFP, so thank you very much to you and your team for coming along. It was all quit painless, and I appreciate that. Thank you, Commissioner.

**Mr Colvin:** Thank you, Chair and members.

### **Australian Human Rights Commission**

[11:57]

**CHAIR:** Welcome, Professor Croucher, to what I am sure is your first appearance before this committee. I appreciate you coming along. Thank you very much also for your courtesy in coming to see me privately, on behalf of the committee. I do appreciate that. Your human rights commissioner, amongst others, did the same thing, so we appreciate that. I know I speak for the committee and, indeed, all parliamentarians in wishing you all the best and saying that we look forward to a long, fruitful and mutually-rewarding interaction together as you undertake your important duties. With that, do you, Professor, the minister or any of your officers wish to make an opening statement?

**Senator Brandis:** Can I just add to your remarks before Professor Croucher speaks. Members of the committee of course will know Professor Croucher very well from the seven and a half years during which she served as the chair of the Australian Law Reform Commission. The government has appointed Professor Croucher for a seven-year term as President of the Australian Human Rights Commission from 30 July. Professor Croucher, as you're probably aware, comes to us from the Academy of Law. She's had a very illustrious academic career in the law, which has included a period as the Dean of the Macquarie Law School and as the Acting Dean of the Sydney Law School. She is an emeritus professor of Macquarie University. It might also interest you to know that Professor Croucher was, at one time in her life, a professional musician with the Australian Youth Orchestra, the Australian Opera and Ballet Orchestra, and the Renaissance Players. She plays the oboe, the cor anglais and the recorder.

We should also welcome to her first appearance at estimates the new Aboriginal and Torres Strait Islander Social Justice Commissioner, June Oscar AO. June is a Bunuba woman from Fitzroy Crossing in Western Australia. She has been particularly active in addressing a number of issues of Indigenous disadvantage, most particularly the effect of alcohol on Indigenous communities. She has in particular worked tirelessly to reduce foetal alcohol spectrum disorder in Indigenous communities. She has held a number of influential positions within Indigenous Affairs over many years. She was appointed for a 5-year term as the Aboriginal and Torres Strait Islander Social Justice Commissioner in April of this year, but this is her first appearance at estimates. The Australian Human Rights Commission is on a very sound footing under Professor Croucher's leadership and with the appointment of new commissioners, and I echo your eagerness, Mr Chairman, for a good relationship between this committee and Professor Croucher and the commissioners.

**CHAIR:** Thanks, Attorney. Again, Professor Croucher, welcome. Also, to Commissioner Oscar, who I haven't met before: welcome. Also, to the existing commissioners who have joined us today: we very much welcome your presence. Professor Croucher, over to you for an opening statement if you would like to do that.

**Prof. Croucher:** Thank you, Chair, and thank you, Attorney, for your warm introduction both to me and to June Oscar. From my perspective, it's a great privilege for me to continue to serve in another government agency headship, and I look forward to this role very much and see it as an important opportunity to reset the relationship of the Human Rights Commission as the national Human Rights Commission with government, with the important committees of government. And I welcome the opportunity to assist this committee in whatever way I can. So that really is all I wanted to say to provide this opportunity for your committee to ask me and my fellow commissioners any questions that you may wish to ask of us.

**CHAIR:** Thank you very much. I think we will be able to slip in an arts question or two and save a bit of money for the Commonwealth if we need to in this committee! But, with that, Senator Pratt?

**Senator PRATT:** Senator Wong.

**CHAIR:** Senator Wong.

**Senator WONG:** Welcome, Professor. I add my and the opposition's voices to welcoming you to this role and to this committee. I thought it might be useful for this committee perhaps to hear a little bit from you about your vision and priorities for the Human Rights Commission. You started with an indication of an opportunity to reset the relationship with government and committees. I assume that your priorities, though, go beyond that to the broader agenda about what you want to achieve in terms of the Australian community. You might want the opportunity to talk about that.

**Prof. Croucher:** What I can suggest at this stage is some impressions, perhaps, of my experience from now three months in the role. Clearly, in order to have a sense of what one can achieve over seven years, it's important to get a sense of the quality of the institution, and I must say that I consider the Human Rights Commission as an organisation to be an extraordinarily well functioning organisation. What I have observed is a great deal of quiet achievement. There's a very large educational outreach program. There are significant partnerships with major agencies like the Defence Force, like DFAT, like Prime Minister and Cabinet—particularly in the commitment to the Aboriginal and Torres Strait Islander Social Justice Commissioner's programs—and other organisations out in the community like the AFL and rugby league. So, there's quiet achievement of that kind

I've also observed a significant quantity of what I would describe as quiet service through the National Information Service and the investigation and complaints-handling functions of the commission. Extraordinary numbers of people are assisted through that service. Approximately 15,000 people a year contact the commission. Two thousand of those translate into complaints, and nearly all of those are resolved through a very strong conciliation program. I describe that as quiet service.

Perhaps I can add to the list of quiet services with 'quiet assistance' as an invited intervener—for instance, most recently in a Family Court proceeding—and also through the role that the commission can play in monitoring: the regular visits to immigration detention centres, where



the commission is able to make observations, highlight things that are going well and highlight things that perhaps are amenable to practical responses and improvements and also has an opportunity to highlight where things have improved since the last visit.

There is a range of things I've observed, all of which I would want to ensure are preserved and protected as part of the key functions of a national human rights institution. Priorities will develop, but I think the key thing for me is to look forward to the fact that in 2021, which falls within my term, it's the 40th anniversary of the 1981 legislation that introduced the Human Rights Commission as a statutory agency in the Australian landscape. And I hope at that time to mark the achievements through reflections on the continuing strength of the work as an independent government agency. But as a government agency it has particular responsibilities both to be sensitive to government and also to be the champion for the commitments that the government has committed to through being a signatory to all those international treaties.

Of particular areas of interest, already I've singled out the business and human rights area, and also, perhaps reflecting my own background, I have a deep sense of historical understandings of rights and freedoms and I would like to extend the educational outreach through an opportunity to map rights and freedoms across a calendar, as it were, with resources opening up of endless possibility that might provide an enduring contribution of the Commission.

That's just a snapshot. I wanted to give some impressions of the first three months, and I look forward to the years that I have to serve in this role.

**Senator WONG:** Sure. I have a couple of brief follow-ups. You use the adjective 'quiet' a few times in that, and I wondered as I was listening why you did that. I'm assuming it's not an indication you don't believe the commission has an advocacy role within the community.

**Prof. Croucher:** I choose the word 'quiet' because I think it's the aspects of the commission's work that are often not observed or not out in the observance. The educational outreach in particular and the work with bodies like the Rugby League and AFL are a way of gradually helping cultural change and improving bystander interventions. Quiet things like that often go under the radar, but I think they are the things that in the long term we should be extremely proud of.

**Senator WONG:** I have just one other question. You have been appointed for seven years. Is that right?

**Prof. Croucher:** That's correct.

**Senator WONG:** Is that the normal term for the president to be appointed?

**Prof. Croucher:** Under the statute, the appointment can be up to seven years.

**Senator WONG:** Up to. And has one been appointed previously for that period or for different periods?

**Prof. Croucher:** Sir Ronald Wilson served for seven years.

**Senator WONG:** Right. And the previous incumbent?

**Prof. Croucher:** That's a matter of public record—

**Senator WONG:** No, I just don't remember.

**Prof. Croucher:** It varies between five—

**Senator WONG:** I just asked how long the previous incumbent served. That's all.

**Prof. Croucher:** My predecessor was appointed for five years.

**Senator WONG:** Okay. So the government's chosen on this occasion to appoint for seven.

**Prof. Croucher:** Yes.

**Senator WONG:** Thank you. I think Senator Dodson had some questions. I don't have anything further.

**CHAIR:** Okay. You've still got some time left, so Senator Dodson.

**Senator DODSON:** I note the race commissioner isn't here, but my questions are in line with your comments in relation to the educational outreach programs. I appreciate that the detail around that may be a bit hazy at this point, but there's no doubt that, from your earlier comments, there's a feel of competency that you seem to have over that. I might put them to you, if that's okay.

**Prof. Croucher:** Certainly. I'll answer as best I can.

**Senator DODSON:** In a recent comment by the Race Discrimination Commissioner, he said:

At the Commission, 54% of *Racial Discrimination Act* (RDA) complaints received in 2015-16 were made by Indigenous Australians and a large number of complaints related to employment.

He went on to say:

These everyday and often casual expressions of racism are unacceptable.

Do you have any sense of whether the rate has been increasing?

**Prof. Croucher:** That's a fair question. I can't give you a specific indication with respect to that. The information about the various complaints has just been made available. But, as to that specific question, I'd like to take that one on notice if I may.

**Senator DODSON:** Sure. Thank you very much. Have you monitored the effectiveness or the impact of the 'Racism. It stops with me' campaign?

**Prof. Croucher:** There is very strong participation in that campaign, and there's an ongoing program over the next year or so under that program supported by a number of government agencies and departments. But, in terms of monitoring it, I'm advised by the executive director that it was evaluated and that that is public.

**Senator DODSON:** Can you tell us how most of those complaints, if they're about employment, have been finalised? Are they in the quiet basket or have they gone to the litigation trail?

**Prof. Croucher:** That is also a very fair question to ask. I will answer it with some general observations. Obviously, the details of any specific complaints are not available as a public matter. From a statistical point of view, the number of complaints that end up in court are very, very few. I'll give you a very simple example of that based on those statistics that I mentioned before. I said about 15,000 people on average contact the commission each year. About 2,000 complaints are handled by the commission each year. With respect to race discrimination complaints last year, there were around 500—so that's 500 of the 2,000—and only one of those ended up in court. What that points to is that there is an availability of an avenue to a court, because the Human Rights Commission is not a court. The complaints

jurisdiction is a conciliation based jurisdiction; it's not a court based jurisdiction. So there's the availability of that pathway. It also points to a very high success rate of the conciliation process itself. Of those that are conciliated, about 75 per cent are conciliated successfully. The participants in the conciliation process are evaluated, and the survey feedback from that is very, very strong not only from those who are complainants but also from those who are respondents. So there is a very large number of people—about 1,700 or so each year—who are actually assisted very constructively through the process.

**Senator DODSON:** My final question is—you might take this on notice as well—can you give us some indication of the cost and time that's allocated to the process of conciliation?

**Prof. Croucher:** There is a staff cost in providing the service. One could ask, 'What do you compare that with?' We can provide information about the staff cost that is allocated to handling those complaints and the information service each year. But if you ask, 'What is the value of that,' you'd want to compare that with, perhaps, the court costs that might otherwise be involved if all of those matters were handled through the provision of legal support and through lawyers and, also, court time. It is difficult to evaluate that, but I would suggest that there are significant savings in terms of the savings of court time and associated private legal costs compared to the service that's provided. From the point of view of the public purse, there is a cost in providing the staff who handle the complaints, but, from the point of view of those who come to the commission seeking assistance, there is no cost for them. It is a no-cost jurisdiction from that point of view insofar as it has an ability to help.

**Senator DODSON:** Thank you very much.

**Senator SIEWERT:** Welcome, Professor. I wanted to ask you a few questions and then I've got questions for our other commissioners. Can I ask how the commission intends to respond to the latest UN periodic review that was released just last week that made a number of criticisms around Australia? I think my colleague Senator McKim may ask you about issues around asylum seekers and refugees. I wanted to particularly focus on the comments made around Aboriginal and Torres Strait Islander peoples from a bigger picture perspective of how the commission responds overall to the review and then around specific issues.

**Prof. Croucher:** One of the functions of the Australian Human Rights Commission as the national Human Rights Commission is to provide information on the cyclical reviews that are conducted both under the particular conventions but in the broader sense. The particular review that has just been conducted in Geneva was a reporting in relation to the International Covenant on Civil and Political Rights, to which the Human Rights Commission obviously made a submission. The Human Rights Commissioner, Ed Santow, was there on behalf of the commission speaking to that and presenting our submission to the review process.

The UN Human Rights Committee itself will be considering all of the submissions—the submissions from the Human Rights Commission, as well as that from civil society, as it's collectively described in that context, and it will be making some concluding observations in a couple of weeks. They are not made yet; it's an ongoing process. So, when the committee itself provides its concluding observations, that will provide an opportunity for the Human Rights Commission to work with the government and other relevant agencies to see how we can answer some of the comments that are made by the committee. We look forward to hearing those observations and seeing how we can continue to work with government to meet the concerns that the Human Rights Committee may have.

**Senator SIEWERT:** Once those final concluding comments are made, do you have a time frame by which you respond to that, or were the government to respond?

**Prof. Croucher:** Not a specific time frame. It's part of the ongoing work—the daily work of the commission is to ensure that we can address any concerns like that and work to find practical answers that achieve systemic improvements across the country.

**Senator SIEWERT:** A number of the criticisms that have been made through the process to date are in fact very similar to a number of the criticisms that have been made or comments that were made last time. We have seen, in some areas, very little progress—in fact, things getting worse. What, then, is going to change in terms of moving forward on some of these deep-seated problems that we are facing here?

**Prof. Croucher:** Continued attention is the start of it. I recently described the role of the Human Rights Commission as rather like the 'devil's advocate', but at times that may mean that we become the 'devil's blowtorch' if it's a question of keeping the attention on the issues that have been raised both by the commission itself but also through the processes in which Australia is a willing participant. By virtue of signing up to the international conventions, it is a commitment of the government to open itself to scrutiny, and, in the continued support of the Human Rights Commission, as the national human rights institution, it's also a commitment to ensuring that there is somebody at that level that can pay that attention and continue the attention on the issues and help to contribute to the solutions. And that willingness to be subject to criticism, I think, is an important aspect of working towards the solutions.

**Senator Brandis:** I might add, Senator Siewert, that this process is one that invites criticism of all the countries that appear before it—

**Senator SIEWERT:** I know that.

**Senator Brandis:** because there is no such thing as a perfect score, I suppose, and there never has been. But, to give a little perspective here, the Office of the High Commissioner issued a press statement after Australia's appearance in which he reported that experts observed a generally strong record of Australia in the field of human rights, a robust civil society and the national Human Rights Commission. So there will be criticisms—there always are, of every country—but, overall, Australia—and this is typical—has always been regarded by and acknowledged by the United Nations Human Rights Committee as a strong human-rights-respecting nation.

**Senator SIEWERT:** There were specific criticisms made—I'm not going to get into an argument with you now; I'm specifically focused on the criticisms that have been made and where we can improve.

**Senator Brandis:** I acknowledge that, but I think context is important. There were specific criticisms, which, as Professor Croucher has said, Australia will be addressing. There are always specific criticisms made of every single country that appears before this body, because its role is kind of a due-diligence body. But the overall context is the view of the United Nations that Australia is a strong human-rights-respecting nation.

**CHAIR:** I was going to add, if you'd allow me to interpose, Senator Siewert, that—Minister, you'd be aware—Australia succeeded in its bid to get a position on the UN Human Rights Commission.

**Senator McKIM:** Along with Qatar.

**CHAIR:** Are you criticising the Human Rights Commission, are you, Senator McKim?

**Senator McKIM:** Qatar's human rights record.

**CHAIR:** So they are on the Human Rights Commission—

**Senator McKIM:** Sorry—I thought you were talking about the committee. My apologies.

**Senator Brandis:** The council, Senator.

**Senator SIEWERT:** He was talking about the council.

**CHAIR:** It's the same thing.

**Senator McKIM:** No, it's not the same thing.

**Senator SIEWERT:** No, it's not.

**Senator Brandis:** I think your point, if I may say so, Mr Chairman, as I understand you, is that it's a good thing that such a strong human-rights-respecting nation as Australia should be on that council because not always all the members are.

**CHAIR:** Yes. Senator Siewert—sorry.

**Senator SIEWERT:** Professor, I wanted to go to the comments that there have been and the report that was made by Special Rapporteur Philip Alston, around Australia's proposal to drug-test income support recipients, that were very critical of that particular piece of legislation, and ask: have you further responded to that or do you intend to respond to that particular criticism?

**Prof. Croucher:** I'm not aware of a specific response, but I will find out in relation to that specific matter.

**Senator SIEWERT:** So, to your knowledge, there hasn't been one?

**Prof. Croucher:** In the three months I've been at the commission, I'd have to say that I'm not aware of—

**Senator SIEWERT:** It's a very recent report—

**Prof. Croucher:** on that matter—

**Senator SIEWERT:** It was only the beginning of last week.

**Prof. Croucher:** I will respond to you on notice, if I may, and seek the advice from within the commission.

**Senator SIEWERT:** Okay.

**Senator Brandis:** I think, Senator Siewert, Professor Croucher has already told us that the report of the Human Rights Committee is in preparation, and we won't receive that for some little while now. So perhaps these questions are a little premature. Let us just see what the Human Rights Committee does put to Australia in relation to that or, indeed, other matters before commenting on them.

**Senator SIEWERT:** I'm specifically interested in the response to the special rapporteur's comments, given that that's about legislation that this parliament will be considering in the near future. So I'm wondering if we could specifically expedite that particular answer on that particular matter.

**Prof. Croucher:** If it concerns the ongoing matters that are before the Human Rights Committee, then in the ordinary course we would await the concluding observations. If it's something that's distinct from that—

**Senator SIEWERT:** It's separate from that.

**Prof. Croucher:** Then that's a matter I will seek advice on.

**Senator SIEWERT:** Thank you very much. Attorney-General, could I ask you whether you've looked at that report or have any response to it?

**Senator Brandis:** No.

**Senator SIEWERT:** You haven't looked at it?

**Senator Brandis:** No.

**Senator LEYONHJELM:** I understand that the race commissioner's not here, and my questions do relate to the anti-racism campaign. So, if there are any of them that you can't deal with now, I'm happy to have them on notice.

**Prof. Croucher:** Yes. I'll endeavour to answer what I can.

**Senator LEYONHJELM:** And as a crossbench senator I move between the committees, and so sometimes I miss things that have been asked before I arrive. I apologise if any of this has been aired. The anti-racism campaign—the two advertisements: can you tell us how much they cost to produce and how much they cost to air?

**Prof. Croucher:** The community service announcements, Senator?

**Senator LEYONHJELM:** Yes.

**Prof. Croucher:** I do have some indication of the budget of those. From the point of view of the Human Rights Commission, the funding was \$18,000. But there was support also from the Department of Social Services, and also some pro bono work by the advertising agency that prepared them.

**Senator LEYONHJELM:** Okay. This precedes you, I suspect. This whole campaign was initiated before you were appointed. But I'm just wondering whether you're able to tell me whether you have any evidence that advertising can stop someone from being a racist, either directly or through prompting other people to call out a racist behaviour?

**Prof. Croucher:** Look, I think that's a fair question. If I may, they are community service announcements; they are not advertisements. They serve a different function. Community service announcements can cover a whole range of matters. I remember the power of the community service announcements around family violence. They contained very powerful messages. So insofar as I can make an observation of personal impact, in my previous role I found them very powerful in their impressions on me.

In terms of measuring: that's a very big question, and I think far beyond my remit. But one would hope that they do have a constructive impact on raising understanding of how bystanders can assist, which, to me, is the ultimate way of us dealing with any of the issues that are of concern under the various discrimination areas that we do cover.

**Senator LEYONHJELM:** I guess I'm looking for something a little more concrete than that. Yes, you may find them powerful—you may find the domestic violence ones powerful. But I'm assuming that you're not a racist, so you're not really the target audience, and I would

think that probably neither am I. But whether you call them CSAs, they appear in the places that advertisements are shown, and if we're talking about someone who is a racist the question really is: would they stop someone who is actually genuinely a racist from being a racist? Or would they prompt someone else to call out a racist's behaviour? Do you have any evidence of that? Is there any research or any published works that would substantiate that conclusion?

**Prof. Croucher:** I can't answer that specifically. But I think that what you are suggesting is that in any area like this, research projects provide the kind of evaluation that would provide additional evidence to support the impact, which would then assist the continuation of a campaign of that kind in future.

**Senator LEYONHJELM:** Before you joined the commission, I would like to think that somebody in the commission actually thought about that question and would have had some sort of substantiation to say, 'We're going to spend \$18,000 of Human Rights Commission budget, plus DSS is going to contribute to it,' and that there was some evidence other than a feeling that this will actually make a difference. Are you able to take that on notice?

**Prof. Croucher:** Certainly, Senator. But the target is bystanders in this case.

**Senator LEYONHJELM:** Nonetheless, we are asking bystanders to respond, and do we have any evidence that this kind of advertising will get bystanders to respond?

**Prof. Croucher:** I will take it on notice and see what evidence was obtained in the preparation of this material.

**Senator LEYONHJELM:** Okay, I'm just going to go a little further on that. There are two CSAs. In the elevator ad, the perpetrator of racist behaviour is a young white man. In the taxi advertisement, or CSA, the perpetrator is obscured, but also appears to be a young white man. Is there any evidence to suggest that the perpetrators of racist behaviour in Australia tend to be young white men?

**Prof. Croucher:** Thank you for your question, Senator. With respect to the second community service announcement, I would like to draw attention to the fact that insofar as there is a hero in that ad, the hero is a young white man. The taxi driver is obscured; it's not possible to identify whether he meets the description that you offered. But the hero, the bystander in that second advertisement, is a young white man. The person he is assisting is a person who appears to be Indigenous.

**Senator LEYONHJELM:** Your website refers to the Scanlon survey. It actually refers to Chinese-born migrants fearing living in areas with people from the Middle East as a chief concern about racist behaviour or racist attitudes, rather than young white men. Did you entertain the idea that that might be portrayed in the announcements as well?

**Prof. Croucher:** I can't answer that question specifically.

**Senator LEYONHJELM:** In relation to the scenarios in which you depict racism, have there been reports of racism against passengers trying to get a taxi, or have there been reports of racism when trying to get into an elevator?

**Prof. Croucher:** Yes. They are illustrative of scenarios where bystanders might take an active role. But with respect to taxis, yes.

**Senator LEYONHJELM:** You have?

**Prof. Croucher:** Yes.

**Senator LEYONHJELM:** Fine. Perhaps I could ask you to take it on notice to give me some details on that?

**Prof. Croucher:** What specifically would you like details about?

**Senator LEYONHJELM:** The evidence of racism in relation to trying to get into a taxi.

**Prof. Croucher:** Certainly.

**Senator LEYONHJELM:** Now, the Scanlon survey on your website is interesting. It states that there is only one visa group who say that the thing they like about Australia is racism and discrimination. Only one visa group, and that group is New Zealanders on special category visas! Do you think that the Human Rights Commission ought to advertise or ought to undertake community service announcements targeted at that group?

**Prof. Croucher:** Perhaps this is not the time, in view of the recent rugby match, to be talking about such matters, Senator.

**Senator LEYONHJELM:** Hah! I guess what I'm trying to do is to ask you for an objective basis for the campaign. If the survey doesn't support what you are doing then what value is the survey? And yet you cite it? That is what I'm getting at.

**Prof. Croucher:** Yes, we cite it. It is not our work as the commission. It is referred to, but we can provide some more information about the background material that was referred to in the preparation for the community service announcements.

**Senator LEYONHJELM:** Okay. That's what I'm seeking, essentially, so, yes, I look forward to receiving that. Thank you, Chair.

**Senator SIEWERT:** Could I please ask some questions of our social justice commissioner?

**Prof. Croucher:** I'll invite my colleagues to join us at the table. I believe, Chair, that Ms Oscar would like to make an opening statement.

**CHAIR:** We might pause and ask Commissioner Oscar if she would like to make an opening statement. Welcome.

*Ms Oscar then spoke in Bunuba language—*

**Ms Oscar:** Thank you. Senator Brandis, thank you for your kind words. Good morning, all senators. I am delighted to be here with you. This is my first time in this room. I'm here to help provide insights, in my responses to you, on people like me—Aboriginal and Torres Strait Islander people—and our thoughts and matters of concern and how we can work together to address them. I feel proud that I am able to speak my first language in this room. Thank you very much and I am honoured to take on this role as the first Aboriginal woman social justice commissioner, Senator Brandis. This is a strong and positive message to many of our young Aboriginal and Torres Strait Islander women and girls that they, too, can aspire to this role in their future. So thank you and thank you for your questions.

**CHAIR:** Thank you very much, Commissioner. I'm not sure how Hansard will go in recording that, but they may contact you later to get some assistance to make sure it is recorded.

**Ms Oscar:** Thank you. I've just offered translations.



**Senator SIEWERT:** Welcome. It's our first opportunity to ask you some questions. Certainly I'd like to congratulate you for being the first Aboriginal woman to become the commissioner. My first question is around the overarching role that you take and what you see as your priorities for your term.

**Ms Oscar:** Thank you, Senator. Yes, I have been now in this role for six months. There are many interrelating issues pertinent to my role and, with my office, I am giving consideration to key issues through my speaking engagements and my submissions and reporting, but the key focus for the next 18 months is the women and girls project, which we are conducting in partnership with Prime Minister and Cabinet. This will cover multiple issues arising from the experiences of women and girls across the country. The focus of this work will consume the next 18 months, and we look forward to leading this work because it will be the first time that the Aboriginal and Torres Strait Islander Social Justice Commissioner has undertaken focused work regarding Aboriginal women and girls and their issues.

**Senator SIEWERT:** Would you take us through a little bit about what that program entails.

**Ms Oscar:** The key objectives of this project are to capture the voices of Aboriginal and Torres Strait Islander women and girls with respect to their cultural, social, economic and personal security, and the key priorities and principles that they believe underpin effective policy and practice. It will be an opportunity to elevate the voice of Aboriginal and Torres Strait Islander women and girls through a human rights based process which is accessible and relevant to their lived realities and contributes to their empowerment. It will also provide credible evidence, in my view, and set out clear guidance for governments to improve their capacity to support Aboriginal and Torres Strait Islander women and girls as active citizens and positive change-makers, and the best-practice considerations that need to be established throughout government policies and programs to inform the development of a positive government agenda to support the safety and empowerment of Aboriginal and Torres Strait Islander women and girls and inform all relevant policies and programs going forward.

This is a consultation that's different to others. It is being conducted by Aboriginal and Torres Strait Islander women for Aboriginal and Torres Strait Islander women. It is led by the social justice commissioner. It is the second national consultation in over 30 years with Aboriginal and Torres Strait Islander women.

**Senator SIEWERT:** When was the first one?

**Ms Oscar:** In 1986, I believe.

**Senator SIEWERT:** Who did that one?

**Ms Oscar:** It was funded by the Commonwealth. It was under the ministership of Susan Ryan at the time. There was a task force established, and they visited over 270 communities across Australia. The findings culminated in a report entitled *Women's business*.

**Senator SIEWERT:** I'll go and have a look at that. Are you also looking at how Aboriginal and Torres Strait Islander women and girls are faring economically and getting a share of, for example, native title benefits, royalties and things like that? I remember hearing a very good lecture by Professor Megan Davis around that very issue, and it seems to me it fits into what you are talking about. Is that the sort of thing that you will be looking at?

**Ms Oscar:** Yes, women's role in their responsibilities to land and sea is obviously a key issue for many communities and native title holders across the country. I agree that that will be a large part of the focus in these consultations, because we are seeing more and more Aboriginal and Torres Strait Islander women coming forward in their roles as members and representatives on the prescribed body corporates, representing the views and the responsibilities that women have to land and sea country.

**Senator SIEWERT:** Thank you. I have lots of other questions on that, but I might put them on notice given the time.

Could I ask about the comments that you've made on the cashless welfare card and the extension of the proposals to extend the cashless welfare card. I've read your submission to the committee. Could you expand on some of your comments, particularly:

The Commission does not accept that it is appropriate to extend these measures to additional sites in order to "build on these positive findings, and offer an opportunity to continue to test the card's effectiveness in different settings and on a larger scale". There is limited evidence to demonstrate that previous income management efforts have been effective ...

And you go on. Could you expand on those comments, please. What are the key elements that you have concerns about, and have you discussed this with government?

**Ms Oscar:** My view is—and it has always been, as an Aboriginal person working and living in community—that measures which are not community-driven but are imposed from outside the population that is most affected by the measures lack efficacy if the goal is sustainable, positive change. So it has to involve community. It has to commit to a process of engagement and deliberations, however complex they are, and many of our communities have diverse views and opinions on many matters. So the key to arriving at some effective measure for the benefit of communities must involve communities.

**Senator SIEWERT:** And, in your opinion, has that involvement of communities in this particular process not been satisfactory?

**Ms Oscar:** I can only speak from my close awareness of what has taken place in the Kimberley, that there are some very effective and strong local community organisations that have been part of an ongoing dialogue with government around this. The leaders, particularly in the East Kimberley and the Kununurra-Wyndham area, have shared with me that they have engaged with members of their own community, but over time we have also heard a strong voice coming from those who oppose these initiatives. My message to communities is that they do take the time and they are supported to take the time to have these hard conversations, to address some of the most complex issues that exist in our communities.

**Senator SIEWERT:** You make the comment in your submission about the involuntary, which then takes me to the voluntary, approach. Kimberley has areas where people can opt in to income management and a voluntary approach. What is your experience, being there, but also in your role in the last six months across Australia, with that voluntary versus compulsory approach?

**Ms Oscar:** I come from a community where I have witnessed members of my community opt in to BasicsCards and other measures with Centrelink. I know that they work and I have had people share with me that it has benefited or helped, at least, manage some of the stress factors that members in community often find themselves dealing with. An opt-in income-

management scheme is something that I would support. It goes with my earlier point around commitment to engage with community, in working through the complexities, to arrive at an outcome that the community also owns but has been a part of arriving at.

**CHAIR:** We'll go to Senator McKim now and then come back to you, Senator Siewert. And, by agreement, we'll have a very short question from Senator Pratt.

**Senator McKIM:** Professor Croucher, it is good to see you again and, on the public record, I congratulate you for your appointment.

**Prof. Croucher:** Thank you, Senator.

**Senator McKIM:** When you were at the ALRC you oversaw and, I believe, had an active role in the report: *Traditional rights and freedoms: encroachments by Commonwealth laws*. You made the observation in that report that—obviously terrorism is a gross violation of fundamental human rights; I am sure we would all agree with that—counterterrorism and national security laws that encroach on rights and freedoms should nevertheless be justified. In your current role, do you think the commission has a role to play in that ongoing conversation about whether or not there has been an acceptable level of justification of the encroachments on many rights and freedoms that have occurred as a result of counterterrorism and national security laws in the last 10 or 15 years?

**Prof. Croucher:** The question you raise goes to a matter of key concern not only for governments but also for human rights institutions. National security is clearly in a climate of increasing concerns about terrorism and is clearly a government responsibility. Even within the framework of human rights conventions, national security is an accepted ground for limiting rights, but any limitation on rights still needs to be scrutinised within a framework of proportionality. Is it a necessary measure for the object of national security? Is it proportionate? The various components that scrutinise the measures is where, I think, the national human rights institution, as in the Australian Human Rights Commission, can play a really active role in assisting government articulate that assessment of measures that are put forward in the interests of protecting national security, as indeed can the parliamentary committees themselves.

I have met, along with my colleagues, with members of the Parliamentary Joint Committee on Human Rights, and we see that we can have a very constructive role with that committee in their understanding of those quite finely balanced questions in that report of the Australian Law Reform Commission, which was a brief that Senator Brandis gave me in that prior role. I was privileged to lead that one and I could see how important the parliamentary committees are in that role; and how, under the great pressures that that committee exercises and the other scrutiny committees, a body like ours can help in the long-term improvement of understanding of those issues; and also in a direct way where the government and ministers seek our input directly in being able to inform those questions. I see the opportunity for very positive and constructive dialogues and that is exactly where the devil's advocate role comes into play that I was talking about. I would see that as one of our major responsibilities, in assisting government to work out those finely balanced things and ensuring that there are appropriate oversight mechanisms—the kind of matters that we canvassed quite thoroughly in the freedoms report.

**Senator Brandis:** That is, of course, what the government hopes to be the role of the Human Rights Commission in relation to national security policy. We are a Liberal government, we're a rights respecting government, but we are conscious of the obligations of protecting the public as well. We do try to tailor national security legislation to be as effective but as surgically targeted, if I may use that expression, so that the limitations or impact upon traditional rights and freedoms are as small as they possibly can be, consistent with the efficacy of the legislation. Now, the role of the Human Rights Commissioner as an interlocutor in that process is very welcome and, of course, it is better to have an interlocutor who engages constructively in the process than an interlocutor who gives hectoring speeches rather than engaging in conversations with ministers. We're very much are looking forward to Professor Croucher's active and close engagement in this process.

**Senator McKIM:** Perhaps then, Attorney, I might just follow-up with you, based on the remarks that you've just made. What do you see as the commission's role in terms of achieving that outcome? Specifically, what might the mechanics of that role be? And how early do you think the commission ought to be involved in discussions with government around framing of responses to the threat posed by terrorism?

**Senator Brandis:** Well, I have a very good relationship with Professor Croucher. We speak very often. We have known each other for quite a number of years now in her former role. It is absolutely my view that Professor Croucher and the Australian Human Rights Commissioner, Mr Santow, in particular, are people to whom I would look and the government would look for their views, including, as Professor Croucher has said, a devil's advocate role in relation to legislation of this kind. I am full of optimism about the new administration of the Human Rights Commission and Professor Croucher's clear and demonstrated willingness to be a constructive contributor to discussions with government.

**Senator McKIM:** Professor Croucher, has the government been in touch with you around the recent COAG decision to allow the sharing of state and territory-owned databases on drivers licences with Commonwealth agencies to provide for biometric identification of Australian citizens and the use of closed-circuit television cameras to be factored into that biometric surveillance of Australian citizens?

**Prof. Croucher:** There has been correspondence between myself and the Attorney with respect to the possibility, when consideration is being given to how that might appear in a legislative form, of input from the commission in relation to that.

**Senator McKIM:** Are you speaking about in general terms or specifically in regards to that proposal that was authorised by COAG?

**Prof. Croucher:** Specifically with respect to the proposal that was announced recently.

**Senator McKIM:** A couple of weeks ago?

**Prof. Croucher:** Yes, but as there is nothing concrete yet to discuss, it has been more that the channel is open and our input will be sought at the key time.

**Senator Brandis:** That is a very important point, too, Senator McKim. Ultimately, ministers make policy decisions, but in giving effect to those policy decisions there are a lot of interlocutors. Obviously, the parliament through its committees is an important interlocutor, but a body like the Human Rights Commission can also be and ought to be an important interlocutor too.

**Prof. Croucher:** May I add to that. In fact, it was on 10 October that I wrote to the minister, Senator Brandis, in relation to those matters, reflecting that understanding.

**Senator McKIM:** That was the contact initiated by the commission not the Attorney?

**Prof. Croucher:** We had a conversation about it and out of that conversation I put it in writing to confirm that understanding.

**Senator McKIM:** As I said in my original question to you, there has been a significant erosion of rights in this country over the past 15 years in the name of counterterrorism and national security. I don't think this is contestable, but feel free to contest that, if you like, but that's my view. Firstly, do you think there has been a sufficiently holistic analysis of that erosion by any human rights organisation in Australia, including the commission? Secondly, does the commission have a view on whether Australia, being the last liberal democracy in the world without a charter of rights, ought to have one?

**Prof. Croucher:** That sounds like almost—

**Senator McKIM:** It's a Dorothy Dixier!

**Prof. Croucher:** It's more than that; it's like every human rights exam question that you would want to factor into a master of international human rights or some such program. I won't endeavour to answer all of those in the time. I will answer in general terms and it is not by way of contesting your initial observation, but to say that in any time of increased pressure on security issues, whether it is World War I, World War II or any of the times, or the sinister way in which warfare is conducted these days, it is the responsibility of governments to be alert to these matters, and at every time there should be an active scrutiny of the impact on rights. An institution like the Human Rights Commission has the opportunity for vigilance and the more that there are counterterror measures or any other legislation that relates to national security, the more the vigilance should be activated. So it is an ongoing issue. I wouldn't refer to the last 15 years, I'd refer to the last 100 years, if we are going to have that kind of examination. The rest of your questions, can we put for exam questions on another day, perhaps?

**Senator Brandis:** Senator McKim, the government agrees with that. You will recall that on occasions when we have debated these bills in the Senate, I have said words to the effect that we welcome the contribution of people like you and Senator Leyonhjelm because the more libertarian voice ought always to be heard in the debate. That's the way in which this process avoids overreach and, if I've been conscious of anything as Attorney-General, I have been very conscious to try and avoid overreach. The other point I would make to you is that some of the national security legislation we have introduced has in fact enlarged human rights. Let me give you two examples. The government has introduced into the Criminal Code two new crimes, the crime of advocacy of genocide and the crime of advocacy of terrorism. I actually think that criminalising that kind of conduct actually enlarges human rights.

**Senator McKIM:** Thank you. Thanks, Professor Croucher. Yes, we will restart the examination next time you are in. If I was marking you, I'd say, 'Failed to address question B,' but that's okay.

**CHAIR:** I would give you 10.

**Prof. Croucher:** Yes, out of what?

**CHAIR:** A real 10.

**Senator SIEWERT:** Ms Oscar, have you been consulted about any changes to the Community Development Program as part of the review process?

**Ms Oscar:** No, not directly, Senator.

**Senator SIEWERT:** What do you mean by 'not directly'?

**Ms Oscar:** I am aware that there are issues being discussed and reported on throughout the country, in various communities in the Northern Territory and Western Australia. I have not had the opportunity to meet with those organisations, but I am aware that CDP is an issue and an issue that we must give full attention to.

**Senator SIEWERT:** Has the minister consulted you about CDP?

**Ms Oscar:** Not as yet.

**Senator SIEWERT:** Mr McEwin, I will go to my usual question, which is around the number of complaints that you have had and the proportion of those that focus on employment?

**Mr McEwin:** In terms of the total number of complaints that we received in the last financial year, 39 per cent of them were relating to disability discrimination, which is the highest of all the complaints that we receive.

**Senator SIEWERT:** Is that for the whole of the commission?

**Mr McEwin:** Yes. Of the disability discrimination complaints relating to employment, 33 per cent of them were relating to employment.

**Senator SIEWERT:** That's a slight decrease over last time, isn't it?

**Mr McEwin:** I probably need to take that on notice. I'm just looking at my notes, but, generally, it's been about the same for the last five years. But I will get back to you on that.

**Senator SIEWERT:** It's been going up and down, but it's around the same.

**Mr McEwin:** I will take that on notice and provide you with an accurate answer.

**Senator SIEWERT:** That would be very much appreciated. And that 33 per cent, is that the highest proportion of the complaints around disability discrimination?

**Mr McEwin:** No. The other similar number is around access to goods and services, which is around about 34 per cent, from memory. Again I will get back to you; I will take that on notice and provide you with an accurate response.

**Senator SIEWERT:** Thank you. Could you also do the same thing with access to goods and services for the last five years? Over the last five years, and even longer, employment continues to be a very high proportion, if not the highest, of the complaints that the commission deals with. We don't seem to be making a dent in it.

**Mr McEwin:** That is a very fair observation, and it is one on which I share your concerns—if I can articulate you have a concern—

**Senator SIEWERT:** Yes. You can articulate that.

**Mr McEwin:** I have a concern and many do. It is one of my six priority areas. For the committee's information, I have six priority areas, and employment is one of them. What I have been doing since I commenced, and will be doing for at least the next 12 months, is

working closely with the Australian Public Service Commission on ways that we can improve recruitment practices, the interview processes, making sure that the application processes are accessible, and so forth. I believe that the Australian government should be showing leadership. They are showing leadership and I will continue to work closely with them.

**Senator SIEWERT:** Are you able to break the figures down—I don't know if you have this information—in terms of the employment figures against disability type and severity? I'm trying to get a really good understanding of where the major problems are. Are you able to do that from the data that you have?

**Mr McEwin:** I will take that on notice, as I want to make sure I give you a very accurate response. That is easy for me to provide you with, but I don't have it right in front of me. But, from memory, around about 20 per cent of people who have a physical disability make up the number of complaints. My colleagues has just very helpfully pointed me to the right page, so, to answer your question, the main recorded for disability-to-complainant were mental health and psychosocial disability, being 29 per cent; physical disability, 20 per cent, as I said; and we have noted an increase in people who identify with a mental health psychosocial disability—it continued to rise. For example, it was 18 per cent in 2013-14 and in 2016-17 it was 29 per cent, as I just said.

**Senator SIEWERT:** That's a pretty significant increase. Obviously there will be a number of reasons. One I would have thought would be the increased focus over that period of time on mental health. But, having said that, it seems to me that work that's been done has not addressed the discrimination against people with poor mental health?

**Mr McEwin:** That is a very fair observation, and I think it's important to continually put a spotlight on the issue, to have conversations and to continue to work with government and stakeholders. Can I just make one final comment. All the numbers and statistics I have given you are also available on the commission's website, but I will get back to you—

**Senator SIEWERT:** Are they the most up-to-date ones?

**Ms Raman:** Yes.

**Mr McEwin:** Yes.

**Senator SIEWERT:** You have just talked about working with government. I'm wondering if there's any work you are doing with the private sector to address these issues, because we're just not seeing any movement here?

**Mr McEwin:** Certainly. One of the things I do is show best practice, and there are a lot of positive examples in the private sector or in the NGO sector around recruitment, around targets, around quotas, around best practice. One thing I have been looking at with stakeholders is how can we then demonstrate best practice to the wider community and encourage all employers—no matter big, small or medium—how they can incorporate best practice.

**Senator SIEWERT:** I have just been on a delegation looking at mental health issues. One of the issues that came up that I thought sounded like quite a good approach, particularly for mental health, was that they are taking an employment-first approach, where they are finding work for people and then doing the training and support for people across disabilities, but particularly focused on mental health. Have you looked at that? If you have, what do you think about it?

**Mr McEwin:** I've observed that amongst many of the complaints that we receive in employment and disability discrimination, one of the issues that arises is the employer often doesn't know how to support a person with a mental health or psychosocial disability. They may be unaware of how to provide them with support; they don't know where to get the information. That is a recurring theme and one that I'm looking at. That goes back to my initial comment about promoting best practice, including things around how they might provide a flexible workplace.

**Senator SIEWERT:** You'll probably have to take this question on notice. I'm continuing to pursue any complaints around the National Disability Insurance Scheme. You took it on notice last time and you said there were nine. Have there been any further?

**Mr McEwin:** What I can tell you is that as of this week we have received a further seven complaints relating to access to, or the administration of, or services provided under the NDIS. I should also make clear, as you know, that I do not get involved in individual complaints. This is the data that I have been provided with. That means that that brings the total, since you have been asking these questions, to 16 complaints relating to the NDIS or NDIA. I know you are interested in the number of people with hearing impairment, and I can tell you that none of the new complaints relate to hearing impairment. Sorry if he was pre-empting something, Senator.

**Senator SIEWERT:** That's fine. You did answer my question you took on notice last time, and there hasn't been any further since those complaints were made? Is that what you were just saying? There has been nothing new there—in terms of hearing?

**Mr McEwin:** To be clear, we have received a further seven complaints.

**Senator SIEWERT:** On NDIS, but not on hearing?

**Mr McEwin:** No. You're right. Nothing relating to hearing impairment.

**Senator SIEWERT:** I know you don't get involved in individual complaints, but can you give us an understanding of the types of complaints that you are getting for NDIS? Is that possible?

**Mr McEwin:** I can't comment on specifics, except to reiterate that they relate to access to—

**Senator SIEWERT:** Access to goods and services.

**Mr McEwin:** NDIS or the administration of it, or services provided under the NDIS. I can't comment any more.

**Senator SIEWERT:** Can you say that again? Administration?

**Mr McEwin:** Administration of, access to, and services provided under the NDIS.

**Senator SIEWERT:** I'll put the rest of my questions on notice.

**Senator PRATT:** I want to take a personal opportunity to welcome Commissioner Oscar. I was in your home town of Fitzroy Crossing just a couple of weeks ago and saw the legacy of some of the great work you've done there, particularly with women. You gave a speech on children and racism a little while ago in which you highlighted the issues that are an increasing part of our national conversation currently about the placement of Indigenous children from foster care with non-Indigenous carers, their separation from siblings and their disconnection from country, community and language. Given those legal separations are



within state jurisdictions, but that there is an increasing national conversation and national focus around those issues, what opportunities do you think we have at a national level to drive change in those areas?

**Ms Oscar:** Look, that's a good question. Thank you. I did hear about your visit to the central Kimberley! All good! Can I take that on notice?

**Senator PRATT:** Given we're due to go to lunch and it's a complicated issue, I think it is perfectly appropriate.

**Ms Oscar:** It is, and it's such an important issue. So, thank you.

**Senator PRATT:** No, thank you.

**CHAIR:** We will suspend the hearing until 2.15. To Professor Croucher and your team, thank you very much for being with us today and for your assistance.

**Senator Brandis:** Can clarify that the Human Rights Commission doesn't need to stay?

**CHAIR:** No.

**Prof. Croucher:** Thank you very much, Chair, and to the committee.

**Proceedings suspended from 13:14 to 14:17**

**Family Court of Australia**

**Federal Court of Australia**

**Federal Circuit Court of Australia**

**CHAIR:** We now move on to the Family Court, the Federal Court and the Federal Circuit Court of Australia, and then corporate and general matters and other matters as listed on the program. We have until 11 o'clock to try and finish the program. I just remind my colleagues that we are privileged as senators to be able to ask questions of officials and public servants directly. It is a privilege that many other parliaments don't have. I'd encourage all my colleagues to ask questions and not make political statements or debates—which are a matter for the chamber, not for this room. Senator Pratt.

**Senator PRATT:** Chair, Senator Kitching will take the call for the Labor Party.

**Senator KITCHING:** Three Family Court judges have retired in the past year and haven't been replaced—Deputy Chief Justice Faulks, Justice Dawe and Justice May. When are they going to be replaced?

**Senator Brandis:** They'll be replaced when the government replaces them. As you may or may not be aware, a new Chief Justice was sworn in only last Friday, as well as a new Chief Judge of the Federal Circuit Court. I will be discussing, as is my custom, the appointments with the new Chief Justice.

**Senator KITCHING:** I do understand that you've made those appointments, and those members of the judiciary have been sworn in recently. The position of Deputy Chief Justice has been vacant for almost 12 months. When will the Family Court have a Deputy Chief Justice again?

**Senator Brandis:** The retirement of Chief Justice Bryant has been known for a long time, because she reached the statutory retirement age two weeks ago, so the government has always been mindful of the fact that there would be a new Chief Justice appointed to the

Family Court in the near future. I think that out of courtesy to him it is appropriate to discuss those appointments with him first.

**Senator KITCHING:** The Family Court of Australia annual report for 2016-17, which was released recently—I think last week—describes the role of the Deputy Chief Justice:

... assists the Chief Justice in the judicial administration of the Family Court. Particular responsibilities include case management, complaints about judges, the collection and strategic assessment of statistics, pastoral care and oversight of the Court's committees.

How are these responsibilities being managed while the Deputy Chief Justice role is vacant?

**Senator Brandis:** Management of the court is a matter for the head of jurisdiction, not for the Attorney-General, but perhaps Ms Christie, as the CEO, might be able to say something about that.

**Ms Christie:** As the Attorney said, the management of the court is a matter for the head of jurisdiction, being the Chief Justice. In the absence of a Deputy Chief Justice, some of the activities that he might ordinarily have undertaken were undertaken in the Chief Justice's chambers. Some other functions have been spread around, either to other judges or to my office.

**Senator KITCHING:** Has there been any strain because of those arrangements that you've made?

**Ms Christie:** There's always strain as a result of taking on additional burdens of work when you're already very busy, but you do what you have to do in order to ensure an organisation runs as effectively and as efficiently as it can.

**Senator KITCHING:** So everyone's looking forward to a new Deputy Chief Justice being appointed?

**Ms Christie:** The court is clearly looking forward to appointments of new judges, because obviously it impacts the court significantly when those appointments are delayed.

**Senator KITCHING:** Attorney-General, you've given a dual commission to the new Chief Judge of the Federal Circuit Court as a Family Court judge. Is that correct?

**Senator Brandis:** Yes.

**Senator KITCHING:** Is that commission in lieu of appointing a replacement judge in Brisbane for retired Justice May or in Adelaide for retired Justice Store or in lieu of appointing a replacement for the Deputy Chief Justice of the Family Court?

**Senator Brandis:** That's not the reason the Chief Judge was given a dual commission. He was given a dual commission because, as you may be aware, most of the family law work that goes through the courts nowadays goes through the Federal Circuit Court. The most recent statistics that I saw reveal that about 87 per cent of contested family law matters are dealt with by the Federal Circuit Court rather than the Family Court, so the Chief Judge of the Federal Circuit Court is for that reason in effect the head of jurisdiction under whose jurisdiction falls most of the family law work in the country. Therefore, it seemed to me for that reason, and also for the broader purpose of bringing the courts more closely into alignment, to commission him as a judge of the Family Court as well.

**Senator KITCHING:** Thank you, that makes sense. Are there any extra costs associated with that extra commission?

**Senator Brandis:** Mr Soden will correct me if I'm wrong, but it's my understanding that the salary of the Chief Judge of the Federal Circuit Court is equivalent to the salary of a puisne judge of the Family Court—so there are no extra salary costs. Of course, as a member of the Family Court he is entitled to the judicial pension arrangements, which he wouldn't otherwise be, so that's a future cost, but Chief Judge Alstergren is a man in his early 50s, so that may detain an estimates committee in about the 2030s.

**Senator KITCHING:** I look forward to hearing those responses. What process does a court employ in order to manage judicial workloads?

**Senator Brandis:** The management of the court, including its caseload, is entirely a matter for the court itself and in particular the head of jurisdiction. But if you're speaking specifically of the Family Court, I think Ms Christie is the best person to answer that question.

**Ms Christie:** There is a number of steps that the court takes in order to manage its workload and it constantly reviews workload in order to ensure that what can be done is done. There is a national case management judge and case management judges in each of the registries whose responsibility includes, obviously, the review of caseloads. The Chief Justice also has a close interest in those things. And we have taken a number of steps in recent times to look at ways to attempt to assist the workload. In particular, we currently have a project going which involves some registrars in further intervention in matters that might otherwise be sitting waiting for trial. to see if there is any possibility of dealing with those cases in a way that might have them resolved more quickly.

**Senator KITCHING:** Would it be the national case management judge who would be assessing judges' satisfaction with their workloads? Who does that or does that reside with, the chief judge?

**Ms Christie:** I guess there are a couple of things. That's more a pastoral matter which formally would have resided with the Deputy Chief Justice and, in the absence of a Deputy Chief Justice, is more a matter for the Chief Justice.

**Senator KITCHING:** Are there judges who have suffered from trauma, stress or burnout? And how does the court assist judges in dealing with those matters?

**Ms Christie:** Since I have been employed in the court, I'm not aware of any judges who are in that category. There is, of course, an availability of what in normal circumstances might be termed as 'employee assistance' type counselling arrangements to which the judges may be entitled.

**Senator Brandis:** I think we can also say that, while Ms Christie doesn't point to any individual cases, there has been a growing awareness in recent years of the psychological effect on judges of the circumstances in which they work. They are lonely; it's a lonely occupation. It's very stressful. It, of course, demands decision and reason to the decision in relation to matters upon which are very consequential to people's lives. So it's a very, very demanding job which brings with it emotional pressures. I know the Australian Institute of Judicial Administration, which is that body of judges which looks at the way courts work and the way in which the judicial process is conducted by members of the judiciary, has in recent years looked very carefully at this issue as have academic specialists. But this growing awareness of the emotional health, if I can put it that way, of judges in stressful circumstances is something that all court administrators are very mindful of.

**Senator KITCHING:** That's good. I think having a better awareness of those matters is better for everyone. Could I move now to the restructuring of the courts? Senator Brandis, I have an extract of an interview with Samantha Maiden on *Sky News* on 11 October where you said that you had an open mind about a restructuring of the Family Court and the Federal Circuit Court. Would you consider a restructure is necessary?

**Senator Brandis:** I think the best way to approach this topic is to refer not to what I said on the 11th of what date?—

**Senator KITCHING:** October.

**Senator Brandis:** but what I said last Friday actually. So, may I table, please, the remarks I made at the swearing in of Chief Justice Pascoe and Chief Judge Alstergren. I made multiple copies available for the use and convenience of members of the committee. If I may take you, please, to the second and third paragraphs on the second page of that transcript.

**Senator KITCHING:** Yes.

**Senator Brandis:** I'll give you a moment to read them, particularly the third paragraph on the second page. That reflects my view.

**Senator KITCHING:** What would you consider radical change?

**Senator Brandis:** The reason I've actually gone to the trouble of bringing the transcript of this speech to the committee is that I want to put before you what I've said on the public record so it's not misunderstood, and I want to stress, as I did in the speech on the occasion of swearing in, the words towards the foot of the third paragraph of the second page where I say:

I want to stress that I have an entirely open mind as to what structural reforms are desirable, and I will be guided by the views of the heads of jurisdiction. I look to their leadership in that regard. However, we all know that the system is capable of improvement and the Government is open to change—if need be, radical change. Now is the window of opportunity for those improvements to be made and implemented.

Those words were carefully chosen because I do not want to get ahead of the discussion here. In this estimates committee, in the Senate and elsewhere there has been a lot of commentary in recent years about delays in the family law system. Partly, it is said, that is a resource issue, which is true. But partly it's also, in my view, a structural issue, and I don't think that's controversial among people who follow this issue closely. But my view also is that the role of the heads of jurisdiction, the Chief Justice of the Family Court, the Chief Judge of the Federal Circuit Court, and also the Chief Justice of the Federal Court as the most senior at least in terms of length of service, the head of federal jurisdiction, Chief Justice Allsop, are critical here. I don't want to get ahead of any views they may form other than, as it were, putting the position on the table that we need to see if the structure is best fit for purpose and mindful, in particular, of the fact that you now have two federal trial courts, the Family Court and the Federal Circuit Court of Australia, dealing with the family law system with very little jurisdictional difference. There are a small number of issues that only the Family Court can deal with. But by and large family law matters can be started in either of those two courts. It does seem to me at least worth the conversation whether that is an optimal set of arrangements.

**Senator KITCHING:** Have you had any discussions as yet with the recently sworn-in heads of jurisdiction?

**Senator Brandis:** I speak to the heads of jurisdiction quite frequently. I should say, make an exception, when I say that list would be misunderstood. I do not frequently speak with the Chief Justice of Australia at least in relation to court matters for reasons that are perhaps obvious, although I know Chief Justice Kiefel quite well. When it comes to the administration of the Federal Court, the Federal Circuit Court and the Family Court and matters such as budgets and management and so on, I have a very free and frequent line of communication with the heads of jurisdiction, as Mr Soden well knows, and that is the way the relationship between heads of jurisdiction and the Attorney-General should be.

**Senator KITCHING:** Perhaps down the track, after the recently sworn-in heads of jurisdiction have been there for a little while, they will have been able to observe and see how things are working such as the strengths and weaknesses of the courts. There is a frustration about the delays in those courts. There are three-year delays in some instances. Is it going to be top of mind, a priority, as to whether a restructure is done?

**Senator Brandis:** I think the pressures on the system are always top of mind for the heads of jurisdiction, as indeed for those who administer the courts. I see Mr Soden nodding. Maybe you want to put your nod on the record, Warwick.

**Mr Soden:** I confirm that the heads of jurisdiction have responsibility for managing the business of the court and at the top of their mind and, therefore, my mind is managing the business as expeditiously and as inexpensively as we can. There are many other issues but how the business is managed is at the forefront of their minds.

**Senator Brandis:** And, of course, Senator Kitching, it is a demand-driven system, obviously. If the demands on a demand-driven system become increasingly acute, there are several things you can do. You can increase the resources. You can make systemic changes so that, for example, the way in which matters are dealt with is streamlined by various processes. You can triage the system so that some cases which currently are dealt with in court are gathered in, as it were, before they reached the court, and we're trying to do that by introducing Parenting Management Hearings or you can make structural reforms. So there are various options of meeting growing and increasingly acute demands on a demand-driven system.

**Senator KITCHING:** I just have one more question, Chair.

**CHAIR:** You've gone over your time, but that's my fault for not alerting you.

**Senator KITCHING:** Thank you, Chair, you're very indulgent. I think you used the word 'pressures', plural, so would one of pressures be around the budgeting of the court systems and, if they were to restructure, would that mean that you wouldn't have to provide additional funding?

**Senator Brandis:** Not necessarily, but we're going to look at everything. As I say, I do not come to this problem with a secret plan, as your shadow Attorney-General has rather foolishly suggested. I come to this problem with a desire to identify the best set of solutions to an identified problem. Now, I mentioned resourcing, though I should say that, with the advent of the Federal Circuit Court, we have massively increased judicial resources over the years because there are 66 judges of the Federal Circuit Court. The Federal Circuit Court didn't exist and only came into being as the Federal Magistrates Court some 20 years ago and became the Federal Circuit Court in 2004. There are 66 members of that court and four out of

five do exclusively or largely family law work, so there are actually more judges in the system.

**Senator KITCHING:** Okay.

**CHAIR:** We can back to you later, but there are a number of others as well.

**Senator KITCHING:** Thank you.

**CHAIR:** Minister or Attorney, I want to ask a couple of questions, which are a bit parochial, about the Rockhampton arrangements for federal judges. You might recall that back in 2015 the Central Queensland Law Association and Michelle Landry were encouraging the Federal Court to appoint a new Federal Circuit Court judge so that the available sitting dates increased from five weeks per annum, which is what it was, to 21 weeks in 1972. My colleague Ms Landry, the member for Capricornia, has heard some concerning rumours about the availability of courts at the Rockhampton court's complex. We did discuss this several estimates ago as well. I'm wondering if someone could tell me what arrangements actually exist between the federal government and the Queensland government for the Federal Circuit Court to sit in the Rockhampton court's complex.

**Senator Brandis:** I'll let the officials talk about the current state of play between the federal government and the Queensland state government. You're right, Senator Macdonald, when you say that, as a direct result of the representations of Michelle Landry, the Central Queensland Law Society and the Central Queensland Bar Association, I made a decision, in collaboration, I should say, with the then Chief Judge of the Federal Circuit Court, Chief Judge Pascoe, to relocate a Federal Circuit Court judge, Judge Anne Demack, who was based in Brisbane, back to Rockhampton.

You know, Senator Macdonald, as somebody who is both a lawyer and a North Queenslander, that the Demack family is one of the great legal families of Central Queensland. Judge Demack's father was the central judge of the Supreme Court of Queensland for decades. Judge Anne Demack comes from Rockhampton. Her family is in Rockhampton. So she was very happy to relocate to Rockhampton to conduct the Federal Circuit Court from the Virgil Power court building there and also to circuit to centres like Emerald, Mackay, Gladstone and other localities along the Central Queensland coast and inland. I know the Virgil Power Building quite well, having practised at the bar myself, and I'm told, and I've seen it with my own eyes, that there is a lot of available courtroom space in that building. It is owned by the Queensland government. It had been used by the Federal Circuit Court and other federal courts or tribunals which circuted to Rockhampton. But what we have been seeking to do is to enter into a condominium arrangement or a tenancy arrangement with the Queensland state government to enable the presence of the Federal Circuit Court judge based in Rockhampton to be made permanent. The Queensland government welcomed the decision to base a Federal Circuit Court judge in Rockhampton, but I'm bound to say that it has been less cooperative than one would have hoped in enabling that to occur. There is a negotiation going on at departmental or officials level still. Judge Demack is still based in Rockhampton and she does sit in the Virgil Power Building, and we're trying to finalise that arrangement now. Perhaps there are officials of the Attorney-General's Department, or maybe Dr Fenwick, who may be able to give you more particulars, but that's the situation.

**Dr Fenwick:** I don't have anything to add to what the Attorney has provided in relation to the arrangements around property. Property, technically, is handled by the corporate services under the Federal Court. There has been effective and good working level cooperation with the local courts around the available time for sitting, and the available time for sitting comes in addition to the accommodation that's provided for the judge to be resident in Rockhampton. We cooperate, as I say, with the counterparts in the state courts about the need for flexibility within a certain available cap of time that has to take into account the demands of the sittings for the local jurisdictions.

**Senator Brandis:** So there's, as you know, Senator Macdonald, a resident Supreme Court judge in Rockhampton and there is one resident District Court judge in Rockhampton. To the best of my knowledge, those are the only two resident state judges based in Rockhampton who sit in that particular court building. But there is more courtroom space than is needed to be occupied by two resident judges.

**CHAIR:** I have some information, through Ms Landry, from the local law association. Can you tell me exactly what the arrangements are between the federal government and the Queensland government for the Federal Circuit Court to sit? I'm told that since 2007 there's been a leasing arrangement where the federal government makes payment to the state government to use courtroom No. 3. Is that correct?

**Dr Fenwick:** That's correct. We also have permanent staff located in the registry there. There is a longstanding documented agreement around access to the building. That is also sufficient to cover the relocation of the judge subject to the ongoing discussions that the Attorney has already outlined.

**CHAIR:** I'm told the state government estimated a cost of \$4.7 million to relocate the Supreme Court library on the ground floor to the first floor and replace the library with the new courtroom. Have there been any costings, and has the federal government been involved in that at all, to include an additional courtroom in the Rockhampton courts complex where, in this new complex, this new courtroom would be located?

**Senator Brandis:** I don't want to say anything that might prejudice the goodwill of negotiations. But may I say that, being familiar with that area of that building as I am, the suggestion it would cost \$4.7 million to turn it into a courtroom seems, to put it gently, extraordinarily high.

**CHAIR:** My question was: have there been any costings that either the department or the court are aware of?

**Senator Brandis:** Mr Soden can answer that.

**Mr Soden:** I'm aware of that figure of \$4.7 million. It's been mentioned to me as an indication of the cost. I share the view of the Attorney in terms of the amount, and discussions are continuing.

**CHAIR:** So there isn't any agreed costing at this stage?

**Mr Soden:** Discussions are continuing in relation to what the costs might need to be.

**CHAIR:** I'm told that the building was originally built for a future courtroom to be located where the Supreme Court library is based. That's why the doors are specifically located in this

vicinity, with access to cells and the lift to the watch house—that's why the library was there. Can you confirm or comment on that?

**Mr Soden:** I don't know those details.

**CHAIR:** Okay.

**Senator Brandis:** In legal practice these days, access to law reports and statutes is almost always online. So the need for large spaces to be devoted to a library is not what it used to be.

**CHAIR:** I guess it's a bit premature to ask my other questions, which are around whether the Federal Court or state magistrates will sit in the new courtroom, if that arrangement hasn't—

**Mr Soden:** It is premature, yes.

**Senator Brandis:** But, with a bit of common sense and goodwill, it can be sorted out. The fact is we have a large and ample court and a newish court building—about 20 years old—owned by the state government with plenty of room to accommodate both state and federal judicial officers so that they can serve the people of Rockhampton and neighbouring regions of Queensland. That really ought to be the only thing on the Queensland government's mind.

**CHAIR:** It seems there are five courtrooms, according to my information, in the building. I don't know whether that's true or not.

**Senator Brandis:** That sounds right.

**CHAIR:** Incidentally, Virgil Power was the uncle of my master when I did my articles, just as a matter of absolutely no interest at all!

**Senator Brandis:** Another one of the great Queensland legal names, Senator Macdonald.

**CHAIR:** Indeed. As you mentioned, Attorney, and perhaps you can elaborate on this, it seems there's plenty of room. The purpose of the federal government and the state government is to make sure justice is available as quickly and as readily as possible to our fellow citizens—in this case, in the Central Queensland area. It seems a very simple matter to me. Is it a question of cost? Are we not paying enough rent?

**Senator Brandis:** The building is owned by the Queensland government, and the Queensland government is very eager to strike a deal as financially favourable to it as possible.

**CHAIR:** You really think it comes down to money, regardless of access to justice for the people for Queensland?

**Senator Brandis:** Of course it comes down to money. There's ample room, as you rightly say. The floor of that courtroom was built to accommodate yet another courtroom. There's more space than there are judges.

**CHAIR:** And magistrates?

**Senator Brandis:** Judges and magistrates. Everybody can fit in that building easily. The judges, federal and state, and magistrates cooperate mutually to accommodate one another. This is all about a negotiation, about a state government wanting to extract what we might call a monopoly profit from the Commonwealth.

**CHAIR:** I would like not to believe you, and I always believe you. The issue is access to justice by the people of Central Queensland, and I can't believe that the state government—



and I know the federal government—would do anything to impede the access to that justice. I find that answer surprising, not that I doubt you, but it does seem unfortunate if that's the case.

**Senator Brandis:** It mightn't be the fault of the state Attorney-General. I think these facilities are usually owned by treasury or finance departments. But somewhere there's a bureaucrat sitting in Brisbane deciding that there's—

**CHAIR:** A profit to be made.

**Senator Brandis:** Let me not go on.

**CHAIR:** Okay. Mr Soden, do you have any indication of when this matter might be resolved? You indicated that discussions are underway.

**Mr Soden:** No, I don't, other than to say that it was brought to my attention very recently in terms of those dollars. It's been brought to my attention because it needs to be progressed.

**CHAIR:** Are you familiar with the building itself?

**Mr Soden:** No, I'm not, but I've heard a bit about it this morning.

**Senator Brandis:** It's quite a handsome building. You'd be familiar with it, Chair.

**CHAIR:** I actually attended Judge Demack's inauguration or swearing-in.

**Senator Brandis:** That's right; you did too.

**CHAIR:** I do recall that there was a representative of the state government who made very encouraging comments at that swearing-in, so I'm surprised to hear that. Hopefully that can be resolved, Mr Soden. If anything happens between now and next estimates, I'd appreciate if, perhaps as a question on notice, you could alert the committee to any progress in the negotiations.

**Mr Soden:** This discussion will be helpful.

**Senator HINCH:** Former Family Court Chief Justice Bryant and Law Council President Fiona McLeod, in recent times, have both warned about workload crises in the courts, logjams in the courts. An example I can give you is, in South Australia, their one Family Court judge and five of their six Federal Circuit Court judges are now listing trials for 2019. As Ms McLeod pointed out—and she's quite right—'The current lack of resources has meant that families facing the most serious family law issues are waiting for up to three years or more before a final trial,' and many months for urgent hearings. I know that you'd agree that Family Court issues are emotional and people are under duress. To have to suddenly hold off and wait for three years because you can't get into court is disgraceful.

**Senator Brandis:** I couldn't agree more. That's why we are taking the opportunity of having two new heads of the two relevant jurisdictions look at fundamental reform of the system. I can't remember whether you were in the room or not, but—

**Senator HINCH:** Yes, I was.

**Senator Brandis:** I went through four different vectors, as it were, for reform. One is greater resources. We've provided a lot of additional Federal Circuit Court judges over the last few years. One is systemic reform. One is structural reform. One is trying to triage cases so as to favour earlier dispute resolution. That's why we're introducing, for example, initiatives such as parenting management hearings. So this is a full court—pardon the pun—go at reform, particularly in 2018.

**Senator HINCH:** In your speech on Friday you referred to it as being a window of opportunity. In the speech you said your government is open minded and open to change and, if need be, to radical change.

**Senator Brandis:** Yes.

**Senator HINCH:** Could that involve scrapping the Family Court?

**Senator Brandis:** I don't want to anticipate that. I don't have a preferred model and I don't want to speculate on options. That is not because the conversation shouldn't be had, but if I say that in this forum then somebody will say, 'That's what Senator Brandis is really trying to do.' I'm actually not. I'm going to be guided by the wisdom of the heads of jurisdiction, such as Mr Soden and other court administrators, because the approach of the government to this issue is entirely pragmatic. It is a problem-solving approach, not a dogmatic approach.

**Senator HINCH:** Obviously rolling all three into one would be an option.

**Senator Brandis:** For the same reason I gave before, I'm not even going to assent to that proposition. All I am saying is that I have an open mind to change, including, if need be, radical change. I am sure you would agree from both your career as a senator and before that during your long and distinguished career as a broadcaster that we should look at options for change, including, if need be, radical change.

**Senator HINCH:** Yes. Every time as a journalist I sent you an email with the words 'Family Court' in it you would get the shakes.

**Senator HANSON:** Attorney-General, you said the Australian Law Reform Commission would be starting up soon. Can you tell me when it will be starting? When is its first meeting?

**Senator Brandis:** We've already appointed—

**Senator HANSON:** Professor Rhoades.

**Senator Brandis:** Professor Helen Rhoades to conduct the review. Professor Rhoades has already embarked upon the work. The way the Australian Law Reform Commission works, by the way, is that it doesn't ordinarily have public hearings like this. Most of its work is in the manner of research or the consideration of submissions that are made to it. But Professor Rhoades has already embarked on this reference.

**Senator HANSON:** Can submissions from the general public come through?

**Senator Brandis:** They will. As I say, the ALRC is an independent statutory agency. It's not for the government to direct it how to conduct its work. We set the terms of reference, which I issued on 27 September. But the Australian Law Reform Commission and the relevant lead commissioner decide on the program and method of work. I don't think the ALRC has been called before estimates today, which is a shame because it would have been able to give you a much fuller answer to those questions.

**Senator HANSON:** I'll just go back to judges. I have asked you this question before a couple of times on the floor of parliament and in these Senate estimates. There are judges out on quite extensive sick leave, possibly due to stress. Have other judges replaced them?

**Senator Brandis:** The Federal Circuit Court has 66 judges. That's at full complement. There are no vacancies on the Federal Circuit Court at the moment, but Mr Soden or Dr Fenwick can give you the details. I am aware that there are some judges on sick leave. The

management of the case flow, including accommodating the fact that some personnel of the court may be unwell, is a matter for the court. Dr Fenwick may be able to add to my words.

**Senator HANSON:** I have a question to ask about the 66 judges appointed to the court. With an ever-increasing population and more and more breakdowns of families, the courts are under stress and cases are waiting for up to three years. What is the increase of judges over the past five years, in relation to an ever-increasing population and family breakdowns?

**Senator Brandis:** There are, at the moment, 97—sorry, 96—judges—

**Senator HANSON:** Is that in the District Courts plus the—

**Senator Brandis:** Let me take you through it. There are 96 judges of the Family Court and the Federal Circuit Court. One of those, Chief Judge Alstergren, has the double commission we were talking about before. Of those 96 judges, 30 are from the Family Court and 66 are from the Federal Circuit Court. All of the Family Court judges do nothing but family law work. There are a couple of small incidental things they do but, essentially, they are exclusively concerned with family law work. Of the 66 Federal Circuit Court judges, about four-fifths of them do exclusively, or largely, Family Court work. That's the available personnel, that's the judicial manpower. And as a result of reforms that this government has introduced, that I have introduced, there are now some family law related matters dealt with by the vesting of jurisdiction in state Magistrates Courts too.

**Senator HANSON:** You said in your statement here that you wished to increase resources; therefore—

**Senator Brandis:** I said that's an option.

**Senator HANSON:** Yes, to increase resources. That being the case, here you are—there's been a merger of three courts, the back office. There are jobs being lost out there, aren't there? People have been losing their jobs in the court system.

**Senator Brandis:** Mr Soden can answer that question. But, Senator Hanson, when you merge functions to create efficiencies, one of the reasons you do that is to generate those efficiencies and reduce the costs so that the services can be more focused and the available money can be more focused on the people who come before the court, rather at the administrative end. But maybe Mr Soden can explain it a little more fully.

**Mr Soden:** That is a back-office merge. It's not frontline services that are being reduced. It was two organisations put into one. It's saving millions over the forward estimates and it's also providing much better corporate services to all the courts.

**Senator HANSON:** Can I ask you how many jobs?

**Mr Soden:** So far? I'd have to take that on notice. It's in the tens, but over the forward estimates it would be probably close to 100 jobs, I think.

**Senator HANSON:** Would 120 sound about right?

**Mr Soden:** That's probably close, yes. But that's into the future.

**Senator HANSON:** And advice of another 30 per cent on top of that?

**Mr Soden:** No, I think that 120 is 30 per cent.

**Senator HANSON:** This is to save costs. Yet we have the court system that's overloaded, we've got judges out on sick leave because they're under stress, we got registrars who are under stress as well—and yet we're cutting jobs in the court system. Am I getting this wrong?

**Mr Soden:** These are back-office jobs. They're HR; IT. There were two organisations merged into one. They're not frontline services, and that merge is contributing towards the financial sustainability of the courts into the future.

**Senator HANSON:** What assistance do judges get in doing up their own submissions or determinations of a case? Do they get that clerical help and assistance?

**Senator Brandis:** Judges, of course, have associates, but in proceedings in which parties are represented by legal representatives, it's of course the job of the legal representatives to provide the assistance to the judge by filing written submissions and doing the analysis of the contested facts and legal arguments. Now, that doesn't apply, of course, where litigants are unrepresented, but my point is that the entire court system is built around a model whereby both the judge has his or her own staff—the associate, or associates—and, where there are legal representatives, reliance on counsel, to do the analytical work.

**Senator HANSON:** They do when they're putting their submissions, yes: the legal representative does put in their submissions. But my question is: do judges actually type up their own judgements or employ their own clerical staff because the government does not provide that?

**Mr Soden:** There's a great variation of how the judges prefer to produce their judgements. Some produce it themselves—they're very competent at keyboard skills; some use voice recognition software to help them with their judgements; and some use staff. There are various ways and, across the courts in corporate services, we support them in the way in which they find most sufficient to produce their judgements. Let me just add this comment if I may: the merge of corporate services, I believe, has contributed in a significant way to improving the efficiency of all the judges in, let's say, the family law jurisdiction, by giving to them some of the latest modern technology that could not have been afforded, could not have been delivered, with two separate corporate services organisations. Following the merge, we have been able to shift the family law system from Lotus Notes to a Microsoft Office arrangement, so the judges in the Federal Circuit Court don't have to flick between two separate systems—one for family law and one for general law. That, I have no doubt, is producing efficiencies. Moreover, the two other courts are now working on a digital court program that's intended to move the paper files in the family law jurisdiction to a digital file in the future, and it's easy to imagine the efficiencies, savings and accelerations that will arise out of a digital file environment.

**Senator HANSON:** I understand, from vested interest in the court procedure, that they are really needing a \$300 million injection into the family law court system and family circuit courts to bring them up to speed. Would that be correct?

**Mr Soden:** I can't comment on that calculation. Our appropriation from government at the moment for all the courts is \$245 million per annum.

**Senator HANSON:** \$245 million?

**Mr Soden:** Per annum, for all of the courts.

**Senator HANSON:** We just spent \$126 million on putting a fence around Parliament House, and \$122 million on a plebiscite, so that's—

**Senator Brandis:** I don't know where that \$300 million figure comes from; I honestly don't.

**Senator HANSON:** You said here about the triage of the system—parental management hearings. You've outlined that you wish that to happen. Has that actually been set aside? Is it allocated? Do you have places for it?

**Senator Brandis:** Yes, it is, and it was allocated—it's a pilot program, and it was allocated in funds in this year's budget and it will commence next year.

**Senator HANSON:** Have you got the places for that—

**Senator Brandis:** Yes.

**Senator HANSON:** where it's being put? Under that, you're advocating for registrars to actually hear: is that correct?

**Senator Brandis:** I'm sorry?

**Senator HANSON:** Under the parental management hearings, are you advocating that registrars actually will be part of those hearings?

**Senator Brandis:** That's the model we're looking at, yes, but not just registrars.

**Senator HANSON:** It will be judges as well?

**Senator Brandis:** No. I talked about triage before: one of the ways in which we want to triage the system is to get parenting orders sorted out before they have to go before a judge. Now, that won't always be possible, but we're piloting this new system so as to explore all the possibilities of resolving these matters before they have to go to a judge.

**Senator HANSON:** I'm just inquiring because, if registrars have to make judicial decisions, which they can't under act 3—that's correct—is that going to hamper the parental management hearings if they have to—

**Senator Brandis:** No. The system has been designed very carefully, with advice from the Australian Government Solicitor and the Office of Constitutional Law, to ensure that we don't have chapter 3 problems.

**Senator HANSON:** Just another thing: it's been brought to my attention that the Newcastle court has actually passed its use-by date. Is there anything in the government sights about a new court in Newcastle?

**Mr Soden:** I can assist there, Senator. We have recently identified an opportunity in accommodation adjacent to the building presently occupied in Newcastle. Some years ago, there was a proposal for a purpose-built Commonwealth court. That was unsuccessful. It was a multi-multi-million-dollar project. I think there's a possibility that the owners of the premises adjacent to the building we now occupy, who also own the building we are in, have indicated a willingness to look at leasing to us for the Family Courts an adjacent property, with the possibility of lease incentives, which may pay for a fit-out. We're having some initial discussions with the Department of Finance about how that might be achieved. That would be a very, very major beneficial change in Newcastle if we can produce that result, avoiding the cost of a large purpose-built building and having sufficient accommodation.

**Senator HANSON:** Attorney-General, just going back to the Law Reform Commission, I'm just asking this question: do your terms of reference take in whether it's actually feasible to look at child support at the same time with regard to that?

**Senator Brandis:** Senator, I've prepared multiple copies of the terms of reference—because I thought we might get into a discussion about them—which I'll table. They're attached to a press release. Just disregard the press release and look at the terms of reference, which are the appended two pages. You will see from the terms of reference that family violence and child abuse, including the protection of vulnerable witnesses, is one of the terms of reference.

**Senator HANSON:** Yes. Does child support come under your portfolio?

**Senator Brandis:** No.

**Senator HANSON:** Is that DSS?

**Senator Brandis:** It's DSS.

**Senator HANSON:** But it won't be looked at in reference to the Family Courts? Sometimes judges make determinations on child support in the courtrooms.

**Senator Brandis:** Senator Hanson, I can tell you: I wrote these terms of reference in consultation with my advisor, Dr Cochrane, who you know, and we wrote them for the purpose of making sure that, without losing focus, nevertheless, they were as flexible as possible to allow the Law Reform Commission to look at all related issues.

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

**Senator McKIM:** I have some questions for the Federal Court. I'm pretty keen to get onto Attorney-General's. Could I ask, for the efficacy of the committee: does the government have any more questions for the court?

**CHAIR:** Senator Kitching does.

**Senator KITCHING:** I'm happy to put it off.

**CHAIR:** It's only you, Senator McKim.

**Senator Brandis:** I'm sorry—could I add to an answer I gave to Senator Hanson? You asked me if the ALRC report had commenced and I said it had. It commenced on 1 October. It formally commenced on 1 October.

**Senator HANSON:** Thank you.

**CHAIR:** Senator McKim, you're putting your questions on notice?

**Senator McKIM:** Yes, I will. Thank you, Chair.

**CHAIR:** Thank you very much, officers of the three courts. We appreciate your assistance. If any questions were taken on notice, could you return them to us by the appointed day, which I think is 8 December, if possible.

#### **Attorney-General's Department**

[15:14]

**CHAIR:** We now move on to the Attorney-General's Department, and the first listed is corporate and general, supposedly going from 1.45 to 3.15, so we're a bit late. We're now on corporate and general matters, for which the committee set aside 1½ hours.

**Senator McKIM:** Senator Brandis, I'll come to issues around national security and counterterrorism if time permits me, but I want to start by asking you about the Criminal Code amendment impersonating—

**CHAIR:** Sorry, Senator McKim; we're dealing with corporate and general matters.

**Senator McKIM:** Yes, that's right.

**CHAIR:** Security, which you mentioned, seems to come much later in specific areas.

**Senator McKIM:** I was intending to raise it under a general matter. But, Chair, I'll accept your observation. Attorney, if I could just start by referring you to the Criminal Code Amendment (Impersonating a Commonwealth Body)—

**CHAIR:** Sorry to interrupt again, but I am just looking at the program. No, we do have ASIO as a separate one, and that seems—

**Senator McKIM:** This has nothing that I'm aware of to do with ASIO, Chair.

**CHAIR:** Perhaps, if you have other matters, you could squeeze it by subterfuge into corporate and general, not that I want to encourage that.

**Senator McKIM:** I don't believe I'm attempting to engage in subterfuge, but perhaps I could just get the first sentence of my question out. I'm happy, obviously, to accept any ruling—well—

**CHAIR:** Sorry, group 2 is, I see, national security and criminal justice.

**Senator McKIM:** Thanks for that assistance.

**CHAIR:** Okay, over to you—and so is group 3.

**Senator WONG:** I think it might be more efficient if we just allow some of these questions in general, Chair. I don't think he's got very many.

**Senator McKIM:** Thank you, Senator Wong.

**CHAIR:** If he hasn't got many, that's fine, but we have to worry about other senators who might be particularly coming along for things at a particular time. That's the only problem. I don't have many questions, so it doesn't really worry me.

**Senator McKIM:** Attorney, the piece of legislation I was attempting to cough out the title of is the Criminal Code Amendment (Impersonating a Commonwealth Body) Bill, and this goes directly to the issue of freedom of speech, which is claimed to be so beloved by so many members of your party—

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

**Senator McKIM:** I do, Chair.

**CHAIR:** Please don't editorialise. What is your question?

**Senator McKIM:** Thank you, Chair. I'm not sure I could do this without your assistance!

**CHAIR:** Senator McKim, I said at the beginning of this that we are privileged to be able to ask questions of public servants and senior ministers in a more relaxed way. But time will be much better used, much more usefully used, if we forget the editorialising, the political pointscoring, which you're just doing now with 'which some parties claim is the basis of their philosophy'. If you could just ask the question without that sort of intervention, that would be useful to you and everyone else.

**Senator McKIM:** All right. Thank you. Attorney, are you aware of the provision in that legislation which refers to genuine satire?

**Senator Brandis:** I'm generally familiar with the legislation, Senator. It's not about freedom of speech. What it's about is fraud. If I can invite an analogy, section 52 of the Competition and Consumer Act makes unlawful misleading or deceptive conduct in trade or commerce, which usually takes the form of representations. Nobody would be silly enough to suggest that that's a freedom-of-speech issue, because fraud or misrepresentation is never a legitimate use of speech. And, equally, what this legislation is concerned with is fraudulent misrepresentation.

**Senator McKIM:** I'm pleased you put that on the record, Attorney. Chair, I have a couple of documents here that I seek to table. I've provided them to the secretariat, and I ask if they could be circulated. One is an email from the National Symbols Officer to a media organisation, and the second is a heavily amended Commonwealth Coat of Arms logo. Attorney, the issue here—and I'll just go through this while it's being—

**CHAIR:** Sorry, just hang on. You've asked to table this document—

**Senator McKIM:** Yes, two documents.

**CHAIR:** which the committee has only just seen, unlike the previous document, which you made available to us well before so we could have a look at it.

**Senator McKIM:** I'm happy to carry on questioning if the committee wishes.

**Senator Brandis:** If you're going to ask me questions about a document you're tabling, I think I'd better see the document.

**Senator McKIM:** Of course, that's true, Attorney. I can ask you some general questions—

**Senator Brandis:** Yes.

**Senator McKIM:** while the—

**CHAIR:** I think the committee is happy for this to be tabled. If you could, certainly make a copy available to the—

**Senator McKIM:** Yes. But the question I asked before, Attorney, 'How would genuine satire be defined in that legislation?' still remains. You've now got a copy of an email from the National Symbols Officer to a media outlet, suggesting that they stop using a version of the Commonwealth Coat of Arms, which, as you can see, is heavily modified. In fact, it even has on that coat of arms not the real logo; the heads of the emu and the kangaroo are surveillance cameras, and the word 'Australian' is spelt ALIEN at the end.

**Senator KITCHING:** French.

**Senator McKIM:** 'French,' says Senator Kitching. I don't believe that was the intent. But, Attorney, that logo, the second document that you've got in front of you, is pretty clearly satire, isn't it?

**Senator Brandis:** It all depends, Senator. If you look at it carefully, I'd agree with you, but of course, when it comes to the kind of material with which this bill is concerned, what one is dealing with are circumstances in which it is unlikely that recipients of the material will look at it closely. I don't want to be prescriptive in relation to a bill that hasn't yet passed the parliament, but might I just make the general observation that the test of whether something is



misleading in law is usually whether it would mislead a reasonable person in all the circumstances. That's a very well developed body of law.

**Senator McKIM:** Yes.

**Senator Brandis:** The most direct analogy here, I think—you'd probably be familiar with it—is the common-law tort of passing off, where somebody claims to be someone or some entity that they are not, and the test is whether it's reasonably misleading. Now, that's a kind of jury test effectively. I don't think it's either productive or possible to try to apply that test in these circumstances, where you're inviting minute scrutiny of a diagram.

**Senator McKIM:** Thank you, Attorney. As you'll see in this email from the National Symbols Officer in the Department of the Prime Minister and Cabinet, they've asked the relevant media authority to cease using this logo to avoid that media company being mistaken for the Australian government. The issue here—

**Senator Brandis:** If I saw this in my letterbox and I didn't look carefully at it, I'd probably think, 'That's the Coat of Arms,' but if I looked carefully at it I'd realise it wasn't.

**Senator McKIM:** Clearly satire, as you said earlier.

**Senator Brandis:** It's only clearly satire if you study it.

**CHAIR:** Yes, and might I say—

**Senator McKIM:** I'm not asking you, Chair.

**CHAIR:** that I looked at it and thought it was the accurate thing, until Senator—

**Senator Brandis:** It's tested by what a court will decide. A court will decide, in all the circumstances, whether a reasonable person would be capable of being misled by it.

**Senator McKIM:** How do you tell the difference between genuine satire and non-genuine satire?

**Senator Brandis:** That's a matter for the courts.

**Senator McKIM:** But you're the one bringing forward the legislation, Attorney. You must have thought about this as you were drafting it.

**Senator Brandis:** We have, in the legislation, put in the appropriate test of reasonableness. The application of those tests is always a matter for the courts.

**Senator McKIM:** Again, what test does one apply to tell the difference between genuine satire and non-genuine satire?

**Senator Brandis:** There's a prior question, and the question is whether a person or the circumstances is reasonably capable of being misled—and that is a question for the courts.

**Senator McKIM:** You don't have any intention of any other body being created or tasked with establishing whether a piece of work is reasonably capable of being genuine satire or non-genuine satire?

**Senator Brandis:** This legislation merely provides, in a particular case, for what has been familiar to the law for centuries—and that is, that it is an actionable wrong to misrepresent to another person that you are somebody that you are not in defined circumstances where the representee is reasonably capable of being misled.

**Senator McKIM:** Attorney, it's clearly your policy position that if someone makes fun of the government and somehow it's determined, as you say, by a court that the conduct is reasonably capable, however that be determined, of representing that the person is in fact the Commonwealth body or is acting on behalf of a Commonwealth body or with the authority of a Commonwealth body but they aren't actually a Commonwealth body, they should face a term of imprisonment for up to two years.

**Senator Brandis:** The test is one of reasonableness, as I keep saying to you. It's instructive because, as I said before, context is important here. It's instructive to remember the conduct, or perhaps I should say misconduct, that inspired this particular piece of law reform—and that was the disgraceful conduct of elements of the Australian Labor Party in the 2016 election of sending out advertisements badged with the Medicare logo, which had nothing to do with Medicare at all, representing themselves to be from Medicare and containing false statements. Now, you may be relaxed about deliberately deceptive electoral conduct representing falsely that a message comes from a government agency when it doesn't, but I'm not, and it's the policy of the government to make that kind of conduct unlawful.

**Senator McKIM:** I understand the policy intent here, but I know you've heard of unintended consequences. Isn't there a risk here that something like this, which as you've accepted, if it's examined closely, could not be found to be anything other than satirical in its intent.

**Senator Brandis:** I agree with you. If it's examined closely—though looking at it from a distance that I am from you as you hold it up there—it just looks like the coat of arms. That's why I say—

**Senator McKIM:** It might say more about your eyesight than anything else!

**Senator Brandis:** It just looks like the coat of arms, but, if you look at it closely, obviously it's not the coat of arms and it does have a satirical flavour. That's why I keep saying that it all depends on applying the test of reasonableness in the circumstances, and that's not a matter for parliamentary committees; it's a matter for courts.

**Senator McKIM:** Policy is a matter of parliamentary committees such as this—

**Senator Brandis:** Policy is, sure. But the application of statutory words to a given set of facts is a matter for courts.

**Senator McKIM:** I'm sure we could all agree on that. Are you concerned that in your policy eagerness to achieve the ends that you just outlined earlier, in regard to certain conduct during the most recent federal election campaign, that you're engaging in some pretty big overreach here and that—

**Senator Brandis:** I don't believe so.

**Senator McKIM:** you actually risk penalising people for engaging in genuine satire?

**Senator Brandis:** It's an element of the offence that there be an intent to mislead, by the way.

**Senator McKIM:** I'll go again, if you don't mind, as to why you have the word 'genuine' in the offence, and what is the difference between everyday run-of-the-mill satire and genuine satire and/or non-genuine satire?

**Senator Brandis:** I think that's a very good question, which perhaps is best left to a legislative draftsman or to the courts. But, I think the word—the adjective—has been included by the draftsman to emphasise the fact that it doesn't apply to satire.

**Senator McKIM:** Yes, but it has the word 'genuine' in front of it.

**Senator Brandis:** That's the adjective to which I'm referring.

**Senator McKIM:** I'm no clearer about any difference between genuine satire and non-genuine satire, but lest these proceedings be considered by someone observing to be descending into the satirical—

**Senator Brandis:** Senator McKim, neither you nor I are legislative draftsman, and—

**Senator McKIM:** But we are legislators, both of us.

**Senator Brandis:** Indeed. The choice of the adjective 'genuine' to qualify the noun 'satire' is a choice by the legislative draftsman which I assume was made for the purposes of emphasis. But this bill has not been progressed through the Senate yet, and I'll make a mental note to myself to clarify that issue in my second reading speech.

**Senator McKIM:** Thank you, Attorney. I appreciate that and I thank you for your engagement with that. Just to tidy up my last issue, Attorney, you made a speech to the International Bar Association on, I believe, 8 October.

**Senator Brandis:** Yes, it was.

**Senator McKIM:** This year?

**Senator Brandis:** Yes.

**Senator McKIM:** By the way, can I just say, before I start quoting you, I definitely agree with your sentiments here. You said this:

In protecting our people from terrorism, for instance, we must be careful to ensure that our legislative and policing response is at all times consistent with our values and obedient to the rule of law ...

You also said:

Upholding the rule of law may involve lawyers in controversy. Often, it may mean standing up to the powerful, or defending the vulnerable, the marginalised or the despised. Lawyers who do so serve the finest traditions of our profession.

As I said, I totally agree with you, Attorney, and you and I don't always agree on things. But I wondered if you could reconcile those statements with your response when you were asked by Alan Jones on the radio in August if the behaviour of lawyers representing asylum seekers was un-Australian. Sorry, that was Mr Dutton's comment, not yours; I do apologise. He said, 'Of course it is un-Australian for lawyers to represent asylum seekers.' How would you reconcile your comments as Attorney-General, with which I totally agree, and the Minister for Immigration and Border Protection's comments, which are diametrically opposed to the sentiments you so rightly espoused in that speech?

**Senator Brandis:** The views that I espoused are my views. They are the views of the government. They are, I think, even though you've been kind enough to praise them, reasonably commonplace views. They're views on which I think most people would say, 'Yes, that's what the rule of law means and that's what the independence of the judiciary means.' So I stand by those words. It's not my practice to be a commentator on the words of others, but I'm perfectly prepared to stand by my own.

**Senator McKIM:** When you say that the views you espoused in that speech are the views of the government, can we take that to mean that the views that Mr Dutton expressed in suggesting that lawyers representing asylum seekers were behaving in an un-Australian way were not, in fact, the views of the government?

**Senator Brandis:** As I said, I'm not going to be drawn into a commentary on what others may have said and, although I've seen those remarks attributed to Mr Dutton, I've actually not read his transcript, so I'm not aware of the context in which he made that rejoinder to Mr Alan Jones. But, nevertheless, as the Prime Minister emphasised in his press conference on 18 July this year, the Attorney-General is first and foremost the minister responsible for upholding the rule of law and that is what I try to do. That is why I devoted this speech to the topic of the rule of law.

**Senator McKIM:** I appreciate that. I've read the speech and, as I said, I agree with all of its underpinnings and particularly the two—

**CHAIR:** Senator McKim, your time for questions has expired. I've let you go twice your allotted time. So could you make this your last question.

**Senator McKIM:** That's all right; I'm going to move on to a different matter.

**CHAIR:** Your time has finished. We'll come back to you.

**Senator McKIM:** That's exactly what I'm suggesting, Chair.

**CHAIR:** I have one question arising from that, Senator Brandis. This document that's been tabled appears to me to be a blown-up copy of this particular document, which exacerbates that it's not the genuine thing when you look at it closely. But, on a small scale—on a tinier scale—I think most people would be glancing at it, because if it's an introduction to something else you wouldn't read it closely. My question is: could you obtain from the parliamentary national symbols officer, who allegedly wrote this letter, the actual copy of the document that was attached?

**Senator McKIM:** The national symbols office is not in the Attorney-General's portfolio.

**CHAIR:** I'm asking the Attorney-General. You've raised these questions here, Senator McKim, and I intend to do the same thing. I am just asking Senator Brandis if he can get a copy of this document.

**Senator Brandis:** It's not in my portfolio but I'll inquire. The point you make is a good point. We don't know how large the original copy of this document, the satirical representation of the coat of arms, is. Chair, as you and I and, I dare say, all the senators here well know having been involved in politics for a long time, it is a very good rule of thumb that the average lifespan of electoral literature is the length of time it goes from the letterbox to the nearest rubbish tin. When you use the word 'glance', that is exactly what most people do in my experience. I must confess it is what I do. You glance at something and a glance is not a study. Somebody could very well be misled by a superficial glance at an image. Although on closer study, the image would be clearly revealed to be satirical. That is why I keep saying this is a matter for the courts.

**Senator McKIM:** Can I urge you to seek the full context of this while you're doing that because my understanding is that this was an electronic logo at the end of an electronic communication.

**CHAIR:** I ask you that because it's tabled to the committee which I chair on the basis this was the document. I'd be disappointed if the actual document is not as large as this because it would mislead the committee, I guess, in its deliberations on whether to accept the tabling. That's why I'm asking you, as a question, if you wouldn't mind, as Senator McKim has raised this with you, rather than the Prime Minister's department. I'm asking you in the same context to find that out for me and forward that to the committee.

**Senator Brandis:** I'll do that. I don't want to get into what would be almost a philosophical argument with Senator McKim, which would be beyond me. It's only satire if somebody realises it's satire.

**Senator McKIM:** It's a reasonable point you make, Attorney. Because the chair has implied I may have sought to mislead the committee, I want to respond to that.

**CHAIR:** Are you raising a point of order?

**Senator McKIM:** Yes.

**CHAIR:** What's your point of order?

**Senator McKIM:** You've implied I sought to mislead.

**CHAIR:** No, I've sought clarification.

**Senator McKIM:** You were seeking clarification as to whether or not I have sought to mislead the committee. Firstly, I reject that assertion. Secondly, for completeness, my understanding is this logo came at the end of an electronic communication and I attempted in good faith to table it based on a paper version of that record, which is my understanding of how things are tabled. So I do reject any assertion that I have sought to mislead.

**CHAIR:** You can reject what you like. There's no point of order but, again, I repeat, Minister, I take a dim view if the committee is shown documents that are not as in their original form. And it may well be Senator McKim is correct, which is fine, but I'd just like clarification of what the original document actually looks like.

**Senator McKIM:** It would depend how big your television screen was.

**Senator WONG:** I have some questions of the minister in relation to the protocol around appointments to the Administrative Appeals Tribunal and some announcements he has made about appointments to that body. I do not have questions so much about the operations of the body and I don't think it is being called. Unless the minister has a copy of it, what I propose to do is just give him a copy of the protocol which was attached to a question on notice answer in response to a question from Senator Reynolds, SBE 16064.

**CHAIR:** Sorry?

**Senator WONG:** I'm giving the minister a copy of the questions on notice answer.

**CHAIR:** That's fine if it's a question on notice in the *Hansard*.

**Senator WONG:** Yes. Do you want it, Chair?

**CHAIR:** It would be helpful so that we can follow the line of the question.

**Senator WONG:** Senator Brandis, this was the protocol that I think you tabled, or your department provided, in response to a question from Senator Reynolds in October of last year. Firstly, is this still the protocol applicable to appointments to the AAT?

**Senator Brandis:** I wouldn't say that it is, because it was a protocol between me and the former president of the AAT. As you would be aware, there has since been a new president appointed, Justice David Thomas. This protocol hasn't been specifically renewed with him.

**Senator Wong:** It doesn't say the president, as in president Kerr; it's the president, which is an office which was continued.

**Senator Brandis:** That's, I suppose, strictly true, but, in the way of these things, if only as a matter of courtesy to the new president, I wouldn't necessarily wish to bind him to a set of arrangements that were agreed to with his predecessor.

**Senator Wong:** So, you haven't been following the protocol?

**Senator Brandis:** I didn't say that.

**Senator Wong:** I'm asking. There was a question mark at the end of that. Have you been following the protocol? I'm trying to understand if your answer is a technical answer, which is, 'I haven't yet spoken to the new president.'

**Senator Brandis:** I have spoken to the new president.

**Senator Wong:** Can I just check something—is it he or she, the new president of the AAT?

**Senator Brandis:** He.

**Senator Wong:** When was he appointed?

**Senator Brandis:** Justice Thomas? I think he was appointed in May.

**Senator Wong:** As yet, you haven't spoken to him about processes for filling the AAT—

**Senator Brandis:** Sorry, I'm corrected: 27 June.

**Senator Wong:** You haven't yet spoken to him about how you might approach the appointment?

**Senator Brandis:** Yes, I have.

**Senator Wong:** What is the consequence of that?

**Senator Brandis:** Obviously, private conversations between me and the heads of jurisdictions are not something that I'm going to put on the public record. I can tell you that I have had more than one conversation with Justice Thomas about appointments.

**Senator Wong:** Have you raised the status of this protocol with him since he was appointed?

**Senator Brandis:** I'd need to go back to check the notes of my staff who were present.

**Senator Wong:** What's your understanding? Is your understanding then that, as at 26 June, somehow this protocol no longer applied?

**Senator Brandis:** Well, my view is that this protocol was a set of arrangements between Justice Kerr and me. As a matter of courtesy to the new president, I would always wish to consult his views about the way in which appointments should be made, and I have done so.

**Senator Wong:** You've made some appointments—and I'll come to the detail of those appointments shortly—in the period since the new president has been appointed. You didn't apply the protocol for the purpose of those appointments?

**Senator Brandis:** I'm not saying I didn't.

**Senator WONG:** I'm asking you.

**Senator Brandis:** I'd have to study the protocol—

**Senator WONG:** Let's do that.

**Senator Brandis:** Let me take that question on notice.

**Senator WONG:** I'm going to ask you a couple of questions, and, if you wish to take them on notice—it was very recently, so I'm sure, given your extraordinary intellectual capacity, you would remember it. Firstly, you announced a total of 32 appointments to the AAT on 29 September—so, in the last few weeks. Prior to doing so, had the president written to you to commence the appointment process as is set out at paragraph 1 of this protocol—this is, the president will supply the Attorney-General with an assessment of which positions need to be filled et cetera?

**Senator Brandis:** I will take that question on notice. I have had a very full engagement with the president, in which we have discussed appointments. I will check whether that engagement, those conversations and meetings, were followed up by an exchange of letters.

**Senator WONG:** If you're going to take them all on notice, let me go through them and be very precise about the questions I'm asking, so that you can respond.

**Senator Brandis:** Senator Wong, I don't want to stop you doing that—

**Senator WONG:** Well, you are—

**Senator Brandis:** and, of course, you're at liberty to, but, before you ask those questions, perhaps it might be helpful if I give you the context.

**Senator WONG:** I'm really—

**Senator Brandis:** You're not interested in the context?

**Senator WONG:** Can I get the questions out?

**Senator Brandis:** You get the questions out and I'll take them all on notice.

**Senator WONG:** I'm happy to do it if it's not taken out of my 10 minutes, but, if it's a lengthy discussion about context—

**Senator Brandis:** Why don't you ask, if I may respectfully suggest so, a single question on whether each paragraph of the protocol is observed.

**Senator WONG:** I'll ask the question as I wish, if I may—thank you.

**Senator Brandis:** I'm just trying to save you time.

**Senator WONG:** The time is usually saved by less discussion. Firstly, I want to know, in respect of the 32 appointments: did the president write to the Attorney-General to commence the appointment process as per paragraph 1. And, if so, on what date? Secondly, of the 32 appointments to the AAT announced on 29 September by the Attorney-General, how many were reappointments recommended by the president of the AAT? How many positions were publicly advertised for expressions of interest? How many positions did the Attorney-General chose not to publicly advertise for expressions of interest? How many of the appointments were new appointments? Are you taking all of them on notice?

**Senator Brandis:** Obviously, questions like the number of individual categories of things I don't have readily to hand.

**Senator WONG:** Did you advertise any of them?

**Senator Brandis:** I'll take all the questions on notice.

**Senator WONG:** Do you remember if anyone of them were publicly advertised?

**Senator Brandis:** I'll take all the questions on notice.

**Senator WONG:** I'm asking you what you recall.

**Senator Brandis:** I'm taking the questions on notice

**Senator WONG:** I'm putting to you that none of them were.

**Senator Brandis:** I'll take the question on notice. I want to check.

**Senator WONG:** I'm sure you do. Can I also check this: that there are a total of 276 non-judicial members of the tribunal currently? Does that sound about right?

**Senator Brandis:** It's some hundreds, but I'll check the exact number.

**Senator WONG:** There also appears to have been a change in the proportion of full-time appointees as opposed to part-time. Can you confirm that it is currently 98 full-time and 178 part-time non-judicial members?

**Senator Brandis:** Again, I'll check.

**Senator WONG:** Sorry—members. The numbers I have are 276—

**Senator Brandis:** Are you talking about non-judicial members or members in aggregate?

**Senator WONG:** Sorry. I will be clear about that—yes. A total of 276 non-judicial members and 19 judicial members.

**Senator Brandis:** I can give you some information, Senator. I'll take it all on notice, but, if it helps for your future questions, as at 11 October—

**Senator WONG:** Will you be here to respond to them, Senator Brandis?

**Senator Brandis:** I'm always here.

**Senator WONG:** No, no. Will you be here at the next estimates to respond to them? Will you be somewhere else?

**Senator Brandis:** As of 11 October this year, the AAT had 294 members—

**Senator WONG:** Sorry. What was the date?

**Senator Brandis:** 11 October—comprising 154 male members and 140 female members. The document I have doesn't disaggregate between judicial and non-judicial members. It will take a little bit of time to do the sums. It does disaggregate between part-time and full-time. But it's probably more efficient if I just give you those figures on notice.

**Senator WONG:** The figures I have—obviously, you have more up-to-date figures; but prior to the most recent set of appointments—are: 276 members currently appointed to the AAT, of which about 262 were appointed by the current government.

**Senator Brandis:** Well, we've been in office for more than four years, so that's probably right.



**Senator WONG:** So you're responsible for about 95 per cent of appointments to the AAT?

**Senator Brandis:** I think that's probably right.

**Senator WONG:** Did Mr Dutton know that when he attacked the AAT?

**Senator Brandis:** I will take that on notice. But, as a general proposition, that sounds right to me.

**Senator WONG:** We have traversed this before, but just to confirm: it is the case, isn't it, that the 76 appointments that you made to the AAT on the eve of the caretaker period—that was when Mr Kerr was still president and the protocol was still in place—none were recommended through a committee process?

**Senator Brandis:** Most of those appointments were reappointments. And the reappointments were recommended in almost—again, I will take the question on notice so as to reserve the right to correct this answer if I've got it wrong in any particular respect. We're talking about large numbers of appointments. All, if not almost all, of those appointments that were reappointments were recommended by Justice Kerr. I think there are a couple that weren't—but a negligible number.

**Senator WONG:** But not all of them were reappointments.

**Senator Brandis:** Most of them were.

**Senator WONG:** My question still stands. Can you confirm that, of those appointments, none of them went through a committee process, as is outlined in the protocol that I've provided to you?

**Senator Brandis:** I will take that on notice because there are so many of these appointments and there has been a deal of correspondence—

**Senator WONG:** Mr Moraitis, can you recall?

**Senator Brandis:** between Justice Kerr and Justice Thomas and me.

**Senator WONG:** I'm only asking about one. Let's not obfuscate. I'm asking you to confirm. I think Mr Moraitis gave this evidence previously and may be able to assist.

**Senator Brandis:** Now, which—

**Senator WONG:** I hadn't finished. None of the 76 appointments made on the eve of the caretaker period had gone through a committee process as is contemplated in part 4 of the protocol?

**Senator Brandis:** I'm not sure that that's right, actually. As I say, let me take on notice.

**Senator WONG:** I'm asking Mr Moraitis. Can Mr Moraitis assist?

**Mr Moraitis:** I cannot recall any selection process or committee being established for those positions in the past or in recent times.

**CHAIR:** I have a feeling we've been through all this before at a previous estimates.

**Senator WONG:** I just was confirming that, thank you. I am allowed to ask my questions aren't I?

**Senator Brandis:** According to the document I have in front of me, of those appointments on 6 May 2016, 39—

**Senator WONG:** I was moving on.

**Senator Brandis:** were reappointments and 37 were new appointments.

**Senator WONG:** You marginally got there on 'most'; by two. Can I move on? We've covered this previously, I think. Of the 262 appointments this government has made to the AAT, how many of them have actually been publicly advertised for expressions of interest?

**Senator Brandis:** I'll take that on notice.

**Senator WONG:** How many have been recommended to you by a selection committee, as set out in paragraph 4?

**Senator Brandis:** I'll take it on notice.

**Senator WONG:** Mr Moraitis, you said you can't recall a selection committee being established for the tranche of appointments on the eve of the caretaker period. Do you recall a selection committee being established in this term of government for the AAT?

**Mr Moraitis:** Since the creation of this protocol, no.

**Senator WONG:** So the protocol was created, but at no stage have we actually had a selection committee process?

**Mr Moraitis:** No, because, as the Attorney pointed out, the processes of paragraphs 1 and 2 have led to appointments or reappointments. As far as I can recall, I personally haven't been involved in any selection and I don't think any delegates have been involved in this. I assume paragraphs 1 and 2 have prevailed in this process.

**Senator Brandis:** Just to make the point a little more clear, an advertisement of public expressions of interest provided for by paragraph 3 of the protocol is a default position. The ordinary mode of appointment or reappointment is provided for by paragraphs 1 and 2 and it is only if paragraphs 1 or 2 are not satisfied that the default position in paragraph 3 is enlivened.

**Senator WONG:** Just to be clear about the evidence, since this protocol was established to govern appointments to the AAT, at no stage has a selection committee as is contemplated by paragraph 4 actually been established? Correct?

**Senator Brandis:** Senator, you—

**Mr Moraitis:** Correct.

**Senator WONG:** Thank you. Can we make sure Hansard got that? The Attorney was talking over Mr Moraitis.

**Senator Brandis:** Senator—

**Senator Brandis:** Can we make sure Hansard got that? I think the answer from Mr Moraitis was 'That's correct.' Is that right?

**Mr Moraitis:** Yes, Senator.

**Senator Brandis:** I was going to say that the reason for that is because the matter was dealt with in the primary way contemplated by the protocol—that is, by discussion or consultation between the president and the Attorney-General.

**Senator WONG:** Actually, it's more than that. I'm going to ask this question: how many of the appointments that the government has made to the AAT since the protocol was put in place have been recommended for appointment without any process whatsoever?

**Senator Brandis:** Well, there's always been a process, Senator. There's been a process of selection. And by the way—

**Senator WONG:** So what's the process of selection?

**Senator Brandis:** Sorry, if I may finish? By the way—

**Senator WONG:** What is the process of selection?

**Senator Brandis:** I haven't finished my answer.

**Senator WONG:** What's the process of selection? You just said that. I don't understand what that is. That's a new concept because the process that is here is not being followed. So what's the process of selection?

**Senator Brandis:** That's not correct. The process contemplated by paragraphs 1 and 2 has been followed. By the way, neither Justice Thomas nor, to the best of my recollection, Justice Kerr have ever raised a complaint with me that they were dissatisfied about the way in which appointments were being handled. In fact, not only have they not raised a complaint with me but when Justice Thomas became the president he went out of his way to say to me in one of our many conversations, words to the effect—I'm sure he wouldn't mind me putting this on the record—I'm very impressed with the high quality of the people we're appointing.'

**Senator WONG:** Can we just confirm then that, if what you're telling me is correct, in respect of no appointments since this protocol was established have you required public advertisement for expressions of interest?

**Senator Brandis:** Because paragraphs 1 and 2 have been—

**Senator WONG:** Before we get to the explanation can we at least get the facts. Is that the case?

**Senator Brandis:** Have we had to use the default provision? No.

**Senator WONG:** Is that the case or not?

**Senator Brandis:** We've never had to use the default provision.

**Senator WONG:** Right. So you have never required public advertising of expressions of interest?

**Senator Brandis:** That's not the way the protocol recommends—

**Senator WONG:** Is that a yes or a no?

**Senator Brandis:** Yes. You've already heard that it's yes.

**Senator WONG:** So no public advertising and no selection process—just so we're clear—of every appointment you have made?

**CHAIR:** Senator Wong, you keep asking the question and when the minister tries to answer you ask another question. If you're asking a question at least allow the minister to answer.

**Senator Brandis:** Mr Chairman, may I take your ruling as an opportunity to respond to you since I'm not being allowed to finish my answers by Senator Wong. Senator Wong, I am

going to answer the chairman's question and I would ask you to do me the courtesy of not interrupting.

Mr Chairman, the protocol that was agreed between the former president and me in 2015 contemplates public advertisement only in the unusual circumstance that there has been a failure to agree between the president of the tribunal and the Attorney-General. It is, as I've said, or tried to say several times, a default process in the event that the primary process of either recommendations by the president or recommendations by the Attorney has not been operative. That has never occurred. If the system is working as well as it can, it wouldn't occur. The system has been working well, under two presidents. And that is why on no occasion has the default provision, paragraph 3 and following, been needed to be resorted to.

**Senator WONG:** I'd invite anyone listening to read the protocol because—

**CHAIR:** No. Can you ask a question now?

**Senator WONG:** There is no reference to agreement in this, is there, Senator Brandis? In fact, what there is—

**Senator Brandis:** Senator—

**Senator WONG:** I listened to you in silence. What there is—

**CHAIR:** What is the question?

**Senator WONG:** I'm about to put it to him, Chair. You would appreciate some courtesy rather than you dictating to me from the chair.

**CHAIR:** What is the question?

**Senator WONG:** I am getting to the question. I am putting a range of facts to him. A little courtesy would be appreciated.

**CHAIR:** No, we're here to ask questions, as I indicated at the beginning of this session. We're in a privileged position—

**Senator WONG:** Oh dear, bad Ian is back!

**CHAIR:** where we can ask questions of public officials. Not many parliaments have that. The practice of some senators making political statements and entering into debate, as happens in the chamber, is not what estimates is about. I'm trying to run these estimates as they are required, which is asking questions of the minister or public officials. Senator Wong, a question, please.

**Senator WONG:** Thank you. Senator Brandis, I suggest to you that the assertion you made that the protocol only deals with circumstances where there is a disagreement is plainly wrong. I ask you to refer, first, to paragraph 1 of the protocol, which sets out what the president supplies you with—that is, an assessment of positions to be filled, advice about terms expiring and recommendations about reappointment; and, second, you were then to indicate which positions will not require public advertisement for expressions of interest, because either you have chosen a person who is suitably qualified or reappoint.

**CHAIR:** And the question is?

**Senator WONG:** Given that, your characterisation of the protocol is incorrect. That's a question.

**CHAIR:** Senator Wong, you are debating.

**Senator WONG:** That's a question.

**CHAIR:** You're saying the minister is incorrect. That's not what this is about. If you have a question for the minister, please ask him.

**Senator Brandis:** I can interpret that.

**Senator PRATT:** That was the question.

**CHAIR:** You are not asking a question.

**Senator WONG:** Even Senator Brandis agrees.

**CHAIR:** Please, Senator Wong, don't interrupt at least the chair while he's speaking.

**Senator WONG:** You're so embarrassing. You're such an embarrassment.

**CHAIR:** You finished off by saying 'you are incorrect', which to me sounds like a debate, not a question of the minister. If the minister can work out a question from that, please answer, Minister. But it didn't seem like a question to me.

**Senator Brandis:** Mr Chairman, I admire your tenacity in the chair, but may I please treat that as a question which I understand to mean—

**CHAIR:** Rather than a debate. Senator Brandis, you at times are equally guilty.

**Senator Brandis:** I'm just as bad as Senator Wong.

**CHAIR:** This is not for debating.

**Senator Brandis:** I know.

**CHAIR:** The chamber is for debating. This is for asking questions and getting answers.

**Senator WONG:** Oh dear!

**CHAIR:** You always know when I'm correct, because then you get the giggles from Senator Wong and Senator Pratt.

**Senator Brandis:** Senator, let me respond to what I'll take as a question to the effect of why isn't it the case that the protocol has been breached? Your interpretation of the protocol, Senator Wong, is completely incorrect. This is a protocol, as I said before, that was agreed to between Justice Kerr and me. Paragraph 1 and paragraph 2 were always observed—always. Justice Kerr supplied me, as paragraph 1 says, with the tribunal's assessment, or indeed his assessment, of what positions needed to be filled and at what level. He provided me with advice about which members whose terms are expiring ought to be reappointed. He provided me with his recommendations regarding whether reappointments should be offered, and at what level. That's paragraph 1—Justice Kerr always did that. I then indicated which positions wouldn't require any public advertisement or expression of interest, because the member would be reappointed without the requirement of advertising—and that was in most cases. That was because in those cases I accepted Justice Kerr's recommendations, or the Attorney-General had chosen a suitable person who was appropriately qualified—and on all other occasions, that is what occurred.

**CHAIR:** Thank you, Senator Brandis. With respect to you, that is the third time you have answered that question in exactly the same way. There are members of this committee who have other questions they want to ask. Senator Wong, unfortunately I haven't been watching the time—your time has expired twice over. I will go on and ask some questions I had. Before I do that, I will follow up a couple of questions on the subject we have just been talking about.

**Senator Brandis:** Mr Brennan, my chief of staff, has just drawn something to my attention.

**CHAIR:** Senator Brandis, I'm sorry, but neither you nor Senator Wong have the opportunity of just chatting away as you like.

**Senator Brandis:** I'd like to correct an answer.

**CHAIR:** I'm about to ask you some questions on the same subject, before I move onto other subjects. Paragraph 1 says, 'The President of the AAT will supply the Attorney-General with,' and it goes on to name certain things. Does 'will supply with' actually require that to be a written letter, as was suggested by previous questions?

**Senator Brandis:** Well, it always was; in fact—

**CHAIR:** Or could the president meet with you and verbally supply you, or hand you a note or something.

**Senator Brandis:** In fact, what happened is in a sense both of those things. I met with Justice Kerr several times a year—perhaps three or four times a year—and when we were discussing appointments he would give me a table. The table I think was probably appended to a covering letter. But he was very thorough, and he went through this process quite elaborately. My then chief of staff, Mr Lambie, who advised me at the time, also went through this quite elaborately with Justice Kerr. What paragraph 1 of the protocol required was always, always complied with by Justice Kerr. What paragraph 2 of the protocol requires was always complied with by me. It's as simple as that. May I prevail upon the courtesy of the committee to correct an answer, please?

**CHAIR:** Yes.

**Senator Brandis:** As Mr Brennan reminds me, it's not correct for me to say, or indeed for Mr Moraitis to have said, that there was never a public advertisement, because on one occasion I did decide and request of the department that there be a public advertisement in relation to some 16 positions. I'm sorry, was it not you? Nevertheless, I requested the public advertisement and it was done.

**CHAIR:** Okay. Thank you for that. Senator Brandis, on that line again, paragraph 3 says 'for the remaining positions', and I've highlighted 'the remaining positions'. I assume that means for the positions that are not dealt with by paragraphs 1 and 2, then for the remaining positions the following things apply. Is that the correct interpretation?

**Senator Brandis:** Well, yes. Perhaps I could just read what I've provided this committee before, which sets it out narratively: 'The protocol sets out three consecutive steps for appointment decisions. First, the president provides the Attorney-General with his assessment of the appointment needs of the AAT.' That's paragraph 1. 'Secondly, upon consideration of the President's advice, the Attorney-General may decide to accept the president's recommendations about reappointments or choose a suitable person appropriately qualified to fill the vacancy.' That's paragraph 2. 'Thirdly, if there are any vacancies that are not filled following step 2, the Attorney-General seeks expressions of interest by public advertisement of those vacancies. The requirement to establish a selection committee arises if there are vacancies that have not been filled following steps 1 and 2.'

So, as I've said ad nauseam now, step 1 was always fulfilled by Justice Kerr; step 2 was always fulfilled by me. The default provision, including the establishment of the selection committee, never became operative, because the primary mode of selection was always followed.

**CHAIR:** Thank you. That answers my question in 3, which says 'for the remaining positions', which I think makes the protocol abundantly clear, that 1 and 2 apply but if people are not selected under that then for the remaining positions the following apply. So, thank you for that.

**Senator Brandis:** And I should say that neither Justice Kerr nor Justice Thomas have ever complained to me that there was not a public—

**CHAIR:** Well, you've said that several times, too, and I accept that it's the case. Now, on corporate and general: Mr Moraitis, can you tell me whether there's been any change in the staffing of the department since the committee last met?

**Mr Moraitis:** There are ups and downs in staffing, depending on programs coming on and coming off. As you would be aware, there's also a process of machinery-of-government changes happening. The last hearing was in May, I think it was that we met. I'd have to take on notice the specific ons and offs.

**CHAIR:** I mean, differences of five to 10 I'm not interested in, but have there been any major changes in staffing for the department?

**Mr Moraitis:** No, not in terms of major changes.

**CHAIR:** Yesterday, with Immigration and Border Protection, we had some questions and answers about the new arrangements, which, as I gather from the proceedings yesterday, have not yet been finalised. I was interested as chairman of this committee in how we should allocate time in the future, because it seems that some of the programs that were previously dealt with by the Attorney-General's Department will now be in a different department. But I understand that there are additional agencies coming into your department. Have you any details of those, or can you alert the committee as to what they might or might not be?

**Mr Moraitis:** Yes. If you recall, when the Prime Minister announced the creation of the home affairs department there was a reference to agencies coming to the portfolio, and they were the Commonwealth Ombudsman—

**CHAIR:** Out of where?

**Mr Moraitis:** Prime Minister and Cabinet. There was also the NSLM, the National Security Legislation Monitor, which is also, if I recall correctly, situated in PM&C, and thirdly the Inspector-General of Intelligence and Security, which is also an agency or an organisation inside PM&C. So, those three agencies will be coming to the Attorney-General's portfolio. They're relatively small agencies.

**CHAIR:** And will they have oversight of ASIO and other intelligence agencies?

**Mr Moraitis:** They have responsibilities under their specific mandates, and of course under the machinery-of-government changes the Attorney-General continues to have a role vis-a-vis ASIO—not in terms of administration of ASIO but in terms of warrants and other powers and responsibilities of oversight. So, there is a role continuing for the Attorney-General in that context.

**Senator Brandis:** Perhaps I can just quickly read you the way the Prime Minister describes this. And as I said in another estimates committee last night, the pooling of all the domestic intelligence agencies in one portfolio and the pooling of all the oversight mechanisms in the Attorney-General's portfolio are kind of two sides of the same coin. And there is, if I may say so, an elegance in the simplicity about this model. The Prime Minister said:

At the same time we are strengthening our security arrangements, we will also strengthen our oversight, accountability and integrity structures by increasing the powers and the remit of the Attorney-General in relation to Australia's intelligence communities and agencies of the new Home Affairs portfolio.

He said:

Strong oversight and accountability is important for public confidence ...

The Attorney-General will retain his current role in the issue of warrants and ministerial authorisations.

He went on to say:

However, the key institutions charged with overseeing the intelligence agencies will be moved from my portfolio—

that is the Prime Minister's portfolio—

to the Attorney-General's portfolio.

That includes the Inspector General of Intelligence and Security and the Independent National Security Legislation Monitor and these will join existing portfolio bodies—

in the Attorney-General's portfolio—

such as the Australian Commissioner for Law Enforcement Integrity.

I have also decided that the Commonwealth Ombudsman should be brought into the Attorney-General's enhanced oversight role ...

Its placement within the Attorney-General's portfolio complements other changes announced today and cements the vital role of the First Law Officer in ensuring Governments act lawfully and justly.

The First Law Officer is the minister for integrity, the minister for oversight and integrity and that role is being reinforced.

So, that's the method of these changes.

**CHAIR:** Okay. And do the changes—or is this question too premature?—mean any reallocation of budgets? Or do the budgets of those agencies sit with the agencies, wherever they are?

**Mr Moraitis:** The agencies' budgets stay with the agencies, in that context. Any agencies moving in a MOG process maintain their budget arrangements—the legislative authority for those elements. Obviously in an intradepartmental machinery-of-government change there are processes for allocating resources from one department to another, because you're taking parts of departments. But agencies are not—

**CHAIR:** So, all the ones we're talking about are really agencies in any case?

**Mr Moraitis:** They're agencies in their own right.

**CHAIR:** So there'll be little change to your departmental budget?

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



**CHAIR:** My 10 minutes are up, so we have another few minutes before we break for afternoon tea.

**Senator Brandis:** Could I make a short personal explanation, as it were?

**CHAIR:** Yes.

**Senator Brandis:** I notice that the shadow Attorney-General, Mr Dreyfus, transmitted a very dishonest and misleading tweet about my evidence a short while ago. So, let me just put it on the record, and Mr Dreyfus or your staff, if you're listening, please correct the record if you're honest. I can confirm that in relation to the appointments made to the Administrative Appeals Tribunal prior to the 2016 election, about which Senator Wong asked me, in every single respect the terms of the protocol agreed to between the former president, Justice Kerr, and me were adhered to.

**CHAIR:** Thank you, Senator Brandis. Do we have anything else in corporate and general?

**Senator WONG:** Perhaps I could ask this question. I was going to follow it up but thought I wouldn't be able to be lucky enough. The correction or the clarification that you made about public advertising: you talked about 16 positions being advertised. I couldn't hear in relation to which tranche of appointments they were.

**Senator Brandis:** Well, I don't think I said which tranche they were. But you said there were no public advertisements, and it was pointed out to me—I must confess that I had forgotten that there were 16—and I at least made a request that they be publicly advertised.

**Senator WONG:** Were they advertised?

**Mr Moraitis:** We'll have to take that on notice. I think it was not by this department. I think it was that period of transition between Immigration—

**Senator WONG:** It was AAT, though?

**Mr Moraitis:** This was before—there was a merger, and that period of transition—

**Senator WONG:** Yes, I appreciate that.

**Mr Moraitis:** So, it could have been a case of vacancies arising before—

**Senator WONG:** When do your staff say that you indicated these were advertised?

**Senator Brandis:** I don't think I did say. But let me expand, if I take that on notice.

**Senator WONG:** Well, can I just be clear, because you didn't give a—

**Senator Brandis:** But it doesn't bear on the appointments you asked me about—that is, the 76 appointments.

**Senator WONG:** But basically are you telling us that 16 of I think the 262 you've appointed you've publicly advertised?

**Senator Brandis:** I am advised that a request was made by me for that to be done, and I suspect that Mr Moraitis is right when he says that is probably a reference to the transition period some years ago.

**Senator WONG:** Right. But it would be 16 of the 262 you made that in respect of?

**Senator Brandis:** I'm not sure, because the numbers change all the time.

**Senator WONG:** Well, perhaps you could clarify, if your staff have told you over the break, what the 16 related to.

**Proceedings suspended from 16:15 to 16:31**

**CHAIR:** I welcome everyone back. We are dealing with the Attorney-General's Department and are on corporate and general matters.

**Senator WONG:** I have questions of the minister but we have no minister.

**CHAIR:** If they're only for the minister, I'll ask some more questions of the department. You've got nothing for the department?

**Senator WONG:** I'd like to finish this tranche, if I may. I'm happy for you to ask questions of the department while we're waiting for him, if you want.

**CHAIR:** Mr Moraitis, does your department operate only from Canberra or does it have offices in other capital cities? If so, which ones?

**Mr Moraitis:** We have offices around Australia, in various roles. The Australian Government Solicitor, which is a group inside the Attorney-General's Department, has offices in most state capitals: Darwin, Brisbane, Sydney, Melbourne, Adelaide, Perth. We also have staff working in Brisbane. The Computer Emergency Response Team—the so-called CERT—have been based in Brisbane for quite a while. You may recall under the cybersecurity review there was a decision to create joint cybersecurity centres. There was one established in Brisbane and there are some staff from the CERT and other staff working there. I think about a week ago we opened the Melbourne office. That's run by an AGD officer based in Melbourne with her staff, as well as industry and other state and local government and local industry involvement—that's an example there.

We also have some staff located overseas. We have an officer based in the high commission in Port Moresby, whose role—we call it Minister-Counsellor (Legal). She works with the high commission, and the high commissioner in particular, on law and justice issues. It's a legacy of the so-called Strong in Government program, which was transformed a while ago, but this officer's position remains in PNG. We also have two staff working in the Australian embassy in Jakarta working with Indonesian officials on a whole variety of issues on legal matters, legal cooperation and obviously, most recently, on counterterrorism. We also have two locally engaged staff: one in London and one in Washington. One is an AG's officer based in Washington as a locally engaged staff—they've taken leave to work there—and we have another officer in London who's locally engaged. Their work involves liaising with UK and US officials and authorities on issues of interest to us ranging from things like countering violent extremism to dealing the telecommunications sector, and with law and justice issues. It's been a great opportunity to see what like-minds are doing in some of these areas. That's the sort of profile of our staff outside Canberra.

**CHAIR:** Thanks for that. In relation to the officer who's located in Papua New Guinea, is that person working with the high commission there—

**Mr Moraitis:** Yes.

**CHAIR:** or with the PNG government?

**Mr Moraitis:** That officer is working with the Australian high commission. She also keeps an eye on four Australians, who are officials working for the Attorney-General's Department, who are based in the PNG legal justice sector helping the PNG legal system

strengthen its skill set in areas like prosecution and many other areas like that. So there's about four staff.

**CHAIR:** But they are paid employees of the Australian government?

**Mr Moraitis:** Of the Australian government, through the aid program, but notionally deployed by the Attorney-General's Department. We have a very close relationship with the high commission and DFAT in ensuring that those positions are regularly filled, and we have the position in the high commission overseeing those specific positions. I've told that officer to work very closely with the high commissioner, Bruce Davis, and his team and the aid projects to ensure that the whole law and justice sector, including the AFP, can work in a seamless manner. It is a very challenging set of issues in PNG when it comes to law and justice, as you can imagine.

**CHAIR:** Sure. Thanks for that, Mr Moraitis. You mentioned the offices of your department within Australia. I don't want to use estimates to push my own parochial barrows, but I will: is there any contemplation given to in the future establishing any new element or agency of your department in places outside of the capital cities—for example, in Townsville or Cairns or Rockhampton?

**Mr Moraitis:** You may be aware there is a process of considering decentralisation of government agencies, and obviously this portfolio is part of that process. I can't tell you where that process is at the moment, but certainly that's an area of possible evolution. I suggest we just watch where that goes.

**CHAIR:** Do you have an officer in your department looking at that specific issue? I'm not going to ask for him to be named.

**Mr Moraitis:** Yes. I think all departments were required to provide information and material to, if I recall correctly, the Department of Infrastructure and Regional Development. That involved the whole portfolio—so all portfolio agencies.

**CHAIR:** I, for one, appreciate that you can't move existing officers holus-bolus from Canberra or Sydney or Brisbane, or wherever, to another location. But new agencies starting could recruit in new areas. Has that been given any attention that you're aware of?

**Mr Moraitis:** My understanding, just by being aware of what's happening, is the National Disability Insurance Agency has been established as a new agency in Geelong, which is outside of Melbourne. But Melbourne is expanding, so the time will quickly come when it's a suburb, speaking as a Melburnian!

**CHAIR:** I won't comment!

**Mr Moraitis:** So yes, there are examples of new agencies being established outside Canberra and beyond the capital cities.

**CHAIR:** Okay. I'll now go to Senator Wong.

**Senator WONG:** Senator Brandis, you promoted Mr John Sosso from a part-time senior member to a part-time deputy president position at the Administrative Appeals Tribunal. Do you recall that?

**Senator Brandis:** Yes. Before you get on to this, Senator Wong, can I indicate to you that during the afternoon tea break I was able to speak to the member of my staff who handled, or

managed, this process for me last year. I can confirm to you that of the appointees about which you've been asking—

**Senator WONG:** I've been asking about all appointees.

**Senator Brandis:** The 76 appointees, of whom you've been asking, in May of last year. I did request that my department, the Attorney-General's Department, publicly advertise 16 of the vacancies. Now, there was some confusion at the equivalent estimates last year about this. In fact, the department wrote to the secretariat correcting its evidence. Although it's part of the records of the secretariat, I think, given that we're seized of the matter now—

**Senator WONG:** I'm not asking questions about—

**Senator Brandis:** it's probably convenient if I table that letter, so I do table it. There are copies for each of the three senators at the table.

**Senator WONG:** Thank you. I'm not asking any questions about this—

**Senator Brandis:** No, that's fine.

**Senator WONG:** Can I get on to my questions? I've been waiting for some time, and I do have to be in another committee.

**Senator Brandis:** But, given the discussion we had before the afternoon tea break, I think it's very important that we make perfectly clear—and what I'm telling you is verified by this letter from the department—that I actually asked the department to advertise 16 positions. I'm told that that was not done, and I'm assuming that it was not done because the election was called and because of the caretaker conventions.

**Senator WONG:** Thank you.

**CHAIR:** Senator Wong, I might just indicate that we'll take that as a correction of an answer previously given and start your time from now.

**Senator WONG:** I appreciate that. Can we just go back to Mr Sosso, who was a senior public servant in the Newman government in Queensland. He was promoted from part-time senior member to part-time deputy president. That's a pay rise of between \$312 and \$545 per day. I just want to understand: was this appointment at a higher level recommended by the President of the AAT?

**Senator Brandis:** Yes, it was strongly supported by Justice Thomas.

**Senator WONG:** The reappointment or the promotion?

**Senator Brandis:** Both. I discussed it with Justice Thomas.

**Senator WONG:** You have also appointed Ms Simone Burford and Mr Colin Edwardes, both former advisers in the Howard government, as full-time members of the AAT, which has a salary of up to \$239,000. Can you tell me: was the appointment of Ms Burford and Mr Edwardes as full-time members of the AAT a decision made on the recommendation of the department or a decision made at your own—what's the word—initiation?

**Senator Brandis:** It was a decision of the cabinet, or a decision, technically, of His Excellency the Governor-General on the recommendation of the cabinet.

**Senator WONG:** Sorry—we can be pedantic.

**Senator Brandis:** I'm just trying to be accurate.

**Senator WONG:** You decided to recommend to the cabinet?

**Senator Brandis:** Yes.

**Senator WONG:** Was that on the recommendation of the department?

**Senator Brandis:** Those two names, to the best of my recollection, did not come from the department, nor ordinarily is that the case. That's not the way this works.

**Senator WONG:** Former Liberal senator and president of the Victorian Liberal Party Ms Kroger was also appointed as a part-time member of the AAT—a position that attracts a fee of around \$1,000 a day. Can you tell me: did her name come forward from the department?

**Senator Brandis:** Senator, you yourself have asked me many questions about the protocol. Protocol, as you know, does not contemplate that the department supplies the names. The department doesn't propose names.

**Senator WONG:** How did her name come forward?

**Senator Brandis:** Her name came forward because she was considered to be a well-credentialed and suitable person.

**Senator WONG:** By whom?

**Senator Brandis:** By the cabinet.

**Senator WONG:** You put her name before the cabinet.

**Senator Brandis:** For agencies within the Attorney-General's portfolio, recommendations for appointment always come from the portfolio minister—in this case me.

**Senator WONG:** Former Liberal MP and president of the South Australian Liberal Party Grant Hedley Chapman was also appointed as a part-time member of the AAT—again, a position attracting a daily fee of up to \$1,000 a day. Can you tell me how Mr Chapman's name came forward?

**Senator Brandis:** In the same way, because the cabinet, on my recommendation, decided that he was a well-credentialed and suitable person, just as we decided that the former Labor senator Mr John Black was a well-credentialed and suitable person; just as the cabinet decided that Dr Linda Kirk, a former South Australian Labor senator, was a well-credentialed and suitable person; just as the cabinet decided that Mr Mark Bishop, a former Western Australian Labor senator and shadow minister, was a well-credentialed and suitable person; and just as the cabinet decided that Ms Amanda Mendes Da Costa, the wife of your colleague Mr Michael Danby, was a well-credentialed and suitable person. The reason I identify those names is you seem to be suggesting that there is some political partiality here. There is none. I regard, and my cabinet colleagues agree with me, that service in the parliament is something that is a suitable credential to be taken into account when considering appointments of this kind. The vast majority of members of the AAT are not former members of parliament or people with any political connection known to me. Many are from both sides of politics. Indeed, ironically, the person who was the president of the AAT at the time of which you speak is a former Labor minister, Justice Duncan Kerr, whose appointment as president of the AAT by the cabinet in which you served was, in fact, welcomed by me when I was the Shadow Attorney-General because I considered that Justice Kerr, politics aside, was a well-credentialed and suitable person.

**Senator WONG:** Can you confirm that there are currently 23 full-time senior members appointed to the AAT?

**Senator Brandis:** I don't have that figure in front of me, so I'll take that on notice.

**Senator WONG:** Are you aware that the salary is up to \$376,710 a year?

**Senator Brandis:** The salary is what the Remuneration Tribunal decides it is.

**Senator WONG:** Right. Amongst those 23 appointments there are Ms Ann Brandon-Baker, Mr Morrison's former chief of staff; Mr Michael Cooke, Mr Abbott's former adviser; Dr Denis Dragovic, a former preselection candidate for Goldstein—I think he failed; Mr Andrew Nikolic, the former Liberal member for Bass; Mr Justin Owen, a lifetime member of the Sydney University Liberal Club; and Mr Theo Tavoularis, a well-known donor to the LNP, and, I think, also known to you personally, including as your son's representative, as we have previously discussed. That is 26 per cent—

**Senator Brandis:** I haven't seen Mr Tavoularis for years.

**Senator WONG:** Sure, but 26 per cent of the full-time senior members of the AAT, receiving a salary of up to \$376,000 a year, have clear links back to the Liberal Party. That seems like a very high proportion.

**Senator Brandis:** I know you feel obliged to do this, Senator. It's usually the kind of bottom-feeding stuff you feed out to somebody like Senator Kitching. The fact is that I do not regard service in parliament as a disqualification; I regard it as a professional accomplishment. That is why I have, as Attorney-General, quite often appointed people from both sides of politics to positions in my portfolio, including the appointment of the former Attorney-General, Justice McClelland, as a judge of the Family Court, as well as the people whose names I mentioned before. I have offered no criticism when Labor governments have appointed people of the calibre of Justice Duncan Kerr to be the president of the AAT. There is an implied criticism in what you say to me. It is not a criticism—

**Senator WONG:** I don't think Mr Nikolic is of Mr Kerr's ilk.

**Senator Brandis:** If I may finish—

**Senator WONG:** Seriously? Andrew Nikolic and Duncan Kerr in the same sentence?

**Senator Brandis:** It is not a criticism that I reciprocate in relation to the Labor members of the AAT, and I wonder why you're being so partisan.

**Senator WONG:** The partisanship, I think, is in the appointments. You recently appointed Hollie Hughes for a 7-year term. Can you tell me: has she retained her position as vice-president of the New South Wales Liberal Party?

**Senator Brandis:** I don't know.

**Senator WONG:** Do you have any concerns about her continuing engagement given that in partisan politics the obligation upon members of the AAT in *A guide to standards of conduct for tribunal members* includes the following phrase:

... a part-time member ... should take care to ensure that those activities do not undermine the discharge of responsibilities of a tribunal member.

It goes on to talk about partisan political activity in relation to the use of 'public controversy' as 'not considered appropriate.'

**Senator Brandis:** What's your question?

**Senator WONG:** I'm asking you whether you would have any concerns. You said that you don't know if she's continued as—

**Senator Brandis:** I don't.

**Senator WONG:** Vice-president of the New South Wales Liberal Party.

**Senator Brandis:** I do not.

**Senator WONG:** You don't have any concerns if she has, is that right?

**Senator Brandis:** The management for the tribunal is a matter for the president. Obviously all members of the tribunal are expected to observe the relevant standards. But as a member of the cabinet who appointed Justice Duncan Kerr as the president of the AAT, I don't know how you can—

**Senator WONG:** He didn't continue to hold a primacy position.

**CHAIR:** Senator Wong, don't interrupt, please.

**Senator Brandis:** I don't know how you can, without hypocrisy, be attacking the appointment of people who may have had a political affiliation on the side other than yours for being appointed to the same body that you appointed your former colleague as president of.

**Senator WONG:** I'll go back to *A guide to standards of conduct for tribunal members*, which includes this paragraph:

Although political affiliations, both past and present, are seldom said to have been the basis for disqualification of judges, it appears well settled that partisan political activity in relation to issues of public controversy is not considered appropriate.

**Senator Brandis:** I didn't write those guidelines. I don't enforce them. They are the tribunal's guidelines, as I understand them, and they're—

**Senator WONG:** But as the first law officer—

**CHAIR:** Senator Wong, you asked the question. Please allow the Attorney to answer them.

**Senator Brandis:** I'm not the author of those guidelines, and I don't enforce them. The management of the tribunal is the matter for the President, but, as I said to you before, I would expect the guidelines to be observed.

**CHAIR:** Just a warning, Senator Wong, your time has almost expired.

**Senator WONG:** I'll try and finish up now. In light of those guidelines I wonder if I could draw to your attention, for your consideration as the first law officer, to a range of Facebook posts from Mr Andrew Nikolic. He is well known as a public 'opposer' of marriage equality, which he's entitled to be, but, obviously, he's currently a member of the tribunal. He's made a range of Facebook posts. One is promoting Mr Howard's statement against marriage equality. Another is talking about various events in relation to marriage equality or the same-sex marriage debate. I won't go through all of them now. They are available on his Facebook page. I just wonder whether these activities by Mr Nikolic are consistent with the guidelines for the conduct of members of a tribunal that I have outlined. I ask that you consider drawing that to the President's attention.

**Senator Brandis:** First of all, I don't think I need to draw it to the President's attention, because I'm sure the President or his staff are mindful of what is said in Senate estimates about the tribunal. Second of all, the guidelines you've quoted to me refer to the impermissibility of engaging in partisan political activity. I haven't seen Mr Nikolic's Facebook posts, but I'll take it at your word that he has said what you have attributed to him. They seem to be the expression of opinions about the issue of same-sex marriage, not the expression of partisan opinions. I would have thought that all citizens are entitled to an opinion on the issue of same-sex marriage. In fact, it's the government's policy to encourage every citizen to vote in the marriage postal survey.

**Senator WONG:** I should be clear, the politicians that he has quoted approvingly or indicated sympathy for were obviously Mr Abbott and Mr Howard. I open my questions by—

**Senator Brandis:** But that's not a partisan statement.

**Senator WONG:** If I may: by reflecting he's entitled as a citizen to have his views. I think there's a question about whether, given his position, it's appropriate for him to continue to engage in that kind of campaign, but that's a matter for you and for the President.

**Senator Brandis:** Your criticism of Mr Nikolic, as I understood it, was that he was engaged in partisan activity, but what you've referred to is not partisan activity, it's merely the expression of a personal opinion on a matter of current political controversy in which there are people in both political parties, including yours, who have opinions on both sides of the question.

**Senator WONG:** True. It is different. I'm just raising it. If you don't wish to deal with it, that's fine.

**Senator Brandis:** Well, it's not for me to deal with it. If he's in breach of the guidelines, then no doubt the President will take appropriate steps in the first instance to counsel him. The examples you instanced don't demonstrate a breach of guidelines.

**Senator WONG:** My final question: by whom was Mrs Hughes suggested to you as an appropriate person to apply?

**Senator Brandis:** I don't remember. I have met Mrs Hughes. I don't know her particularly well. A number of the people whose names I recommended to cabinet were recommended to me by others. I don't remember who recommended Mrs Hughes.

**CHAIR:** Senator Wong, your time has expired. Thanks, Senator Brandis. I'm very reluctant to ask this question, because I've always thought these appointments were beyond partisan political comment, but, in view of Senator Wong's question, perhaps I could ask Mr Moraitis this—this is the first question—how difficult would it be for me to get a list of appointments to the AAT during the Rudd-Gillard government who have some association with the Australian Labor Party? My first question is: how difficult would it be?

**Senator Brandis:** I'll take that question on notice.

**Senator WONG:** Could we have one for this government, with the association with the Liberal Party? How about we do that—which I haven't asked for?

**Senator Brandis:** If I may respond to the chairman's questions, Senator Wong, without being interrupted by you so rudely, I'll take that question on notice. It might require some research to identify a political affiliation, but at least let me take it on notice. By the way, Mr



Chairman, I know you were busy here, but had you been in Finance and Public Administration's estimates last night, when Senator Wong pursued a somewhat similar line of questions, you would have heard me recite a list of some 50 or 60 former Labor Party politicians appointed to various public offices, including the AAT, by Labor governments in recent years.

**CHAIR:** Thanks, Senator Brandis. My question was really—

**Senator WONG:** That included both state and federal.

**CHAIR:** Please can we have some courtesy in not interrupting other senators asking questions. My question really was: how difficult would it be? I don't really want to put the department to a huge expense, and I'm reluctant to raise this because I thought these things were beyond partisan politics. I'm aware of many Labor politicians, and you've named some of them; I suspect there are a lot more. But in view of Senator Wong's question, if she's going to make some political capital out of it, I think it should be responded to. So perhaps you could answer my question about how difficult it is. But, if it's reasonable to do so, could you get me a list.

**Senator Brandis:** I will do as well as I can. Just to make things as clear as I can, I have never taken the view that parliamentary service is a disqualification for appointment to positions like, for example, the AAT. I have appointed former Labor politicians of good repute, like Robert McClelland to the courts and Linda Kirk, John Black and Mark Bishop to the AAT and to other offices. I have appointed former Liberal politicians too, and I know that Labor governments have appointed Labor politicians and on some occasions Liberal politicians too. I think it would be a very, very sad day for Australian democracy if people were to take the view that men and women who have given service in this parliament and are of good repute were regarded as somehow tainted by the fact that they've given service.

**CHAIR:** Thanks, Minister. I'm very pleased to hear that. I don't want to dwell on individual personalities, but Senator Wong did mention a Mr Nikolic and indicated he was a member of parliament for three years. My understanding of Mr Nikolic—he wasn't a close associate of mine—is that he had a very long and distinguished and indeed celebrated career as an Army officer in addition to other aspects of his career.

**Senator Brandis:** He did.

**CHAIR:** I assume he was—perhaps you could confirm it for me—a distinguished Army officer for much longer than he was a member of parliament.

**Senator Brandis:** He was a distinguished senior military officer. I forget at what rank he served; I think it may have been brigadier. He was decorated. He saw active service and put himself in harm's way in the Gulf War. He then retired from that position of military leadership and became a senior official—I think it may have been at first assistant secretary level—of the Department of Defence. I can't immediately call to mind anyone in Australia in recent memory who has been both a senior battlefield commander and then a senior official and policymaker in the Department of Defence. We all have different political views. Senator Wong doesn't like Mr Nikolic's views on the issue of same-sex marriage. That's not the point here. Mr Nikolic is a distinguished and, indeed, an illustrious Australian.

**CHAIR:** I wasn't aware of all those aspects of Mr Nikolic's career. The Administrative Appeals Tribunal is about administrative decisions; is that correct?

**Senator Brandis:** Yes.

**CHAIR:** I assume someone who served at senior level in the Australian Public Service would be enormously well qualified—

**Senator Brandis:** That's what we look for. We look for people who are familiar in the broadest sense with government. That's why people who have served in parliament are among the sorts of people who are suitable, just as are former judges we appoint because they are people who are professionally trained in decision-making. That is why we look among part-time members for people whose careers have involved decision-making and exposure, in particular, to the public sector.

**CHAIR:** I apologise in absentia to Mr Nikolic. I didn't want to embarrass him personally, but his name was raised in what I might say was a derogatory way by another senator and I just wanted to clarify that. My limited knowledge of Mr Nikolic would suggest to me that he would be as appropriate as any one of those members. I apologise indirectly to Mr Nikolic for raising this, but it was raised before.

**Senator DODSON:** Attorney-General, you would be aware that some three months ago since the Referendum Council placed its report and its recommendations in the hands of the Prime Minister and the Leader of the Opposition, and it's nearly five months since the historic Uluru statement put a proposal to the Australian nation that went to the issue of constitutional change for a voice and a proposal to legislate a Makarrata Commission to deal with truth-telling and agreement-making between first nation peoples and the government. What resources are being allocated within your portfolio for Indigenous constitutional recognition?

**Senator Brandis:** I will ask the officials to deal with that question, Senator.

**Mr Moraitis:** I will ask Mr Reid or Mr Lewis to answer that.

**Mr David Lewis:** The Office of Constitutional Law in the department has had some involvement in dealing with the recommendations of the council. But the primary responsibility within government for work on constitutional recognition of Indigenous Australians is being undertaken by the Department of the Prime Minister and Cabinet. Our role has been to work with PM&C on technical aspects.

**Senator DODSON:** These questions maybe a bit irrelevant. I will ask them on Friday to the relevant minister. Is there a timetable for following up on those recommendations from the Referendum Council or the Uluru statement?

**Mr David Lewis:** There's certainly no publicly announced timetable. The government is considering the recommendations very carefully, but I'm not sure there's much else I can say about that.

**Senator DODSON:** I take it there's limited work being done in the Attorney-General's Department in relation to the recognition and also limited work in relation to the proposals that have come from Uluru, hence the voice in constitutional recognition and a Makarrata?

**Senator Brandis:** Senator Dodson, when you say 'limited work', I mean the work that is being done is the work that's being done.

**Senator DODSON:** Is that long? Is that wide? Is it small? What is it?

**Senator Brandis:** I don't know how we can express it in relative terms really. The matter is before government.

**Senator DODSON:** Can I ask, Senator—

**Senator Brandis:** My department is engaged on the topics that Mr Lewis has described.

**Senator DODSON:** There are some legal matters, and he did say it was relatively—I don't know the exact words, but I got the impression that it wasn't a lot of work, that it was work reliant upon what other work was being done in the minister for Aboriginal affairs' portfolio or the Prime Minister's department.

**Senator Brandis:** I think it's fair to say that the Minister for Indigenous Affairs has a much more immediate involvement with the issue than I do, and that the lead department is between his department and my department on this issue. We're just the lawyers, Senator Dodson, and the main issues with which we're seized, as Mr Lewis has said, are the legal issues, and that depends to a large degree on the selection of the referendum question and other policy decisions that may or may not be made by the cabinet.

**Senator DODSON:** I'm none the wiser on this, Attorney-General. But I do take your point that you are not the lead agency in relation to these matters and that they are matters for the Minister for Indigenous Affairs.

**Senator Brandis:** And PM&C, of course.

**Senator DODSON:** Is that the Prime Minister or is that the department?

**Senator Brandis:** The Department of the Prime Minister and Cabinet has a very big role in this as well, of course.

**Senator DODSON:** Okay. My last question, which you may not be able to answer, given the role that you have in this area is limited, is: are we likely to see the constitutional matter, subject to the policy—I'm not asking about policies but the work in relation to that—become more intense after the same-sex marriage matter is resolved or not?

**Senator Brandis:** They're quite unrelated, but, that having been said—

**Senator DODSON:** It's just that one comes before the other, that's all.

**Senator Brandis:** Yes. Well, sure, and obviously—

**Senator DODSON:** We hope, anyway!

**Senator Brandis:** Obviously, the results of the same-sex marriage postal survey will be declared on 15 November. I can tell you—you may already have noticed this in the press this afternoon, Senator—that the response rate is now 74.5 per cent, which is a spectacularly successful response rate. So nobody will be able to call into question the result, whether it's yes or no. But the Prime Minister has announced that, in the event there were to be a yes vote in the postal survey, he would facilitate passage through the parliament of a private member's or perhaps a private senator's bill before the end of this year. In that practical sense, this issue—the same-sex marriage issue—is likely to be done and dusted before the Indigenous recognition. That reflects sequencing. It doesn't mean that the government thinks one is more important than the other; it just reflects the sequence in which the events have happened.

**Senator DODSON:** Yes, I understand that—and thank you, Attorney-General. It's not only sequencing; it's priority. But I understand that as well. That's been the concern in relation to that. Thank you, Chair.

**Senator WATT:** Senator Brandis, I've just got some questions about the establishment of the Department of Home Affairs. To begin with, I suppose I'm interested in the approach you've taken to this department. In the past I think you've described yourself as a 'classical liberal' in terms of your philosophical outlook. Is that a fair description?

**Senator Brandis:** Yes.

**Senator WATT:** And what does that involve? What does it mean to you to be a classical liberal?

**Senator Brandis:** I suppose it means being instructed by the wisdom of the great liberal philosophers, particularly in the English liberal tradition, like Mill and Burke and others.

**Senator WATT:** And what types of values do you hold dear as a classical liberal?

**Senator Brandis:** I'm not sure that—

**CHAIR:** No, I don't think that's an estimates question.

**Senator Brandis:** I'm not here to engage you—

**Senator WATT:** What I'm getting to is—

**Senator Brandis:** in a philosophical argument. I have written a lot about this, Senator Watt, so—

**CHAIR:** Why don't you send Senator Watt one of your books?

**Senator WATT:** Give us the CliffsNotes!

**Senator Brandis:** I'll give you a copy of my Deakin lecture in 2009, and that will—

**Senator WATT:** Give us the CliffsNotes version.

**Senator Brandis:** I'm sure, be very informative.

**Senator WATT:** What would be the two or three highlights for you?

**CHAIR:** They're not estimates questions.

**Senator WATT:** I'm coming to the approach that the minister—

**Senator HUME:** I've got a copy of it, Senator Watt. I can send it to you.

**CHAIR:** Is it that good?

**Senator HUME:** I keep it on my iPad.

**Senator WATT:** Is it compulsory for preselection in the Liberal Party? And how have you—

**Senator Brandis:** In some places it might be a liability!

**Senator WATT:** That's actually funny.

**CHAIR:** And true.

**Senator WATT:** Not in Queensland though. How have you sought to bring that approach—the approach of a classical Liberal—to you administration of this department and this portfolio?

**CHAIR:** Is that an estimates question?

**Senator WATT:** Just be patient.

**Senator Brandis:** Senator Watt, I always try to be observant of those principles, including the freedom of the individual and the rule of law and the separation of powers and limited government—all of those principles that are generally associated with that philosophical point of view.

**Senator WATT:** Would you agree that different departments within the government have a somewhat different culture and value setting in the way they approach the task of government?

**Senator Brandis:** I've only ever been the Attorney-General, the Minister for the Arts or the minister for sport. I think the department of sport may have had a slightly different culture than the Attorney-General's Department at one stage. I merged the Minister for the Arts and—

**Senator WATT:** They're not classical Liberals in the department of sport?

**Senator Brandis:** the Attorney-General's Department, and they seemed to have a very harmonious culture, so I don't really know, Senator. It might perhaps be true.

**Senator WATT:** How would you describe the difference in approach taken within the Attorney-General's Department from that which you've witnessed in the Department of Immigration and Border Protection?

**Senator Brandis:** I don't really have a view about that, because I've never administered the Department of Immigration and Border Protection and I wouldn't be in a position to speak about its culture.

**Senator WATT:** But you've been a member of cabinet for a number of years now and you've seen submissions taken forward led by the Department of Immigration and Border Protection. Do they come from a similar philosophical standpoint to those that you bring forward?

**Senator Brandis:** It's really, to be honest with you, not something I've ever thought about, and it's never struck me. I don't look at cabinet submissions with my copy of John Stuart Mill in one hand and my cabinet submission in the other. We make the best decisions we can in the interests of the Australian people, consistent with good government; that's what we do.

**Senator WATT:** How would you differentiate the approach taken by your department from that of the Department of Immigration and Border Protection when it comes to the collection and administration of personal information and data held in relation to Australian citizens? Do the departments come from a similar standpoint, or is there a different approach?

**Senator Brandis:** I wouldn't differentiate it. I think one looks at these matters from a whole-of-government point of view. We are a single government, albeit administered by different departments. You asked me a couple of questions ago whether departments have different cultures. Honestly, I wouldn't be in a position to answer your question. It's not something I have an opinion about.

**Senator WATT:** I've moved on from different cultures, but I'm assuming that the cabinet of which you're a part operates in a similar manner to other cabinets, in that different ministers bring different submissions or different perspectives to a debate. I'm just asking whether you've seen any difference in the approach you or your department have taken to that of the department of immigration in relation to data collection.

**Senator Brandis:** Not that it has ever struck me, Senator.

**CHAIR:** Senator Watt, I'm really uncomfortable. I struggle to see how issues about Senator Brandis's philosophy and—

**Senator WATT:** I've moved on from that.

**CHAIR:** Have you? I thought the last question was directly related to that.

**Senator WATT:** No, I've move on from that.

**CHAIR:** Does he think cabinet follows his views on these things?

**Senator WATT:** That wasn't my question. Given the repeated data breaches we've seen by the Department of Immigration and Border Protection, how do you, as Attorney-General, have confidence that their takeover of your portfolio is going to lead to the protection of Australians' data going forward.

**Senator Brandis:** I'm not aware of the data breaches of which you speak, and I take it you intend to refer to the relocation of the national security function and the transfer of some of the national security agencies from the Attorney-General's Department to the proposed Department of Home Affairs. I've got every confidence that that transfer will see the same level of respect for the privacy of the individual as has been a hallmark of my department and my administration of the portfolio.

**Senator WATT:** Incidentally, are you trying to insult me and the committee by undertaking other work while we're asking you questions?

**Senator Brandis:** No; I'm just routinely signing letters—including one to you, Senator.

**Senator WATT:** Is that right? I look forward to receiving it. Do you want to hand it over?

**Senator Brandis:** I am listening carefully.

**Senator WATT:** I just think it would be polite.

**Senator Brandis:** I'm capable of writing my name while listening to your question—

**Senator WATT:** I think it would be polite.

**Senator Brandis:** but if you want me to set them aside I'll set them aside.

**CHAIR:** I'm sure you can talk and chew gum at the same time, Minister, but—

**Senator PRATT:** It's not very polite to talk and chew gum at the same time.

**Senator WATT:** How advanced are preparations for the creation of the Department of Home Affairs?

**Senator Brandis:** The Prime Minister, when he made the announcement—I think it was on 18 July—said that he wanted it to be in place by early 2018, and that is well on track. I think it's fair to say—I was asked some questions along these lines last night—that the vast majority of the work that needed to be done has now been completed.

**Senator WATT:** And is it correct that a large number of staff at your department have been contacted and told that they now work for Minister Dutton rather than for you?

**Senator Brandis:** Perhaps Mr Moraitis could answer that. Certainly there is a division, or an element, of what is now the Attorney-General's Department that will be transferred. That hasn't happened yet.

**Senator WATT:** So Mr Moraitis is not correct that—

**Mr Moraitis:** Under any machinery-of-government changes there's no suggestion of any change until that happens. There have been discussions with officials from the task force involved in the creation of the machinery of government, but that's not suggesting in any way that AGD staff who have been identified as parts of areas which will be moving are now working in a different portfolio. That wouldn't work. It stays in AGD until there's a day when the MoG happens. Technically they're taken—

**Senator WATT:** So on a day-to-day basis—

**Senator Brandis:** The Prime Minister made it very clear when he made the announcement that until machinery-of-government changes came into operation all agencies would remain—that the existing arrangements would remain until the change came into effect.

**Mr Moraitis:** All the staff that are in the Attorney-General's Department now are responsible to the Attorney-General.

**Senator WATT:** Right. So on a day-to-day basis officers of the Attorney-General's Department continue to take direction from you, Mr Moraitis, rather than any other secretary?

**Mr Moraitis:** That's my understanding.

**Senator WATT:** And from Senator Brandis rather than any other minister?

**Senator Brandis:** Yes.

**Senator WATT:** You were staying that administrative arrangements have been drawn up?

**Mr Moraitis:** They're being worked through. There's a task force in the Prime Minister's department which is overseeing this process, and there's been an endless series, almost daily, of discussions with various agencies—not just with the Attorney-General's Department but with the Office of Transport Security, Prime Minister and Cabinet and ASD; Mr Anderson is part of that process—and they're very well advanced.

**Senator WATT:** Has it been settled as to exactly which parts of your department will be swallowed up by this new agency?

**Mr Moraitis:** More or less, yes; pretty much.

**Senator WATT:** Just remind me of what's left?

**Mr Moraitis:** There will be the civil justice group, the Australian Government Solicitor, elements of national security and criminal justice which involve the Criminal Code and the Crimes Act, and, obviously, areas that need to provide support to the Attorney to fulfil his roles under the ASIO provisions and other matters.

**Senator WATT:** Roughly what percentage of your existing staff will go across to this new Department of Home Affairs? When I say 'your existing staff' I'm not just talking about the department. I'm talking about the other agencies.

**Mr Moraitis:** The portfolio?

**Senator WATT:** The portfolio.

**Mr Moraitis:** That's quite large, of course, because AFP is very large. I think Commissioner Colvin mentioned 6,000-plus this morning as the headcount. ASIO's quite large. The Australian Crime Commission and AUSTRAC are less than a thousand I think—I might be corrected. So it's a significant number in the portfolio.

From the department, we're still working through the exact details, the levels of granularity, but we're talking in hundreds, a couple of hundred at least, 300 to 400. There are areas which are moving in their entirety. For example, Emergency Management Australia was one area that was explicitly mentioned by the Prime Minister in his statement on 18 July. Emergency Management Australia has been in the department for about a decade or so and before that it was in Defence. It will move in its entirety; that's pretty clear. Other areas in the national security space will move, and in the criminal justice group as well. So, a large part will remain. Obviously, the Australian Government Solicitor, which is a large organisation, which came into the department a few years ago, as you will recall, and the civil group will continue. Then, of course, as I mentioned earlier in response to a question from Senator Macdonald, other agencies from the Prime Minister and Cabinet portfolio will come to the department, and that will need to create some synergies there in terms of departmental resources, in the same way that departmental officers working, for example, with AUSTRAC or with the Federal Police will transition in the process. So there will be in and there will be out. I can't give you an exact figure, but that is the ball-park quantum of movements, in a generic way.

**Senator WATT:** Senator Brandis, I'm a keen observer and reader of your speeches, although I will admit I missed the Deakin one. The speech you gave recently to the International Bar Association in which you argued that those who exercise executive power must always accept that they are subject to and must always be respectful of the supremacy of the law, and, in that process, as the custodians of the rule of law the role of lawyers is essential. How would you rate the observance of those principles by the Department of Immigration and Border Protection?

**Senator Brandis:** I don't have a particular opinion about departments other than the department that I administer, but the principles that I adverted to in that speech are commonplace principles. I regard the Australian government as adherent to them.

**Senator WATT:** But what about the Department of Immigration and Border Protection?

**Senator Brandis:** When I say the Australian government, I mean the whole of the Australian government.

**Senator WATT:** Every department within the government?

**Senator Brandis:** I suppose there might be exceptions, but as a general proposition, there was nothing in that speech that was other than a restatement of certain fundamental values that this government adheres to.

**Senator WATT:** Would the Department of Immigration and Border Protection be one of those exceptions?

**Senator Brandis:** I don't make an exception for anyone. I contemplated the possibility that there could be exceptions. I'm not talking about departments. Not wanting to overstate my case, but as a generalisation, it is my view and belief that the Australian government is adherent to those principles.

**Senator WATT:** How would you rate the observance of those principles by Minister Dutton?

**Senator Brandis:** I regard all of my colleagues as being observant of those principles.

**Senator WATT:** With some exceptions?



**CHAIR:** Senator Watt, these are not estimates questions. They are asking for the minister's opinion on other colleagues, which is nothing to do with estimates.

**Senator WATT:** Okay, I will move on—

**CHAIR:** If you don't have estimates question, perhaps—

**Senator WATT:** Sticking with the establishment of this new department, Senator Brandis are you 100 per cent confident that if the newly proposed Department of Home Affairs is created it will adhere to the approach that you outlined in that speech in terms of its regard for the rule of law?

**Senator Brandis:** Well, that's my job, because as the Prime Minister was at pains to emphasise in his press conference of 18 July that it's the Attorney-General's job, as an oversight task, to ensure the agencies, particularly the national security agencies that have been pooled in the new department, are observant of the rule of law.

**Senator WATT:** You won't have control over them any more, will you?

**Senator Brandis:** If I can just finish. It has been my happy experience, as the Attorney-General, while ASIO and the AFP, the Australian Criminal Intelligence Commission, in particular, and AUSTRAC have been within the Attorney-General's Department, to find that those policing and intelligence agencies have a very conscious and successful culture of being observant of the rule of law, and that is very important, particularly if I might say so for ASIO, which is, of course, a domestic intelligence agency, whose very job is to collect intelligence on Australian citizens, to protect the national security. So it is in my view absolutely essential that organisations such as ASIO and policing agencies do have a rights-respecting, rule-of-law-obedient culture, and I have found that they do.

**Senator WATT:** I'm pleased to hear that that's been your experience while you have been in this role. I'm wondering whether there's any risk that the approach taken by those agencies might change if they are swallowed up by another department which might have a different culture to that of your own?

**CHAIR:** Before you answer that. Senator, I have allowed you to go well over your time, too. So, when Senator Brandis answers this, if you have another question that's relevant to estimates, please ask it, and then we might pass to someone else. But can I just inquire if anyone else has questions about corporate and general in the department?

**Senator PRATT:** Yes.

**Senator WATT:** We don't have a huge number, I think it is fair to say. We're not talking hours.

**CHAIR:** We have a long program and we're three hours behind our indicative program. If we're hoping to finish tonight, we do have to move on. Can I just raise the matter that nobody really asked for ASIO to appear.

**Senator KITCHING:** I have some questions.

**CHAIR:** You do have questions for ASIO? Okay. With everyone's agreement, once we finish with corporate and general, can we go to ASIO, if we can get them here, because they have indicated to us they have a commitment at 7.00. So, with the concurrence of the committee, when we finish corporate and general we can go straight on to ASIO instead of

criminal intelligence, so that ASIO can meet other commitments at 7. Agreed? Okay. That's what we shall do and we will change the program accordingly.

**Senator Brandis:** I was about to answer Senator Watt's question. Senator, without for a moment accepting the premise of your question, I see absolutely no reason why that should be so. Take, for example, ASIO. For the reasons I just explained about the special position in a democracy of a domestic intelligence agency, one of the most important provisions of the ASIO Act is that section which prohibits ministerial direction to ASIO in relation to operational matters, or words to that effect. The autonomy of ASIO as an intelligence agency, just like the autonomy of the police, as a policing agency, is vital. It is vital for its operational capability to be effective. And it is vital for public confidence in it as well. Those rules, for example, the provision of the ASIO Act, prohibiting ministerial direction will not change. They will not change. So, ASIO will continue to operate according to its statute, and, I have a very high level of confidence, according to its culture and its own corporate values.

**Senator WATT:** What impact do you consider it will have to see the concentration of almost all national security powers under a single minister and departmental secretary? What impact do you expect that to have on transparency and accountability?

**Senator Brandis:** Under the model the Prime Minister announced—I'm not sure if you were in the room earlier when I was having this discussion with one of your colleagues; it might have been with Senator McKim actually—I think it will enhance accountability and transparency, because the oversight role and the integrity functions have been enhanced. Lest you be concerned about putting all of the domestic national security agencies in one portfolio, these are agencies that are linked up already. They are, for the reasons I've explained, operationally autonomous already and will continue to be so. It is ASIO and the Director-General and his officials who will be protecting national security in an operational sense. It won't be the minister and it won't be the secretary of the department, just as under the current arrangements neither I nor Mr Moraitis tell the Director-General what to do. But, of course, under our principles of responsible government, as an agency it is accountable to the minister and, through the minister, to the parliament. That will be so, irrespective of who the minister is and irrespective of which department it may be located within. But the Attorney-General's role—to use the Prime Minister's words, the minister for the rule of law—in ensuring that that is the case, has not only been maintained but enhanced.

**Senator WATT:** Just to wrap up, we talked about the fact that arrangements are quite well advanced for the establishment of this new department. I've seen that Mr Pezzullo has started describing himself as the secretary-designate of the department of home affairs. Is that an official title?

**Senator Brandis:** Well, put it this way: when the Prime Minister announced the new arrangements on 18 May, roles he referred to Mr Dutton as the minister-designate. There is no secret that the department is being built around the substructure of the Department of Immigration and Border Protection, so I think it's not inapt to describe Mr Pezzullo as the secretary-designate. Is it more official than that?

**Mr Moraitis:** If I recall, when the Prime Minister announced the secretary appointments a while ago, he also mentioned the appointment of Michael Pezzullo in that role. That was when there was a movement of secretaries, if you recall, about three, four or five weeks ago, when Gordon de Brouwer and Martin Bowles retired.

**Senator WATT:** So, similarly, Minister Dutton has taken on this unofficial title as minister-designate of the department of home affairs?

**Senator Brandis:** Well, he was so described by the PM at the press conference. That describes the reality that the Prime Minister has decided that, when the new department begins to operate, its minister will be Mr Dutton and its secretary will be Mr Pezzullo.

**Senator WATT:** Thanks.

**Senator KITCHING:** Senator Brandis, we'll try to go through these quickly. We have discussed this in previous estimates. As you will be aware, there is ongoing speculation that you will replace Alexander Downer as high commissioner to London. Mr Downer's term was extended and is due to finish in early 2018. Have you had any discussions with Mr Downer, Ms Bishop, the Department of Foreign Affairs or anyone else regarding a potential appointment in London?

**Senator Brandis:** I have addressed this issue before and I have nothing more to say about the matter.

**Senator KITCHING:** So you haven't had a discussion with Christian Porter either?

**Senator Brandis:** I have addressed this issue before and I have nothing to say about the matter.

**Senator KITCHING:** I ask the department: has the department been asked to prepare any material—briefing books, for example—in anticipation of a new Attorney-General being appointed?

**Mr Moraitis:** No.

**Senator KITCHING:** Thank you. I'll move onto some expenses questions. I refer to QoN 121 from the last estimates hearing in June. There was a lunch for the Singapore Minister for Home Affairs at the Shangri-La Hotel in Sydney on 10 March, 2017. Senator Brandis, you hosted that lunch.

**Senator Brandis:** I did.

**Senator KITCHING:** The cost was \$2,461. What I'm interested in—and I don't wish to name them—is that you brought staff with you. There were two senior advisers, two advisers and your executive assistant. In comparison, the Minister for Defence brought one member of her staff. Why did you have five staff with you?

**Senator Brandis:** I'm not in a position to tell you who was there, Senator. This question was asked and a written answer was given.

**Senator KITCHING:** I'm not sure it fully explains.

**Senator Brandis:** Given that we've given you the details, I'm not sure what more I have to say.

**Senator KITCHING:** You and I both know that not all of the QoNs are that detailed. Could I ask you to take the following on notice—

**Senator Brandis:** As Mr Moraitis points out to me, in the alignment of portfolios between the government of Australia and the government of Singapore, Mr Shanmugam is my counterpart. He's not a defence minister. There is a different minister in the Singaporean government who is the defence minister. So the engagement between Mr Shanmugam and

me, between my department and his and between, indeed, my office and his, was much more immediate and extensive than with any other minister in the Australian government, and I was the host.

**Senator KITCHING:** Do you always take five staff with you when you are hosting a lunch?

**Senator Brandis:** It all depends on the circumstances.

**Senator KITCHING:** Could we have some detail around that, where you have hosted—and I'll just narrow it to perhaps other ministers who correspond with your portfolio—a lunch for, let's say, your counterparts, and how many staff have you brought with you to those?

**Senator Brandis:** I host relatively few functions. But, on this particular occasion, as a rule of thumb, it is good practice for there to be roughly equivalent numbers from both sides, from the Australian side and from the Singaporean side. Minister Shanmugam, as I recall, certainly had numerous of his officials with him.

**Senator KITCHING:** Officials or staff?

**Senator Brandis:** I'm afraid, Senator, that I would need to have a more detailed knowledge of the Singaporean system of government than I do to answer that question with precision.

**Senator KITCHING:** It looks like they were either—for example, the second permanent secretary was there from the Ministry of Home Affairs in Singapore, the director of operations of Singapore's Internal Security Department was there, and Deputy Commissioner of Policy (Operations) of the Singapore Police Force was there. So it looks to me like they're not really staff, as such, of the Singaporean Minister for Home Affairs but, rather, officials.

**Senator Brandis:** As I say, the way in which people are classified or designated, or arrangements within government are configured, in Singapore is not something about which either I or I suspect you have any expertise at all.

**Senator KITCHING:** I'm not sure you should judge me by your standards, Senator Brandis. But could I ask you if those staff flew from Brisbane or other locations for the purpose of that lunch, and why five staffers?

**Senator Brandis:** I was in Sydney for other appointments as well. My staff are variously located in Canberra, Sydney and Brisbane.

**Senator KITCHING:** I don't want to presume—but I presume—well, maybe your executive assistant flew down from Brisbane. Now, could I turn to another topic—so you will take those on notice?

**Senator Brandis:** I don't even know what questions you've asked me.

**Senator KITCHING:** My question is: what other lunches have you hosted for counterparts and how many staff did you bring with you to those lunches—let's say, in the last financial year—in 2016-17?

**Senator Brandis:** To the best of my recollection, the only lunch that I hosted in Australia for a visiting counterpart minister was the lunch for Shanmugam, and I have hosted a dinner for the visiting Attorney-General of New Zealand in the last financial year, and I have attended but I wasn't the host for a dinner for the visiting Deputy Prime Minister of Malaysia.

**Senator KITCHING:** How many staff went with you to the lunch or the function for the New Zealand—sorry, who was it from New Zealand?

**Senator Brandis:** The Attorney-General of New Zealand.

**Senator KITCHING:** The Attorney-General of New Zealand?

**Senator Brandis:** I don't know.

**Senator KITCHING:** Would you be able to take that on notice?

**Senator Brandis:** Yes.

**Senator KITCHING:** Thank you. In relation to the lunch for the Singaporean Minister for Home Affairs, perhaps you could take on notice—

**Senator Brandis:** That's Mr Shanmugam of whom you are inquiring.

**Senator KITCHING:** where your staff flew in from.

**Senator Brandis:** That assumes they flew in from somewhere. On that occasion, which was not all that long ago, they were already in Sydney for other reasons.

**Senator KITCHING:** Would you be able to confirm that?

**Senator Brandis:** Do you want me to take the question on notice?

**Senator KITCHING:** Yes, I do.

**Senator Brandis:** Yes, I will.

**Senator KITCHING:** Thank you. I now move to another topic. Yesterday it became apparent that a document relating to security upgrade works for Parliament House had been lost by a contractor engaged by DPS. I did ask at those estimates, at Finance and Public Administration, whether your office or you were informed. Have you been informed about that lost security manual?

**Senator Brandis:** Sorry?

**Senator KITCHING:** Were you informed when it was discovered—

**Senator Brandis:** I'll take that question on notice.

**Senator KITCHING:** Thank you. To elucidate, perhaps, it was lost in November. Some investigation works were undertaken by DPS in February. A contractor was put on to investigate. I would like to know whether you were informed at that point in February—it would have been in February—that there was a lost manual that relates to security of Parliament House.

**Senator Brandis:** Yes.

**Senator KITCHING:** Thank you. That's all, Acting Chair, thank you.

**ACTING CHAIR (Senator Pratt):** Senator Brandis, I now have some questions that relate to some unanswered questions on notice. I wanted to ask you about a question I asked in August in relation to the royal commission into institutional responses to child sex abuse. I think it is BE17-178. I will have an opportunity to ask the agency formerly known as CrimTrac about these issues later tonight, but the royal commission made some quite clear recommendations in 2015 that talked about the implementation of national working-with-children checks. They made recommendations back in 2015 and the recommendations of the commission were that they should be implemented within 12 months. So I asked about

progress about this back in August and I have not yet received a reply about the progress that's being made on working-with-children checks. I'm very concerned that, as to recommendations that were made in 2015, that should've had a 12-month time frame—and I appreciate that there are complex, interjurisdictional things within it—yet there has been no reporting against the kind of time lines set by the royal commission in relation to progress on these matters.

**Senator Brandis:** Did you have a question?

**ACTING CHAIR:** What progress has been made and when can I expect an answer to my question on notice?

**Senator Brandis:** Well, in relation to the questions on notice, all but 27 of the 221 questions taken on notice at the last estimates have been answered. I am advised that there are 15 that remain with the department and perhaps they can explain that. There are 12 that remain with my office, for various reasons, and none of those are the question about which you are asking.

**ACTING CHAIR:** So are you able to point me to the evidence that BE17-178 was answered?

**Mr Moraitis:** May I ask Andrew Walter or Iain Anderson to try to answer your questions on the details of the specific question you raised rather than the actual meta-issue about the question on notice—

**ACTING CHAIR:** Okay. Thank you.

**Mr Moraitis:** which we'll try to get you as soon as we can.

**Mr Walter:** There are just two items that I might update at this point that might be helpful. In relation to the recommendation around minimum standards: we have been working with the states and territories in relation to minimum standards in relation to working-with-children checks or working-with-vulnerable-people checks, as they are called in the ACT and one other jurisdiction that doesn't spring to mind. We have had a number of meetings with the states and territories and we have another one coming up in the next few weeks, in fact. It's probably, in some respects, the more difficult one of these recommendations, in that there are a range of ways in which the states and territories do this, and we are currently working through with them what the best approach will be, in terms of coming up with at least some common standards. So there is a lot of work going on on that and we have some dedicated resources working on that. It's fair to say that it has been harder and taken longer than we would have hoped.

The other thing I point you to is one of the recommendations is about making decisions available to all jurisdictions, so when one jurisdiction has made a decision it is made freely available. We had undertaken to do a scoping study in relation to a possible shared database in relation to those types of decisions. We engaged a consultant through a limited tender process. That consultant was Deloitte. We literally last week got that scoping study. We are working through that now and considering it and its implications.

They are probably the two biggest things. You mentioned that the ACIC will be appearing shortly. They will be able to fill you in on the recommendation that specifically relates to them.

**ACTING CHAIR:** I understand that the recommendations themselves have not yet been implemented. The royal commission said that these things should be done over a 12-month timeframe. Is there not some way of treating these issues with more urgency?

**Mr Walter:** With respect, I don't accept the characterisation that we're not. As I said, we have dedicated resources working on these projects. Unfortunately, they are complicated and they are taking time, but we are absolutely committed to getting this work done. We are taking it very seriously.

**ACTING CHAIR:** What is being done to progress the findings of the royal commission to date in an overall sense?

**Mr Moraitis:** Working with children checks, or do you mean the whole—

**ACTING CHAIR:** Holistically. There are a range of findings.

**Mr Walter:** While I'm at the table, the other area that my area of the department has responsibility for—I can't talk to the redress elements—

**ACTING CHAIR:** No, I'm not asking about those.

**Mr Walter:** is in relation to the criminal justice report, which of course is three volumes and contains a wide range of recommendations, many of them for the states and territories and obviously for our portfolio agencies as well. We are working through that report now. As I said, it goes to three volumes; it's very substantial. We are working through that at the moment and beginning to talk to other agencies and the states and territories about the recommendations in that. Again we do have some resources that we are putting specifically onto that work.

**ACTING CHAIR:** Are you also familiar with the findings of the creating child safe institutions document?

**Mr Walter:** That's not my area, I'm afraid.

**ACTING CHAIR:** I sought to ask questions about that within DSS and they referred me to A-GD. Is there someone within A-GD? This was at the last estimates. I note when I asked a question about this on notice the answer was that there were as yet no recommendations about child safe organisations. Ironically, DSS directed me to A-G's, but I can see from the minister's communicate that they are talking about a national statement of principles of child safe organisations, drawing from the recommendations of the Royal Commission into Institutional Responses to Child Abuse. I'm assuming from that that they are, indeed, talking about the findings within this document. Can you outline for me the overall process for tracking the recommendations and findings of the royal commission as a whole?

**Mr Anderson:** I would rather take that on notice. You will appreciate that this is a royal commission that has been running for four years. It has produced a wealth of recommendations and findings.

**ACTING CHAIR:** There must be someone in your department coordinating that?

**Mr Anderson:** We look after the Commonwealth's representation before the royal commission—that is the role of the department—but we're not responsible for monitoring the recommendations.

**ACTING CHAIR:** Who is?

**Mr Anderson:** I would rather take that on notice, Senator, just to make sure that I give you an absolutely correct answer, because different agencies have different roles here. The Department of the Prime Minister and Cabinet has a role here as well.

**ACTING CHAIR:** I have to say I'm quite shocked—in terms of the need for government to take the findings of the royal commission seriously—that you can't tell me who is responsible for coordinating the overall response to the royal commission's findings.

**Mr Anderson:** Senator, because I'm taking your question seriously, I want to make sure that we're giving you a completely accurate answer. So I would like to take that on notice, to be sure that we agree with PM&C and others as to what the correct division of responsibilities is there.

**Senator Brandis:** As well, Senator, beyond what Mr Anderson has said, you must surely be aware that there is a complex range of issues being dealt with by this royal commission which will, no doubt, demand—it has already demanded—a complex variety of different responses from different parts of the government. All Mr Anderson is doing, out of courtesy to you and the committee, is being very particular to ensure that the complexity of the response required by the complexity of the issues is appropriately described.

**ACTING CHAIR:** In answering that question, therefore, can you take on notice whether each part of government is responsible for sifting through every document to find out where the recommendations affect them or whether there is, indeed, someone within government monitoring those recommendations so that that complex response can indeed be facilitated, because it appears to me that no-one is tracking those findings in a holistic way, as far as I can tell.

**Mr Anderson:** I can say that we certainly pay a great deal of attention to the findings and recommendations because, as a department, we are responsible for the Commonwealth's representation before the royal commission. So we engage with Prime Minister and Cabinet and other departments about particular recommendations, but we're not responsible for allocating each recommendation to a particular portfolio. That's the part that I'm taking on notice. But we do certainly track the recommendations and engage with other departments as to what might be required for the Commonwealth to respond to them. For the most part, it's actually a matter for the states and territories to respond. There's a role for the Commonwealth, as we are doing with working-with-children checks, in seeking to provide some national leadership, but for the most part the work's actually going to be done by the states and territories. Indeed, I had the pleasure of appearing before the royal commission in March this year, as did Leanne Close—at that time also a deputy secretary of this department—and also counterparts from all the state and territory governments. We were all held to account by the royal commission for how we're responding to particular recommendations.

**ACTING CHAIR:** Thank you. Senator Brandis, what's your role and responsibility in relation to the royal commission into institutional sex abuse?

**Senator Brandis:** In relation to the overall subject matter, obviously it involve liabilities, or potential liabilities, in relation to a number of Commonwealth agencies or entities. Within the Attorney-General's portfolio lies responsibility for issues including questions of the treatment of children—those offences under Commonwealth law which involve the treatment



of children. Those are the two particular matters that I would regard as foremost the responsibility of the Attorney-General's Department. The question of redress is a matter for the Department of Social Services.

**ACTING CHAIR:** In terms of the driving issues within other jurisdictions, what is the Commonwealth's coordinating role in that respect?

**Senator Brandis:** Through the ministerial council of Attorneys-General, the Law, Crime and Community Safety Council, which is a COAG ministerial council, the Commonwealth leads the response of jurisdictions across the country on a range of different issues.

**ACTING CHAIR:** I have questions about extradition matters with Chile. I understand the Australian government doesn't generally comment on extradition requests, in order to ensure they remain confidential until they are acted on. I notice that the current request in relation to the extradition of Adriana Rivas is somewhat unusual, because it has been a public request after an order of the Supreme Court of Chile. Why does this matter need to be dealt with confidentially? I can't see any basis for it, given the public nature of the claims made by the Chilean government.

**Senator Brandis:** The government does not comment on extradition requests.

**ACTING CHAIR:** Are you aware that extradition is sought for this defendant, who fled the jurisdiction while on bail and while criminal court proceedings were already underway against her?

**Senator Brandis:** The Commonwealth doesn't comment on extradition matters.

**ACTING CHAIR:** I am perplexed that you won't comment on it, when, clearly, the Chilean government is robustly seeking engagement with the Australian government on this matter. Are you able to give us any indication of the progress being made on it?

**Senator Brandis:** No.

**ACTING CHAIR:** Do you recognise there is a strong community expectation and national interest in ensuring that Australia is not seen as a safe haven for fugitives from justice and, in particular, for those who are alleged to have committed crimes against humanity?

**Senator Brandis:** That is not the case, and the Commonwealth doesn't comment on extradition matters.

**ACTING CHAIR:** You would understand community concern about the lack of progress on this extradition. What has your response to the Chilean government been?

**Senator Brandis:** The Commonwealth doesn't comment on extradition matters.

**ACTING CHAIR:** So you won't comment on why it has taken so long to get to this stage at all?

**Senator Brandis:** I neither accept the premise of your question and nor will I be commenting on extradition matters, because it is the settled practice of Australian governments, from both sides, not to comment on extradition matters.

**ACTING CHAIR:** So there is no recognition of the fact this is already a public matter, as made public by the Chilean government itself, and that they are simply seeking extradition of someone who should be facing trial in Chile?

**Senator Brandis:** I didn't say that. I merely said that the Commonwealth doesn't comment on extradition matters and I wonder, given you know that, why you are asking me these questions.

**ACTING CHAIR:** What representations has the Chilean government made regarding these matters to the government?

**Senator Brandis:** The Commonwealth doesn't comment on extradition matters.

**ACTING CHAIR:** I guess there is no further need for me to ask questions on this matter, seeing as they won't be answered. I'll now take the opportunity to call ASIO.

**Australian Security Intelligence Organisation**

[17:58]

**Senator KITCHING:** I'm just going to refer to some documents, firstly, so that we know where we are. That would be the ASIO annual report 2016-17, particularly your review—the director-general's review. Ms Adamson's speech recently—

**Senator Brandis:** Madam Acting Chair, the director-general would like to make an opening statement. That's the usual courtesy.

**ACTING CHAIR:** Yes, that would be perfectly appropriate. I'm sorry I didn't give you the call earlier. How long do you think your statement is?

**Mr Duncan Lewis:** It's about seven minutes or so. Acting Chair, members of the committee, good evening, and thank you for the opportunity to make an opening statement. I'm sorry, Senator Kitching; I have as a practice made an opening statement at the start of my appearance before the committee.

**Senator KITCHING:** No need to be sorry at all. Thank you.

**Mr Duncan Lewis:** Before I go on, could I introduce, please, Dr Wendy Southern, sitting beside me? Dr Southern is Deputy Director-General, Strategy, of our organisation, and she's accompanying me today for the first time before the committee.

I'd like to make a couple of comments on organisational reforms, and I know that the committee has been discussing this during the course of yesterday and today. You all know that, back on 18 July, the Prime Minister announced reforms to Australia's national intelligence and to the domestic security arrangements, with plans to establish a Home Affairs portfolio. The Home Affairs portfolio will bring together a number of security and intelligence agencies, including ASIO. ASIO support these changes, and we are working closely with the Home Affairs implementation task force to ensure a smooth transition to these new arrangements.

At the same time, back in July, the Prime Minister also announced that he had received the *2017 Independent intelligence review* report. That review was carried out, as you probably recall, by Professor Michael L'Estrange, supported by Mr Stephen Merchant, and with advice from the UK's Sir Iain Lobban. The review was extensive. It's been noted publicly that the review found that Australian intelligence agencies are highly capable and staffed by skilled professional officers. The review also noted the high regard that international partner agencies hold for Australian intelligence agencies, and it acknowledged the future challenges we face over the coming decades, and outlined a number of recommendations. ASIO was consulted throughout the review and believes the recommendations to be very sound.

As with the establishment of the Home Affairs portfolio, ASIO is working closely with the independent intelligence review implementation task force to bring about that particular set of changes. So we've two sets of adjustments, if you like, in terms of the arrangements within the national security community, going on at the one time. ASIO is now fully focused on implementing both the intelligence review recommendations and those of the Home Affairs portfolio.

You will be aware—and Senator Kitching just referred to it a moment ago—of the tabling last week of our annual report. This report is one of my organisation's key reporting and accountability mechanisms. It provides insight into our work over the reporting period. I'd like to reinforce two key points that were made—and, again, Senator Kitching, going to your point, I made these remarks in the foreword to the report. Firstly, ASIO made and continues to make a significant contribution to combating terrorism, espionage, foreign interference, cyber and malicious insider related activities that threaten our national security; and, secondly, we remain resolutely focused on managing our resources and capability to respond to the assessed, steadily worsening overall security and operational environment.

I will make some remarks about that security environment. Terrorist threats in Australia and to Australians continue to be shaped by the influence of the Islamic State of Iraq and the Levant, ISIL; and also by the conflict more broadly in Syria and Iraq. While ISIL has undergone some very serious setbacks recently, losing its strongholds in Mosul and in Raqqa—and now, of course, as we've seen in the last few days, in Marawi, in the Philippines—these losses do not eliminate the threat that ISIL poses to Australia and to Australian interests globally. These territorial losses that ISIL has suffered will degrade their ability to support and direct attacks outside the conflict region, including here in Australia. But—and this is the big 'but'—ISIL propaganda remains a powerful force for radicalisation and incitement. The threat from ISIL-inspired lone actors and local groups will endure.

ASIO remains committed to preventing Australians from travelling overseas to engage in activities prejudicial to security. This includes recommending the cancellation or refusal of passports to individuals who intend travelling overseas to join the conflict and by providing advice to the Attorney-General's Department on whether an area should be cited as a declared area under the Criminal Code Act of 1995. ASIO is not limited by geography. We are concerned with threats to Australians and Australian interests wherever those threats lie.

We are, therefore, very concerned by ISIL influence in South-East Asia. Recently, in the Philippines, we've seen ISIL's ideology unite previously quite disparate Islamist extremist groups. The capture earlier this year of Marawi City—now, mercifully, it appears to have been reversed—demonstrates ISIL's ability to coalesce extremists and to encourage them to undertake large-scale acts of violence. Many of the terrorist groups—certainly the ones in the Philippines—have pledged allegiance to ISIL and are operating as the Islamic State East Asia. You might be aware that, as a result of that, on 8 September the Australian government proscribed the Islamic State of East Asia as a terrorist organisation following consultation with key agencies, including my own.

I've previously been asked to comment in this committee on whether the individuals that ASIO is investigating—and, in particular, those involved in attacks or disrupted attack planning—are representative of particular groups in Australia. ASIO investigations are focused on countering extremism, and this includes investigations into a small number of

Australians who are committed to anti-Western, violent Sunni Islamist extremist ideology. Most of the individuals in this small group were born in Australia or migrated here as children. There are more than half a million Australian Muslims. Of these—and I've said this in this committee before—less than 0.1 of 1 per cent, so one-tenth of 1 per cent, are the subject of security interest. If you flip that, more than 99.9 per cent of Australian Muslims are of no security interest to my organisation. Traits such as ethnicity do not necessarily help us to identify the individuals who are of concern.

At my last appearance before this committee I was asked to quantify the number of disrupted attacks which have involved refugees or the children of refugees. We are now up to 13. Of the 13 major disruption operations in relation to imminent attack planning in Australia since 12 September 2014—you will remember that that's when the alert level was raised—there were 56 individuals who were primary targets of these 13 disruption operations. They were either arrested, charged or the subject of search warrants. Only seven of the 56 individuals came to Australia as refugees. Six of those seven migrated to Australia with their parents as young children, aged 11 or younger. The trend since 2014 is consistent with longer-term trends dating back to 2002. Where an individual is involved in attack planning and arrived as a refugee, they generally arrived as a child and have spent more time in Australia than they have elsewhere.

Stereotyping any group as a source of threat is not helpful. It is behaviour, not background, which ASIO is investigating. Our focus is identification and prevention of terrorist attack. To achieve this, we have to be vigilant regarding the sources of threat. Terrorists will, however, continue to evolve their attack plans and their methodologies to defeat protective security measures. We remain concerned about the threat from more complex ISIL-directed attacks and continue to remain vigilant regarding changes in attack methodology.

While the current threat level contemplates it more likely that Australia will face small-scale, low-capability terrorist attacks, we can never rule out the possibility of large-scale, coordinated terrorist attacks. A vitally important part of Australia's capability is collegial and effective partnering between Commonwealth and state and territory agencies. I recently briefed the Council of Australian Governments to discuss measures to improve collaboration on counterterrorism. As you know, COAG agreed to a package of legislative reforms as well as practical measures that will better equip police, security and intelligence agencies to counter the terrorist threat. ASIO will also continue to work closely with government as these measures are implemented.

Focusing now on some more operational matters, since I last appeared before this committee, on 25 May, we have remained focused on our mission of countering terrorism. Since May, regrettably, four Australians have been killed as a result of terrorist attacks overseas. You'll recall that on 30 May this year an Australian child was killed when a car bomb detonated outside an ice cream shop in Baghdad. On 3 June this year two Australians were killed and another two injured in the vehicle and knife attacks on the London Bridge and the Borough Market in London. On 17 August an Australian child was killed and four others injured in a vehicle attack in Barcelona. ISIL and, to a lesser degree, Al-Qaeda continue to encourage and endorse low-capability attacks. That means attacks using readily available objects and weapons and employing very simple tactics. All the Australian victims I mentioned just a moment ago who were killed were killed in this type of attack.

In August the Prime Minister announced the release of the Australian Strategy for Protecting Crowded Places from Terrorism. This strategy was developed to assist owners and operators to make crowded places across Australia safer and more resilient to terrorism. Throughout the consultation and development of this strategy, ASIO worked as part of the Australia-New Zealand Counter-Terrorism Committee's Crowded Places Advisory Group, a subcommittee of that organisation. We worked in conjunction with them to assist in developing this strategy. In July ASIO, with our joint counterterrorism partners—that's the New South Wales police, in this case; the Australian Federal Police; and the New South Wales Crime Commission—disrupted a terrorist plot now known publicly as Operation Silves. This plot involved a directed attack—a direction that came from ISIL members in Syria—against aviation targets here in Australia. This was the aviation incident in Sydney. This incident represents a serious and sophisticated threat. It's a sobering reminder that the aviation sector remains an enduring and attractive target for some transnational terrorist organisations. The joint counterterrorism teams, located in each capital city in the country, have proven themselves an effective tool to rapidly mobilise Commonwealth, state and territory resources to achieve a significant security outcome.

Turning to a couple of legal matters, you'll be aware that at my last appearance Coroner Michael Barnes, from New South Wales, had just released his findings into the Lindt cafe siege. I'm pleased to say that the recommendations that the coroner made are being implemented by my organisation. There were three recommendations that specifically related to ASIO in the coroner's open findings, and in the closed findings there were several others. We are well on the way to implementation of all of those. We regard an incident such as this as an opportunity. While no fault was found with anything that was done by ASIO, we do regard it as an opportunity to examine whether we can do things better.

In a similar vein, on 31 July the Victorian coroner, Mr John Olle, handed down his findings with regard to the incident that led to the death of Ahmad Numan Haider. You'll recall that was an incident where Mr Haider attacked two JCTT police officers with a knife at the Endeavour Hills police station in Melbourne. He was subsequently shot and killed by the police. The coroner made no adverse findings or recommendations against ASIO, the AFP, the Victorian police or any other officers involved in the incident. I particularly want to take this opportunity to acknowledge the ongoing professionalism of officers involved and echo the coroner's comments regarding those officers as committed, courageous and deserving of our utmost respect.

Moving briefly now from terrorism to ASIO's other great responsibility, countering espionage and foreign interference. I have provided some context to the serious threats posed to Australia's national interests by espionage and foreign interference in our annual report. I observe in our annual report that espionage and foreign interference is an insidious threat. Foreign powers are clandestinely seeking to shape the opinions of members of the Australian public, of our media organisations and our government officials in order to advance their country's own political objectives.

ASIO continues to identify and to investigate harmful espionage and foreign interference directed against Australia. Due to the scale and the activities directed against Australia, we couldn't possibly investigate every reported matter of concern, so we rigorously prioritise our efforts, pursuing activities that represent the greatest potential of harm to our interests. I can

appreciate that this is an area of great concern and enduring interest, and I commend our annual report to you. It provides further detail. Noting, as I always do, the gravity and the sensitivity and the potential ramifications of this particular subject, I don't intend to say anything more about the specifics or specific incidents that we have addressed during the reporting period.

Thank you for the opportunity to make some remarks. All of my officers are continuing to work at what is an unprecedented high tempo to ensure that every effort and every exertion is made to provide for the security of Australia and the Australian community, and I want to acknowledge their commitment. I now welcome your questions. Thank you for the opportunity.

**Senator KITCHING:** Thank you, Mr Lewis, for that report. Just for your reference, I'm going to ask questions about two areas. I have read the annual report and I would reference particularly your foreword. I would also like to reference a speech given by the secretary of the Department of Foreign Affairs and Trade, Ms Adamson, about a fortnight ago. Those documents have informed these questions. I would like to go to foreign influence at universities. To what extent are foreign powers trying to extend their influence to Australian university campuses?

**Mr Duncan Lewis:** As I just said a moment ago, I cannot and will not speak to the specifics, but I did raise in our annual report, and as you have pointed out Secretary Adamson raised in a recent speech she made in Adelaide—I think to the University of Adelaide—that we need to be very conscious of the possibilities of foreign interference in our universities. That can go to a range of issues: it can go to the behaviour of foreign students, it can go to the behaviour of foreign consular staff in relation to university lecturers, it can go to the atmospherics in universities. Beyond that, I'm obviously not able or prepared in this environment to talk about the specifics. But it is an issue, and I certainly strongly identify with those comments that Secretary Adamson made.

**Senator KITCHING:** I think you've partly addressed this. I was going to ask you: what forms does the influence take? Is there any part of that question that you could answer or add to, given your previous response?

**Mr Duncan Lewis:** No. I think I've discussed the scope of this influence, and I'm not really in a position to give you any further detail.

**Senator KITCHING:** What are the key reasons or what has informed your concern in this context?

**Mr Duncan Lewis:** The investigative work of my organisation.

**Senator KITCHING:** And what actions have been taken or do you plan to take in order to counter this threat.

**Mr Duncan Lewis:** That's an operational matter, Senator, and, I'm sorry, I'm just not in a position to comment on that.

**Senator KITCHING:** That's fine.

**Senator Brandis:** I can tell you that the government, and the Prime Minister has already foreshadowed this, will be introducing legislation before the end of the year of quite a comprehensive character to deal with foreign interference, which has been developed by my

department and me for some months now. As I say, it will be introduced before parliament rises. It will be a very comprehensive statute that will deal with all aspects of foreign interference from espionage, at one extreme, to foreign agents of influence acting on behalf of foreign principals to influence the political process at the other end of the scale.

**Senator KITCHING:** Earlier Senator Watt, in another set of questions, was asking you about classical liberalism. Given John Stuart Mill is known for freedom of speech, is that going to be a feature of this piece of legislation?

**Senator Brandis:** I don't see the connection, Senator.

**Senator KITCHING:** I guess I'm asking about this really in relation to Secretary Adamson's speech in Adelaide, and the emphasis in that speech given to freedom of speech.

**Senator Brandis:** Secretary Adamson will be at the foreign affairs estimates on Thursday, and I suggest you direct your questions to her.

**Senator KITCHING:** I will ask her, but I guess I'm trying to learn more about the bill. But thank you for that response, and I look forward to seeing that legislation.

**CHAIR:** It will no doubt be referred to this committee to have a closer look at, when it happens.

**Senator KITCHING:** Excellent; I look forward to it.

**Senator Brandis:** Perhaps not; perhaps the PJCIS.

**CHAIR:** Yes, it could be.

**Senator KITCHING:** I want to move on to another topic. I note there were some questions asked in February this year around foreign fighters. That was question number AE17/077. I don't propose to ask again the questions that ASIO was not able to answer for security reasons, but I would like an update around some of the questions. They would relate to, for example, if there has been an update in the number of Australians who have participated in armed conflicts with non-state actors in overseas conflicts. There are 110. Have there been any updates on any of these figures in that response?

**Mr Duncan Lewis:** I can give you something of an answer to this. The number of Australian foreign fighters that we assess are currently in the Middle East, in Syria and Iraq, still sits at around 110. That figure—I have explained this at previous estimates—was actually up a little on what it had been a year or two before. That's not necessarily because there were more there; it's more a reflection, I think, of the fact that our understanding of precisely who was there had improved.

**Senator KITCHING:** Okay.

**Mr Duncan Lewis:** So 110 is still the estimated number of Australians that are in the conflict zone. There are a number of other figures that are associated with this, and I don't know whether you're interested in those.

**Senator KITCHING:** Yes.

**Mr Duncan Lewis:** We frequently comment on the number of passport cancellations, for example, that are made, and the number of fatalities and so forth that have been suffered. As at, I think, the first of this month the passport cancellations were running at 219—that is, passports of Australians cancelled, on our recommendation, by the Minister for Foreign

Affairs because in our assessment those individuals were intent on going to the Middle East with the purpose of fighting with ISIL. With regard to fatalities—this is always a sobering issue—we now are running at at least 68 Australians that have been killed, and possibly 85. There is always a gap between the ones that we can confirm and the ones that we suspect may have been killed. They are the figures that are currently pertaining.

The other figure which is always of interest to this committee is those who have returned from the Middle East. That still sits at around 40. And, as I've said on several occasions before this committee, the overwhelming majority of them returned to Australia before ISIL was actually declared as this so-called province—this caliphate. These were people that went from Australia off to join the Syrian civil war. In the main, they have not necessarily presented as threats to security back here, but those who have returned since ISIL was in place, of course, are most commonly in a different category. What I can assure you is that every returnee who comes back from the Middle East is included in what is a whole-of-government framework to examine where they fit in, and then to look at the treatment that needs to be applied to that individual. That could range, of course, between a prosecution and, depending on the finding, going to jail, through to being put in some form of diversionary program, depending on the circumstance of the individual. Every case is treated on its merits, and the point that I would want to assure all Australians of is that there is no nobody who returns from the Middle East without going through this process. Therefore, we are very, very mindful of any of those returnees who might still present a threat to the community.

**Senator KITCHING:** Thank you. One final question: I note that there are 20 countries which have been identified as possibly being secondary nationalities for individuals who may also have Australian citizenship or residency. There are about 20 countries identified as possible secondary nationalities for these people. Are the numbers about the same still? Have they increased or decreased?

**Mr Duncan Lewis:** I'm sure the number has not changed much. It might be one or two that have been added, but my recollection is that there has been a reasonable spread of national background to those people that are of interest to us, and that the numbers of countries involved really haven't changed much. It would be very much at the margins.

**Senator KITCHING:** Thank you.

**CHAIR:** Is there anyone else with ASIO questions? No? Okay. Mr Lewis, thank you very much for your attendance and for your assistance to the committee. We, as always, appreciate your assistance and the job you and your officers do for Australia. Thanks very much.

**Mr Duncan Lewis:** Thank you very much. Thank you, ladies and gentlemen.

**CHAIR:** The next on the program is the Australian Criminal Intelligence Commission, followed by the Office of the Australian Information Commissioner and then the Attorney-General's Department. We are scheduled to go to dinner break now, which we will. We will resume at 7.30 with the Australian Criminal Intelligence Commission.

Before we close: Attorney, can you just get your staff to have a look at an ABC online report headed, 'AFP too busy to bust cocaine ring, officers guarding city HQs and PM's mansion instead'? As I heard the AFP Commissioner, that wasn't anywhere near an accurate portrayal. Can I just ask you to have your staff see whether you need to advise the ABC, yet



again, of the factual matters rather than their ongoing left-wing bias, if you wouldn't mind doing that during the break?

**Senator Brandis:** I will do so, Senator. I wasn't aware of that matter. I will attend to it immediately.

**Proceedings suspended from 18:29 to 19:30**  
**Australian Criminal Intelligence Commission**

**CHAIR:** I call back to order the Senate Legal and Constitutional Affairs Legislation Committee, dealing with the supplementary budget estimates. Just for the record, noting that the Attorney-General, the secretary and, I assume, the ASIO chief are involved in other important matters, I welcome Senator Scullion, filling in for the Attorney, and Mr Anderson, the acting secretary for the moment.

**Mr Anderson:** For about two hours.

**CHAIR:** For about two hours—the sign looks a bit permanent!

**Mr Anderson:** I will keep the sign and give it to my wife, Senator!

**CHAIR:** We're now dealing with the Australian Criminal Intelligence Commission. I welcome officers from the ACIC. Does anyone want to make an opening statement at all?

**Ms Rose:** No, chair, we don't have an opening statement.

**CHAIR:** Thank you and welcome. I will go first to Senator Kakoschke-Moore.

**Senator KAKOSCHKE-MOORE:** My first questions are in relation to what was the National Indigenous Violence and Child Abuse Intelligence Task Force. That operated between 2006 and 2014, and collected an extensive range of information to inform a range of intelligence reports and recommendations. But, noting that it ceased in 2014, the NNITF's final report stated that the task force's closure would leave a significant gap in the ongoing national collection, analysis and reporting of operational intelligence and strategic advice regarding the nature, extent and impact of Indigenous violence and child abuse. The final report from this task force was published in 2014. Are you aware of whether this gap has since been filled?

**Ms Rose:** I can't talk about the report directly; it was well before my time. I do know that in each of the states and territories the police commissioners are looking at those issues in their states and territories individually. I don't believe that we are looking at doing any further work at the commission in that area. The board, the commissioners of the states and territories, haven't requested that at this stage.

**Senator KAKOSCHKE-MOORE:** Okay. So there was a national approach previously, but when the task force was disbanded the states and territories took on responsibility for this policy area?

**Ms Rose:** Yes. My understanding was that the national approach was gathering intelligence to then provide that to the states and territories so that they could then use that intelligence.

**Senator KAKOSCHKE-MOORE:** So the states and territories are gathering that intelligence themselves now?

**Ms Rose:** Yes.

**Senator KAKOSCHKE-MOORE:** So you are not currently undertaking any operations relating to Indigenous violence and child abuse?

**Ms Rose:** No, we're not.

**Senator KAKOSCHKE-MOORE:** To your knowledge, was there ever a formal response to the final report of this task force?

**Ms Rose:** Not that I'm aware of, but I can take that on notice.

**Senator KAKOSCHKE-MOORE:** The recommendations that were in the report were very wide-ranging and they concerned issues such as child sexual abuse, violence, suicide, financial crime, gambling, substance abuse and more. Do you know whether those recommendations have been implemented?

**Ms Rose:** No, I would have to take that on notice.

**Senator KAKOSCHKE-MOORE:** One of the recommendations is a review of the effectiveness of the monitoring of child sex offenders in remote communities under the National Child Offender System, including the Australian National Child Offender Register and the Managed Person System. I understand those are under your purview?

**Ms Rose:** Correct.

**Senator KAKOSCHKE-MOORE:** Do you know if that review occurred? And, if 'yes', what were the findings and enhancements to the system as a result?

**Ms Rose:** No, I don't. We definitely have those systems, and their use is ongoing by the states and territories, but I will take on notice what happened with the recommendations.

**Senator KAKOSCHKE-MOORE:** Thank you. I just have a few more. I believe this is in your most recent annual report. The Australian Cybercrime Online Reporting Network, ACORN, received 47,873 reports in the 2016-17 financial year, which is almost double the 25,000 reports made two years ago in the 2014-15 financial year.

**Ms Rose:** Correct.

**Senator KAKOSCHKE-MOORE:** What do you attribute this increase to?

**Ms Rose:** There are a couple of things. There is the awareness of ACORN as a reporting mechanism itself, there's obviously the increase of online fraud and crime, and the increased victimisation and reporting, we think, has resulted in those increases.

**Senator KAKOSCHKE-MOORE:** Has there been a sufficient increase in funding for ACORN to handle this doubling of reports it's receiving?

**Ms Rose:** ACORN itself doesn't require additional funding at this stage. We will be looking at enhancements in the next year to make the system triage a little better and more user-friendly, but we are doing that internally. ACORN itself is just a system where it delivers intelligence to us and information to police agencies. So it's actually the impact on police agencies; they're the ones seeing the increased impact in the increased reporting.

**Senator KAKOSCHKE-MOORE:** The increased workload from that.

**Ms Rose:** Yes.

**Senator KAKOSCHKE-MOORE:** I saw that 37,999 of the reports made last year were actually referred to police.

**Ms Rose:** Yes.

**Senator KAKOSCHKE-MOORE:** To what extent does the ACIC investigate reports before referring them to police?

**Ms Rose:** They're reviewed to see, firstly, if there's actually a crime there and what sort of information can be passed on. They are triaged, if you like, so that we're not just dumping a range of reports onto states and territories. There's some sort of window into where it has to go, whether it's actionable and whether there is information that can be looked at by states and territories. So, that's the work that we're doing. We then do a fair bit of intelligence gathering to actually provide a bigger picture for states and territories on trends that are coming out so that we can give people warning if there are trends that we're seeing across the country.

**Senator KAKOSCHKE-MOORE:** Do you perform any tracking of the outcome of those referrals?

**Ms Rose:** No, we don't.

**Senator KAKOSCHKE-MOORE:** Why is that?

**Ms Rose:** At this stage it's not something that the criminal intelligence agency does, but it is something that states and territories have been talking about and it is something that we'll be looking at in the future—on how we are going to be looking at these nationally—because of the continuing increase in this type of crime type.

**Senator KAKOSCHKE-MOORE:** I just want to go now to visa exploitation and the sex industry. In your annual report you state that you identified intelligence and case studies relating to serious and organised crime in relation to the sex industry in South Australia to better understand the exploitation of visas related to the sex industry in SA. Can you explain to me why SA was the focus?

**Ms Rose:** I believe it was a targeted job. I am not sure if the job is completely finished, so I might ask my deputy to elaborate further.

**Mr Blanch:** We have a determination called the criminal exploitation of Australia's migration system. There's more than one job, and the South Australian job you mentioned is but one. We use our coercive powers to gather that intelligence. Without going into the operational details: we take opportunities when we have them, but certainly the program extends beyond South Australia into other states and territories.

**Senator KAKOSCHKE-MOORE:** Do you have any data on the extent of the visa exploitation in the sex industry in South Australia and the rest of the country that could be provided to the committee?

**Mr Blanch:** It's a classified report, in relation to the outcome of that investigation or operation, so I'll have to take that one on notice and see what we can actually provide to the committee.

**Senator KAKOSCHKE-MOORE:** No worries. I saw that the ACIC conducted 12 coercive examinations in Adelaide. Are you aware whether any criminal investigations have been conducted as a result of those examinations?

**Mr Blanch:** When we run an examination program, we'll generally do it to collect intelligence and assess the intelligence and then provide that to partners who may be able to respond to the intelligence. But, at this stage, I would probably again take that on notice to

make sure we are not interrupting any ongoing investigations as a result of that examination program.

**Senator KAKOSCHKE-MOORE:** Understood, thank you. The Organised Crime in Australia 2017 report was released a little earlier this year. I'm aware there is a public version, but there's also a confidential version as well.

**Ms Rose:** A classified version, yes.

**Senator KAKOSCHKE-MOORE:** A classified version, thank you. I'm a member of the Parliamentary Joint Law Enforcement Committee, and I'm aware the committee has made a request for in-camera access to the classified report, but to my knowledge the report hasn't been handed over to the committee. Why is that?

**Ms Rose:** I don't know when the request was made and I'm not aware of the request, but I've only been acting and back at the agency for about eight weeks, so if it was prior to that, that's perhaps why I'm not aware of it. Certainly we could give an in-camera briefing on the report—whether it's the provision of an entire classified report, that's probably not possible, but we can certainly give an in-camera briefing on the items that we think would be relevant but not completely classified.

**Senator KAKOSCHKE-MOORE:** Just going, finally, to one more report, and I don't think it's been made public yet, but last estimates you stated that—

**Ms Rose:** Yes—illicit tobacco.

**Senator KAKOSCHKE-MOORE:** The illicit tobacco one—you've read my mind. How is that coming along?

**Ms Rose:** December it will be coming out.

**Senator KAKOSCHKE-MOORE:** In conjunction with that report have you considered the capability of the Australian law enforcement and policy community, and the legislative framework to address any of the threats identified within that report?

**Ms Rose:** Yes, absolutely. It's one of the areas we will be looking at when we move forward into Home Affairs, because of course it's a cross-agency workforce that we're looking at there with Border, AFP and ACIC and a range of other agencies. So certainly we will be looking at the options there to work with all of the agencies, including policy and legislative change if necessary.

**Senator PRATT:** In August I submitted questions on notice after the spillover hearing on progress on recommendations of the Royal Commission into Institutional Responses to Child Sex Abuse, in relation to working-with-children checks. I do not yet have an answer to that question, however the minister advised that it was not among the unanswered questions that he had a record of. Are you able to give me some advice about the basis of that misunderstanding?

**Mr Anderson:** We've still been checking that. We think that, in fact, it might actually be with the Attorney's office, but we're still confirming that.

**Senator PRATT:** Is ACIC involved in the working group that's been established on this matter?

**Ms Rose:** Absolutely.

**Senator PRATT:** When did the group start meeting, and can you give us an update on the workings of the group?

**Ms Rose:** I'll take this on notice because, again, it was when I had left the agency—I believe that the working group started obviously with CrimTrak joining with the ACC. CrimTrak was mentioned as one of the agencies in the recommendations. CrimTrak started to talk to states and territories about a number of the recommendations that impacted on CrimTrak, specifically two—standardising a lot of the terms across the country and looking at a database. Shortly after the merge the working group was set up; it was led by the Attorney-General's Department.

**Senator PRATT:** When did the merge take place?

**Ms Rose:** July last year—2016.

**Senator PRATT:** What progress had been made before that, given these recommendations were made in 2015?

**Ms Rose:** I don't know about formal progress, but I believe the working group started in late 2016.

**Senator PRATT:** When do you expect to be able to start implementing what comes out of this working group?

**Ms Rose:** As mentioned previously by the Attorney-General's Department, Deloitte has done a report on what the options are moving forward. That's coming back to the working group, and we will be looking at whether it's actually our agency that takes on that—because, of course, it hasn't been costed or funded fully—or whether there's another option on building a group database for the negative notices in the working-with-children checks.

**Senator PRATT:** Why has it not yet been costed fully?

**Ms Rose:** I believe Deloitte has done draft costings, but I haven't seen them yet so we're not aware of whether they've taken in all of the state and territory costs as well.

**Senator PRATT:** Are you aware that the royal commission said that this recommendation should be implemented within 12 months of making the recommendation?

**Ms Rose:** Yes.

**Senator PRATT:** So what's the explanation for things like costings not even having been done yet?

**Ms Rose:** I think the costings were done when Deloitte was brought on. It certainly wasn't something that CrimTrak was tasked with directly. We didn't go out and do any costings at that stage, and the Attorney-General's Department have decided they will take that up and progress it.

**Senator PRATT:** Who was responsible for progressing this recommendation?

**Ms Rose:** I don't think it was actually allocated to anyone specifically.

**Senator PRATT:** Not allocated by government to anyone specifically?

**Ms Rose:** Not that I'm aware of.

**Senator PRATT:** Despite the fact it had a 12-month time frame under the recommendations of the royal commission to be implemented?

**Ms Rose:** It was an interim report, and that was the royal commission's wish that it would happen within 12 months, yes.

**Senator PRATT:** I know you've characterised it as an 'interim report'. I'm not sure if you are characterising it as interim as a way of lowering the impetus for implementing it, but it did have a 12-month implementation time frame, didn't it?

**Ms Rose:** That was their wish, correct.

**Senator PRATT:** With respect to the costings, have there been any indicative costings done?

**Ms Rose:** I believe they have been done by Deloitte, but I haven't seen them yet.

**Senator PRATT:** And who asked for those costings to be undertaken?

**Ms Rose:** When the Attorney-General's tasked them with actually looking at the options, that was part of that tasking, I understand.

**Senator PRATT:** Can you give us a date for when that request was made for those costings to be undertaken?

**Mr Anderson:** I'd have to take that on notice.

**Senator PRATT:** Okay. So you don't have any idea at this point when that request was made for those costings?

**Mr Anderson:** We might be able to come back to you with that in the course of the evening.

**Senator PRATT:** Okay, thank you. Has ACIC completed recording into its systems historical criminal records that are in paper form or microfilm and that are not currently identified by CrimTrac's initial database search?

**Ms Rose:** We felt that was impractical and not achievable, so what we did is go through and tag all of the records that did have a microfilm attachment or history to them so that it was flagged when you brought it up, and then the officer has to actually make a phone call to follow that up.

**Senator PRATT:** Are those phone calls taking place?

**Ms Rose:** I believe so, yes.

**Senator PRATT:** Has anyone received a flag as a result of those historical—

**Ms Rose:** I'd have to take that on notice. I just know that the work's been done and it's in the system.

**Senator PRATT:** Has there ever been any public explanation of the manner in which that recommendation by the royal commission has been implemented?

**Ms Rose:** I'd have to take that on notice—not that I'm aware of, no.

**Senator PRATT:** So you've never publicly stated that you thought the royal commission's recommendation to insert into the database everything on microfilm was impractical. In terms of getting things off microfilm, did that involve looking at each of those individual records to work out which people needed to be flagged within the database? How was that undertaken?

**Ms Rose:** My understanding is, where a historical record in paper or microfilm is identified as matched during the criminal history checking process, the owning police

jurisdiction will upload the record electronically into the ACIC system, and the process of progressively digitising records on an as-required basis is cost effective while ensuring that all records are identifiable through a national criminal history check.

**Senator PRATT:** Where is the database that identifies anyone who has a microfilm or paper record?

**Ms Rose:** In ACIC—so it's updating that database.

**Senator PRATT:** Who did the work to take all of those historical records off microfilm to at least flag there was an individual associated with that record?

**Ms Rose:** The individual states and territories as they've gone through their own records.

**Senator PRATT:** And that was done as part of this work as recommended by the royal commission?

**Ms Rose:** Correct.

**Senator PRATT:** The royal commission's recommendations have said that all working with children cardholders should be checked against historical criminal history records. Can you affirm that that is now taking place?

**Ms Rose:** I would have to check that. I will take that on notice.

**Senator PRATT:** So you don't know whether those checks are taking place as per the royal commission's recommendations.

**Ms Rose:** Can you repeat the question, please?

**Senator PRATT:** Can you confirm that all working with children check applications and existing card holders, current card holders, have been checked against historical criminal history records interstate? So, a new application.

**Ms Rose:** Yes, I can confirm that.

**Senator PRATT:** You not only are checking new applications, but all of the existing card holders have been data matched with the new set of records that you've created by consulting with the states that draw in all of those microfilmed and paper records?

**Ms Rose:** I have an officer here who has the answer, but they're not sworn in as a witness, so I might have to take that on notice.

**Senator PRATT:** Are you able to take some advice from them?

**Ms Rose:** I think we will take it on notice, because it is quite a complicated answer.

**Senator PRATT:** I am somewhat concerned by the fact that I haven't received an answer to my question on notice about these issues. Are you able to characterise—are there people with working with children checks who have not been checked against historical databases?

**Ms Rose:** My understanding is that the only case, the only instance where that may be the case is if it's a five-year working with children check and they haven't been checked on their renewal. Their renewal hasn't come up yet. Again, because of the technicality of that, I wouldn't mind taking it on notice.

**Senator PRATT:** How long has this new system been in place for?

**Ms Rose:** Just a couple of years.

**Senator PRATT:** So it has been fully operational for a few years?

**Ms Rose:** That's my understanding, yes.

**Senator PRATT:** On that basis, it's only those who haven't come back for renewal.

**Ms Rose:** Since that's occurred.

**Senator PRATT:** So you haven't checked everyone as a matter of course? You only checked people upon the point of renewal?

**Ms Rose:** That's my understanding. They're continuously checked against the state records.

**Senator PRATT:** That's good news. So everyone has been checked. That's terrific. What progress have you made in making international records more accessible?

**Ms Rose:** I'd have to take that on notice, because that's a great deal more complicated than doing it nationally.

**Senator PRATT:** Do all Commonwealth government personnel, including contractors undertaking child-related work, now have working with children checks, as recommended by the commission?

**Ms Rose:** I don't know that it has been qualified that they have, but the Secretary of the Department of Prime Minister and Cabinet, Dr Martin Parkinson, wrote to all of the Commonwealth chief executives expressing an expectation of compliance with this recommendation and requesting an update on the measures being taken to achieve this. Sorry—the Australian public service secretaries responded to Dr Parkinson and have confirmed that they have processes in place to meet Recommendation 3(c).

**Senator PRATT:** If you could take on notice—perhaps the department might be in a better position to do this—to take on notice what processes they are, that would be appreciated.

**Mr Anderson:** I hesitate to actually take that one on notice because it actually requires—that is information that we don't have. That's information from every other portfolio.

**Senator PRATT:** So each department has its own individual process? It's not a uniform process across government?

**Mr Anderson:** Dr Parkinson wrote to each secretary asking them were they able to implement that recommendation and to ensure that it is met in their respective departments and portfolios, and they've confirmed to Dr Parkinson they have processes in place. PM&C might have copies of the correspondence. Those secretaries might say what their processes are—I don't know. I just know they have confirmed to PM&C, to Dr Parkinson, that they have processes in place.

**Senator PRATT:** So if I wanted to ask which departments had occupations within them that required such checks, I would have to ask each department individually?

**Mr Anderson:** You could start with Prime Minister and Cabinet. They might have a better idea on that because of course they have received the responses from each secretary.

**Senator PRATT:** In terms of the national database, what progress have you made in consistent terminology in offences to enable the creation of a national approach to this?



**Ms Rose:** My understanding in the working group is that they have got agreement throughout the states and territories for standardised terminology. I understand that has been completed.

**Senator PRATT:** It has been completed. Does that mean that your database now reflects that?

**Ms Rose:** Yes.

**Senator PRATT:** So at which point in time will we have—is there an expectation that a national working with children check is achievable, or is it being met with resistance from the state and territories?

**Ms Rose:** I wouldn't say it is being met with resistance, but each of the states and territories is very happy with their own system. They don't feel that that necessarily needs to be changed or their standards need to change. What we are looking at, therefore, is—currently we have a good understanding, through our systems, of everyone that does have a check. What we don't have an understanding of is people that have been denied a check. So that's what this system will be looking at. It's really a negative notices database. That's probably one of the ways we will go, so we can see from state to state and other states can check against who has applied for a check and been rejected, which is something that we don't have now.

**Senator PRATT:** So you don't yet have any capacity to check who is shopping around for a working with children check between states?

**Ms Rose:** Not on a system, no.

**Senator PRATT:** I think that concludes my questions. I'll just—

**Mr Anderson:** While you're checking that, I can say that although we don't have a precise date, Deloitte were engaged in late June to do that scoping study on the costs.

**CHAIR:** If there is no-one else with questions on the Australian Criminal Intelligence Commission, could I thank you for your attendance and assistance to the committee and we will see you next time.

#### **Office of the Australian Information Commissioner**

[19:58]

**CHAIR:** I welcome Mr Pilgrim and Ms Falk from the Office of the Australian Information Commissioner. Thank you very much for coming along. Do either of you want to make an opening statement?

**Mr Pilgrim:** No, Senator, I don't have an opening statement.

**Senator XENOPHON:** Thank you for appearing before estimates, Mr Pilgrim. The ANAO reports that the elapsed time for Information Commissioner decisions varies from 81 days to 1,228 days, with an average of 372 days. Do you think that's a satisfactory benchmark?

**Mr Pilgrim:** No, I don't think it's a satisfactory benchmark. We have been aiming to improve that quite significantly.

**Senator XENOPHON:** What do you think a reasonable bench mark would be?

**Mr Pilgrim:** At the moment we're aiming to make sure we complete over 80 per cent of our FOI IC review applications within a 12-month time frame, and we have managed to

achieve that in the last financial year. In fact we have closed 86 per cent of the matters before us within 12 months.

**Senator XENOPHON:** Can I go to the issue of how decisions are made. My colleague, Senator Kakoschke-Moore asked questions of you back in February this year about the fact that there is only one commissioner—you—that fills two of the three commissioner roles—Information Commissioner and Privacy Commissioner. Is that correct?

**Mr Pilgrim:** That is correct.

**Senator XENOPHON:** And that the FOI commissioner has been left vacant because there is a requirement in the act they must have certain legal qualifications—is that correct?

**Mr Pilgrim:** I'm not sure that is the reason for the decision not to fill the FOI commissioner's position. As I mentioned at the previous hearings, you are correct that the FOI commissioner does require legal qualifications for that position. The powers in the FOI Act are vested in the Australian Information Commissioner, and in that role I am able to exercise all the functions under the FOI Act and make decisions. Similarly under the Privacy Act, the powers within the Privacy Act are actually vested in the Information Commissioner.

**Senator XENOPHON:** Senator Kakoschke-Moore previously asked you about one person occupying two or perhaps even three of the commissioner roles. Was it always the intent that one person would occupy those three roles? I think your response was that you recommended to the government that, having been in the position of the acting Information Commissioner at the time for a while, and as Privacy Commissioner, you thought the role could be done by one commissioner. Is that still your position?

**Mr Pilgrim:** Yes, that's still my position.

**Senator XENOPHON:** I FOIed the Attorney-General's Department seeking access to your recommendation. All I got back was correspondence between your office—the Information Commissioner's office—and the Attorney-General's Department relating to your appointment. Are there any other documents or communications about your recommendation or advice in respect of that?

**Mr Pilgrim:** I don't have any other documents relating to that advice.

**Senator XENOPHON:** It was oral advice, presumably?

**Mr Pilgrim:** It's through discussions I had with the Attorney-General's Department.

**Senator XENOPHON:** But it wasn't reduced to writing?

**Mr Pilgrim:** Not anything from me, no.

**Senator XENOPHON:** I want to ask a few general questions. In examining decisions published in AustLII, I note that only you make the decisions—is that right?

**Mr Pilgrim:** That's correct. The FOI Act only empowers the Information Commissioner, or if there was an FOI Commissioner, through the Australian Information Commissioner Act. I'm happy to pare that out if you need me to.

**Senator XENOPHON:** You can't delegate that?

**Mr Pilgrim:** I can't delegate that function, no.

**Senator XENOPHON:** So when you do something very normal and acceptable, such as go on annual leave, what happens? Everything is in abeyance?

**Mr Pilgrim:** No. In fact I was on annual leave in August this year, and the deputy commissioner was put into an acting role in the Information Commissioner's position to allow—

**Senator XENOPHON:** The deputy can make decisions?

**Mr Pilgrim:** When they are formally appointed in an acting capacity to the Information Commissioner's role. That was the case in August.

**Senator XENOPHON:** That resolves that. I want to make it clear that I declare that I have a number of matters before your office, before the Information Commissioner. I don't want to ask you questions that go to the substance of those matters, but I do want to ask a few general questions that flow from my experience with Information Commissioner reviews and, in particular, the review that you conducted on the submarine CEP. It's concluded, so I don't think there's any question of it being prejudiced by this discussion. You refused access to all documents. On appeal to the AAT the Department of Defence immediately released documents to me and advised that the Japanese government—that their hope was that by releasing material that is not sensitive we will persuade the tribunal we are only seeking to protect truly sensitive documents. Then the correspondence went on to say to tell the Japanese government, 'It is our belief that there is no harm to you or the other parties in releasing this material, as it is all standard Defence contracting material of a very general nature.'

I want to understand this: can you explain their approach—that is, of Defence—making representations to you that all the documents were sensitive; as soon as it's put to the test by an appeal to the AAT, or in the face of an AAT review, Defence releases it and indicates it was not truly sensitive. You accepted the Defence submission, it seems, unequivocally initially, but as soon as Defence was put to the test of a review process they made all these concessions. Is it a resourcing issue? There is an issue there. It's been a frustrating process from my office's point of view. Is there a resourcing issue? There seems to be such a difference in terms of your approach and the approach of Defence, who basically capitulated on a whole range of issues, saying that they weren't really that sensitive.

**Mr Pilgrim:** I would first of all say that I can't remember all the detail of that matter. One of the matters I would have taken into account at the time would have been the submissions from Defence—

**Senator XENOPHON:** I was hoping you found it was unforgettable!

**Mr Pilgrim:** No, I wouldn't say that. I would have taken into account at the time, apart from myself going through and examining the documents, which I did, the submissions from Defence, and they would have been at a point in time which, I could suggest, might have had some impact on the sensitivity of those documents, at a point in time, as opposed to the process when it reached the AAT. I can only assume that. I think that's a question best put to Defence, though, as to why they changed their position to release it.

**Senator XENOPHON:** Can I put this to you: the defence department also wrote to the Japanese government, stating: 'Our experience of the Administrative Appeals Tribunal is that it is more exacting than the Information Commissioner and will look more closely at the contents of the documents.' Does that sort of comment concern you? It's almost as though they won't release documents and, as soon as they're put under any pressure, not only do they release documents but they then have a swipe at your office.

**Mr Pilgrim:** They're entitled to their opinion about how they think we approach our process of the IC review. As I said, I personally went through all the documents that were in question. I looked at them and I took into account the submissions from both parties and made my decision on the documents as they were before me. How Defence want to categorise or put a view forward on how that was undertake is entirely up to them.

**Senator XENOPHON:** I guess what I don't understand is this: in that review, the defence department advised your office that even the act of consulting with the Japanese government about the documents under review would be harmful to international relations but immediately proceeded to do exactly that—that is, consult with the Japanese government—when the AAT proceedings commenced. I'm trying to understand why they took one approach with you and another when it was before the AAT.

**Mr Pilgrim:** And I'm sorry, I don't know why they took that approach.

**Senator XENOPHON:** The department made a claim to you that the release of any information under FOI relating to the tender documentation would provide a framework for people to draw unsubstantiated assumptions as to the merits or otherwise of the competitive evaluation process, participants and proposals, and, as previously stated, would be extremely damaging to the continuing strategic relationships and trust between Australia and the governments of both Japan and Germany. But then Defence gave a completely contrary view, saying: 'We've raised no objection for the release of the material we are consulting on.' If you have a history of a department saying one thing to you and then taking a completely different approach—some would say an insulting approach to your office—does that change the way you look at things? Obviously you look at them objectively, but do you then change the approach in which you look at these assertions, given the way Defence has treated your office and the, I think, quite dismissive assertions they've made?

**Mr Pilgrim:** We would look at each case—and I don't mean this to come across glibly—on a case-by-case basis and would look at each matter based on the submissions from the parties, the exemptions they may be claiming and my examination of those documents, and make a decision based on the particular matter before me. I don't know why Defence took the approach they did before the AAT. I'm not sure; they might be in a better place to respond to those particular comments they made about my office.

**Senator XENOPHON:** I want to go to the issue of the time it takes for decisions to be made—and I have to note my great frustration and the frustration of those who work with me in relation to that. The AAT makes orders in respect of time frames for submissions and the departments adhere to the time frames. In contrast, is it the case that the Information Commissioner's office agrees time frames for submissions and the departments regularly seek extensions?

**Mr Pilgrim:** They can seek extensions, that's correct.

**Senator XENOPHON:** Can you provide me on notice the number of times extensions have been sought in the past 12 months in the context of the total number of reviews conducted?

**Mr Pilgrim:** I'll take that on notice and see if we can provide that.

**Senator XENOPHON:** The AAT also makes orders in respect of time frames for submissions and does not permit a change of the exemptions claimed after submissions have

been made. In two of my recent Information Commissioner reviews, the department has made submissions switching exemptions, which means you start from scratch, effectively, taking an even longer period of time. The AAT's approach seems to be mindful of the need to have a quick process in place. Do you consider that your office's approach seems inconsistent with the timely access to information objective, which is the wording in the Freedom of Information Act?

**Mr Pilgrim:** I'm sorry, I didn't pick up on the question.

**Senator XENOPHON:** The act basically talks about the timely access to information. The AAT takes a pretty dim view about changing exemptions, but your office seems to allow for exemptions to be changed, or the grounds to change, which means you go back to square one, which means you start from scratch again. Are you concerned about the fact that that can delay the process even further, which goes against the intent of the act, which is to have timely access to information?

**Mr Pilgrim:** Yes, I am concerned about that. That's one of the practices we are examining and looking at as part of the process of trying to improve our efficiency around that process.

**Senator XENOPHON:** When will that process be completed? By the time we get some of this information, it will no longer have any currency. That's what concerns me.

**Mr Pilgrim:** We're certainly looking at trying to expedite a number of these key matters at the moment. One of the considerations we're taking into account is how agencies approach us in terms of wanting to change exemptions, which I would say does not happen on a regular basis. It's something that we look at very closely.

**Senator XENOPHON:** In a couple of reviews—one past and one on foot—that I have been a party to, your office, Commissioner, has held confidential from me departmental submissions. In the matter that's being appealed at the AAT, documents not provided to me by the information commissioner were made available to me as part of the T document set. This week the same thing happened to me. Normally all cards are laid face-up on the table in this process. Only in exceptional circumstances—if it's a highly sensitive issue or a matter of national security—would that information be withheld. What is your view on this, because I'm finding it incredibly frustrating?

**Mr Pilgrim:** Again, we look very closely at when agencies do make claims for information to be kept confidential. We would usually expect it to be in those more sensitive matters which are deemed matters of national security—

**Senator XENOPHON:** But that hasn't been the practice, though, of your office in that I can get them in the T documents when it goes on appeal to the AAT. I can't see that you can allow them to be withheld. Can you provide me on notice the number of times submissions have been withheld from the applicant in the past 12 months in the context of the total number of reviews conducted?

**Mr Pilgrim:** I'll take that on notice.

**Senator XENOPHON:** And can you take on notice what specific areas for improvement in the way reviews are conducted are being proposed and when they may be implemented? That would be useful.

**Mr Pilgrim:** Yes, I'm happy to provide that.

**Senator XENOPHON:** In the Auditor-General's report on FOI released recently, the number of exemptions—that is, grounds to deny access—claimed over the last five years has increased by 68.4 per cent. Noting that an individual FOI claim can be subject to multiple categories of exemption, over the same period the number of applications increased by 53.4 per cent. The use of the 'certain operations' and 'national security' exemptions has increased by 318 per cent and 240 per cent respectively. My final question is: what is your view in respect of this statement, and what, if anything, is your office doing in response to those findings of the Auditor-General? In other words, are you providing the same sort of training to departments that I believe was conducted by the Office of the Australian Information Commissioner when Professor McMillan had that role, where there was continuing education of government departments as to what the parameters of a reasonable request under FOI were?

**Mr Pilgrim:** We'll certainly take some of that on notice. In terms of the training, there has been continuing training going on over the past few years, during the period of which we were in a position of not being sure whether we were going to maintain the function—when there was a bill before the Senate. The functions for undertaking training have been carried out mainly by AGS, and we support them in that. Officers from my office will attend to provide information on cases I've handled to help supplement those training sessions from AGS. Since we have been advised in the last 12 months that we will be continuing on those functions, we're now looking at recommencing our own network for training purposes as well.

**Senator XENOPHON:** Thank you, Mr Pilgrim.

**Senator GRIFF:** I would like to start with some questions about My Health Record. In your annual report, you indicated that you received 35 notifications in 2016-17 and a total of 58 data breach notifications for the past three financial years. Can you detail what these breaches relate to?

**Mr Pilgrim:** I might ask the deputy commissioner to do that. In terms of the My Health Record specifically?

**Senator GRIFF:** Yes.

**Mr Pilgrim:** Not the broader range of notifiable data breaches we've received.

**Senator GRIFF:** No.

**Ms Falk:** In relation to digital health, as you'll be aware, there is an obligation for mandatory reporting of data breaches in relation to the My Health Record system, and you refer to a number of mandatory data breach notifications which were provided to the OAIC. In relation to that matter, there's some information about those mandatory data breach notifications at page 80 of our annual report, and I would also refer the committee to the e-health My Health Record annual report that the commissioner releases each year which goes into some detail in relation to those matters. As our annual report sets out, nine of the notifications involved separate breaches related to what we're calling intertwined medical records of individuals and this resulted in Medicare providing data to incorrect individuals in the My Health Record system.

**Senator GRIFF:** By intertwined you're meaning like a family connection? A member of a family? Is that what you mean by intertwined?

**Ms Falk:** That's correct, yes. In relation to the other notifications, they resulted from findings that occurred through the Medicare compliance program in terms of DHS undertaking their own routine process of checking the accuracy of records. In those instances, certain Medicare claims made in the name of a healthcare recipient but not by that healthcare recipient were uploaded to their My Health record. In those cases, the OAIC was notified. We have entered into an arrangement with the Department of Human Services, such that those notifications are provided to the OAIC—at usually fortnightly intervals—because they do arise from the ongoing examination by DHS of these matters. Then they bring them to the OAIC's attention and then the commissioner will make a view as to whether any further information is required, or whether any further regulatory action is required.

**Senator GRIFF:** Are you aware of any consequences that affected individuals as a result of these breaches?

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

**Senator GRIFF:** If you could, I'd appreciate that. To clarify, in answer to a question on notice following the June budget estimates your office stated that you'd received 57 data breach notifications. Yet your annual report states 58. I know it is only one, but given that the 57 relate to 300 data breaches, is there any reason why that discrepancy was there?

**Ms Falk:** I'm not aware of that discrepancy and I'd need to look into it.

**Senator GRIFF:** If you can take that on notice that would be great. I'd also like to now look at the notifiable data breach scheme which will commence in February next year. The office's funding dips in the forward years from \$11.3 million in 2017-18 to \$9.9 million in 2019-20. Is this sufficient for you to engage with businesses and other organisation to implement and manage the scheme starting in February?

**Mr Pilgrim:** We're certainly taking steps to make sure that we provide an appropriate level of guidance material to all those entities that will be covered by the notifiable data breaches scheme. In fact, we've had a series of resources out already for consultation with entities that are covered by the act—that will be covered by the notifiable data breaches scheme. We've had some fairly good response back on those draft resources. In the long term, I'm keeping the Attorney-General's Department aware of the potential impact of the scheme. At the moment, you'll be aware that we run, and have run, for a number of years a voluntary notification scheme. I think in the last financial year—and I can be corrected—we received approximately 114 voluntary notifications. It's hard to determine what we will receive under a notifiable data breaches scheme. However, we can anticipate that there'll be a significant increase. When we look at jurisdictions around the world who have similar schemes, there's no one-exact model that we could pick up to say this is what will happen. So, on that basis, we're working towards, as I said, providing appropriate levels of guidance at this stage. Then, as we start to get the notifications in, I'll be keeping the Attorney-General's Department informed if it looks like it's going to have a significant impact on our resources.

**Senator GRIFF:** So you are expecting a significant increase, but your budget is down about 1.5 million for managing this?

**Mr Pilgrim:** Our budget does drop, and I would like to just check those figures. It could be in regard to other moneys that we received through a memorandum of understanding that may finish prior to that period.

**Senator GRIFF:** Are you concerned about the budget cut?

**Mr Pilgrim:** I'm not looking on it as a budget cut. As I said, I would like to check our figures, but it could be as a result of some funding we get for specific projects that is finishing up, rather a change in our underlying appropriation.

**Senator GRIFF:** How many staff do you currently have?

**Mr Pilgrim:** We have approximately 75 staff—full-time equivalents.

**Senator GRIFF:** How many will be involved with this program?

**Mr Pilgrim:** In this program at the moment I think we have approximately three staff for developing the guidance material. There are a number of staff who will be involved in receiving those notifications once they start coming in. As I said, we're not sure, because there is no one scheme that we can look at that would be necessarily comparable to anticipate how many notifications will be becoming in. But I can assure you that we will be looking closely at that, and making sure that, if we start to run into problems with that, I will be talking to the government about those issues.

**Senator GRIFF:** Your annual report states you managed 114 data breach notifications under the voluntary scheme for the past financial year, compared to 107 for the prior year. You note they continued to grow. Have you noticed any change in trend with the number or nature of the notified breaches?

**Mr Pilgrim:** In terms of a trend, I would have to say that there's not a particular trend. For example, it does cover a broad range of different types of entities. We cover the government sector but also the private sector, and that's a significantly large sector. If we looked at it sector by sector, there is not a particular trend. We could say that there have been a large number from government agencies in total. But, from a range of causal factors, it does vary. It varies from things that can be offline—the mail-out going to do the wrong people—and it can be online, where we see information being sent out to incorrect people as well, but in an online situation.

**Senator GRIFF:** Which government agencies have you received the most from?

**Mr Pilgrim:** I might have to take that on notice. I don't have that—

**Senator GRIFF:** Can we have a breakdown by agency.

**Mr Pilgrim:** Certainly.

**Senator GRIFF:** In the EM of the Privacy Amendment (Notifiable Data Breaches) Bill 2106, it's stated that you expect notifications under a mandatory data breach scheme would nearly double to around 200 a year. Is that still your expectation?

**Mr Pilgrim:** That was a figure that we were looking at at the time. I'm not sure whether that will be my expectation. If I could use one example—I don't want to necessarily say this will be the case in Australia; as I said, there are differences in various schemes I think the Dutch commissioner's office recently had a notifiable data breaches scheme introduced as well, and in the first 100 days of their scheme they received a thousand notifications. That's in an economy that is somewhat smaller than Australia's, and in a population somewhat smaller. So, we're trying to look at this in terms of what we can expect to get in. At the time we looked at that bill, we thought it might be a doubling. But I think there will be significantly more than a doubling.



**Senator GRIFF:** Two thousand?

**Mr Pilgrim:** I wouldn't like to guesstimate.

**Senator GRIFF:** But a thousand is feasible?

**Mr Pilgrim:** A thousand was the example in the Dutch situation. But I'm not sure what we will get here.

**Senator GRIFF:** That would have significant impact on your operation of—

**Mr Pilgrim:** It would have a significant impact. Yes, it would.

**Senator GRIFF:** How would you manage that—if you have these numbers coming in from February?

**Mr Pilgrim:** The normal process is that, if we were looking at having such a significant change in our workload, we would be discussing that quite seriously with the department and the government.

**Senator GRIFF:** Looking at 2016-17 again, it states that you received 17 per cent more privacy complaints— 2,494 compared to 2,128 in 2015-16. How many have been as a result of data breaches?

**Mr Pilgrim:** I may need to check that as well. When you say a data breach, there are the two processes there. Sorry, I don't want to be too pedantic, it's—

**Senator GRIFF:** I'm referring to privacy complaints. But how many of those are related to data breaches?

**Mr Pilgrim:** In our terminology, a complaint coming to us is as a result of someone alleging a breach of their personal information. So it would be a potential or alleged breach under the act. If you're referring to, say, a significant breach that an organisation has brought to us, I would need to check those particular breaches we've received to see whether any have resulted in individual complaints.

**Senator GRIFF:** So they'll be on notice. Thank you. In its submission to the 2015-16 consultation on notifiable data breaches, IDCARE stated the average number of days between a breach being identified and when organisations reported it to the individual was around 405 days. What was the average time frame between breach and notifications under the voluntary scheme in 2016-17?

**Mr Pilgrim:** Again, they're statistics we may not have to hand. In the voluntary scheme, the requirement is by nature that it's voluntary, is that organisations report to us when they have had a breach, and then they advise us what steps they've taken to remedy that breach and what steps they've taken if necessary to advise individuals. So we would need to—

**Senator GRIFF:** Need to look into that—

**Mr Pilgrim:** go back and look at that sort of information.

**Senator GRIFF:** You can provide that?

**Mr Pilgrim:** We can have a look to see what we've got.

**Senator GRIFF:** What's the time frame under the mandatory scheme?

**Mr Pilgrim:** Under the mandatory scheme, organisations will need to assess whether there has been, in fact been a notifiable breach, and they are given 30 days to make that assessment.

However, if within that 30 days they form the view that it is notifiable, then we expect them to notify the office and the individual as soon as possible. But they may need to take some steps to determine whether, in fact, there has been a breach and the act gives them up to 30 days for that.

**Senator GRIFF:** Your target would be 30 days?

**Mr Pilgrim:** To make the assessment that's the period they do have. But, I would stress, and as I have been saying in the presentations I've been giving to organisations on the bill, we would be fully expecting them to make a notification as soon as it is clear to them, which could be fewer than that 30 days, that there has been a breach, because it allows the individual then to take steps to actually help themselves to address the breach and any impact it may have on them.

**Senator GRIFF:** The mandatory scheme will not apply as we know to small businesses, except those that provide a health service, are a credit reporting body or trade in personal information. Are there small businesses participating in the voluntary scheme that will not be required to participate in the mandatory scheme?

**Mr Pilgrim:** I'm not sure that we would have information on the size of the businesses that are reporting to us. I would be would be surprised—

**Senator GRIFF:** Wouldn't we need that if small businesses are exempt? Shouldn't you know that information now?

**Mr Pilgrim:** Sorry, I—

**Senator GRIFF:** Given small businesses are exempt, shouldn't you know whether they should or should not be in the scheme?

**Mr Pilgrim:** As you say, small businesses—that is, organisations with a turnover of less than \$3 million—generally are not covered by the scheme. I wouldn't expect that the office was already getting notifications voluntarily from them because they don't have any other obligations under the act.

**Senator GRIFF:** I note that you are actually seeking public comment on data breaches with comments closing yesterday, I believe, on a range of draft resources. What is the purpose of this? Is it to guide processes or fine-tune how the scheme operates?

**Mr Pilgrim:** The idea is to put out information so that people can read how we are describing the application of the act and the expectation for the processes of reporting to us. We need to test those to make sure that they are workable in terms of how different organisations can provide us with information and that they do actually make sense—sorry, that they are easily understood, plain English, those sort of issues.

**Senator GRIFF:** Thank you.

**Senator PRATT:** Do you think the resources you have been provided, as set out in the budget, are sufficient for you to properly discharge your statutory functions?

**Mr Pilgrim:** At the moment, we're undertaking the functions under both the FOI Act and the Privacy Act within the resources we have been provided. We do have some delay in allocation of those resources in terms of our privacy complaints. There is a four-month wait between receipt to allocation to a staff person to handle that. In terms of FOI matters, there are some similar delays, as we have been discussing, in terms of handling that. On the FOI

side, I'm pleased to be able to say that I've been advised this week by the Attorney-General that we will be receiving some additional funding this year and into the out years to help with the workload—the increased workload we are receiving on IC reviews. In fact, as I mentioned at the spill over hearing in August, we received a 24 per cent increase in the number of IC review applications—

**Senator PRATT:** Of which applications? Could you not use acronyms.

**Mr Pilgrim:** Sorry, I apologise. Information Commissioner review applications—we received a 24 per cent increase in numbers in the last financial year. And, as I was saying, I've just been advised that we will be receiving some additional funding that will go towards our work in that area.

**Senator PRATT:** What about additional funding for the privacy problems?

**Mr Pilgrim:** At the moment, we haven't received any additional funding for that, but I have been keeping both the Attorney's office and the department informed of some of the challenges around those increases.

**Senator PRATT:** What is the nature of the kinds of privacy complaints that you're dealing with? It appears to me that a privacy complaint could be an ongoing breach of privacy that requires remedy and, in the event of something not being acted on or even beginning to be acted on within four months, is quite problematic.

**Mr Pilgrim:** It is, and for that reason we do triage the complaints. We certainly go through and assess them first and look at those which may be having an immediate impact on individuals, and we would escalate those in those sorts of circumstances. We certainly don't just look at them, put them all into a pile and then wait for that period to move through; we do triage them. I would also say that, in our Information Commissioner review processes, we also have a triage process for assessing those matters.

**Senator PRATT:** What kinds of complaints are remaining unaddressed four months later? What's the nature of the kinds of complaints being made?

**Mr Pilgrim:** I'd probably have to take that on notice. Our complaints do vary quite significantly. As you can appreciate, we have a range of areas that we cover. For example, we do have specific credit reporting provisions within the act, and a complaint could come to us from an individual who has been denied credit in a situation where they do need to access that fairly quickly and it will have a significant impact on them, so we could look at those, as opposed to someone who may have received some information that isn't going to impact them directly. They could have had a name or address provided to someone else, which doesn't have an immediate impact on them.

**Senator PRATT:** You have had progress in funding on your information applications.

**Mr Pilgrim:** Yes. As I said, I've been advised this week we will be receiving some additional funding that we will be able to put to the Information Commissioner review process.

**Senator PRATT:** What was the waiting period on information reviews before that?

**Mr Pilgrim:** Similarly, there was a four-month period.

**Senator PRATT:** So why has the government funded the information complaints but not the privacy complaints at this stage?

**Mr Pilgrim:** The money that we are receiving is money that was removed from the funding of the OAIC back in the 2014-15 budget process, when there was a bill before the parliament to change the arrangements for the undertaking of FOI matters. Amounts of money were taken away at that stage, and some funding was reallocated to different agencies to pick up some of the work. The money we're talking about here was an amount that went to the AAT, on the basis that the Administrative Appeals Tribunal would get additional appeals. That hasn't eventuated for a number of reasons—one of them is that our office is going to continue with the function—and, as I've mentioned, we have subsequently seen an increase in the work, so that money is being taken back from the AAT and returned to my office.

**Senator PRATT:** What's the quantum of that money?

**Mr Pilgrim:** The quantum in the out years will be approximately \$500,000. For the remainder of this financial year, it's approximately \$370,000.

**Senator PRATT:** In what way is the government still compromised in its commitment under the Open Government National Action Plan to ensure adequate resourcing of your office to discharge its statutory functions?

**Mr Pilgrim:** I'm not quite sure. Could you repeat the question?

**Senator PRATT:** I'll put it another way. Do you think the government is fulfilling its commitment under the Open Government National Action Plan to ensure the adequate resourcing of your office to discharge your statutory functions?

**Mr Pilgrim:** I think that might be a question that's best asked of the government. In terms of our role in undertaking our statutory functions, I am responsible for making sure that I use the money I'm allocated in the most efficient and effective way. We have made some significant increases in terms of our turn-around time—for example, on the freedom of information side, while we did have a 24 per cent increase in the number of Information Commissioner reviews coming to the office for review, we also, through work to improve our processes, had a 13 per cent increase in the number of matters that we were able to close within that financial year.

**Senator PRATT:** You've improved your efficiency, which means you're maximising your capacity to fulfil your statutory obligations within the resources that you have. You've talked about the waiting times for both key areas. In terms of what your statutory functions mean in the resolution of those streams of work, is your statutory function largely defined by whether you meet all of those requests, or are there other elements of it that are also compromised?

**Mr Pilgrim:** We certainly have a broad range of functions. It's not just a matter of undertaking Information Commissioner reviews. Under the Freedom of Information Act, we also handle complaints about the administration issues that may arise as part of a request for access to information. We also have a responsibility, should I deem it necessary, to undertake commissioner-initiated investigations, if I believe that is warranted. We also have a role over the Information Publication Scheme to monitor that. Obviously, within that broad range of functions—and that's before we tackle the side of the privacy functions—I would reiterate that my responsibility is to make sure that I am satisfied that we are undertaking the functions we can—and we do that in a number of ways of prioritising as well—to make sure we utilise the funding we have in the most efficient way.

**Senator PRATT:** What parts of your work that are within your statutory obligation are currently not getting done because of the limits in your resources? You've outlined the waiting period on both sides, but in what way are your other functions compromised by that?

**Mr Pilgrim:** I would suggest that what we do—as I said—is we prioritise the work we have to make sure that when we identify an area that needs to be addressed we will tackle that and we will allocate resources. It's a matter of compromising.

**Senator PRATT:** What issues are before you that you would like to be able to address that you don't currently have the resources for?

**Mr Pilgrim:** At the moment, as I said, our main aim is to be responsive to individuals who either apply for, say, an Information Commissioner review or have a privacy complaint, so we prioritise those matters. That naturally means that we would need to look at other areas—for example, in the Information Publication Scheme, we haven't undertaken a review or an assessment of how that is being applied. We are looking to try and prioritise that, as well, over the next 12 months, so it will be some work we are looking at prioritising.

**Senator PRATT:** That's an example. Is it the only key example of the things that you haven't had the resources to triage up the priority list?

**Mr Pilgrim:** I would say that on the FOI side, I think that is the main area.

**Senator PRATT:** You said your office is working quite well in the one-commissioner model, and you've advised government that it's your preference to continue with this model. What are your reasons for that?

**Mr Pilgrim:** There are a number of reasons. I think what we've seen is that—I've looked at other examples of similar commissions around the world, and there is a tendency for the model to focus around having one commissioner. My preference would be to have the model we've got, with one commissioner, to have at least one deputy—which I do have—and some other senior staff to pick up some of the workload around some of the educational work, for example, and some of the representational work. I think the model works quite well because it gives one position that is the position that makes the key decisions and issues the guidelines.

While I think it worked quite well under the previous model, given the individuals who knew each other, I think there were some challenges, potentially, in the long term with the act—for example, there was the ability for each of the commissioners to be making decisions on the same matter or a similar matter with a similar outcome, yet make different decisions. That was always a potential risk.

There are some things which, if we do maintain the one-commissioner model, I think in the longer term we would need to look at, and Senator Xenophon touched on that—and that's the issue of delegations under the FOI Act for the undertaking of Information Commissioner reviews. At the moment that rests solely with the Information Commissioner.

**Senator PRATT:** That is probably doable given that you can't do them all because of your limited resources. If you had more that you were processing, is there a limit to the capacity resting with one commissioner without delegating that?

**Mr Pilgrim:** That's an interesting question. One of the things that we're trying to do, and that we have been doing quite successfully, in the Information Commissioner-review space is move to an early resolution model with the approach. We're trying to resolve more of the

Information Commissioner review matters that are brought to us without actually having to go to a formal decision. In fact, in the last financial year, out of the number of IC reviews that were finalised, only 18 per cent ended up having to have a formal decision made by me.

**Senator PRATT:** Are there benefits to reinstating the independent statutory role of an FOI commissioner as distinct from a Privacy Commissioner or Information Commissioner?

**Mr Pilgrim:** Ultimately that would be a decision for the government of the day. I've advised the government, as I said earlier, that I think, at the moment, the process is working quite well with one commissioner. I believe there could be some enhancements to that, as I just touched on with one example, into the future, but ultimately the decision for filling the other positions would be up to the government.

**Senator PRATT:** If you had additional resources, you'd wish for the existing model to continue rather than for the reinstatement of other commissioners?

**Mr Pilgrim:** That's my position, yes. I would like that, along with, as I said, if we could look at some of the issues around the delegations and some of the functions.

**Senator PRATT:** I want to ask you about the ANAO report on FOI. They published a report in September this year assessing the effectiveness and efficiency of entities implementation of the Freedom of Information Act. As you'd be aware, the report was based on the targeted testing of FOI applications made to AGD, the Department of Social Services and the Department of Veterans' Affairs. The report suggested that entities' ability to search for relevant documents could be improved were the entities able to electronically search the contents of all documents rather than just by title. Would this be a useful improvement, and how could such a thing be implemented?

**Mr Pilgrim:** I do think that would be a useful improvement. That's an issue I know a number of agencies are looking at as part of their overall document management systems and the enhancing of their systems. We would be happy and able to provide some of that guidance and assistance with organisations in terms of those document management systems.

**Senator PRATT:** Is that something that's being openly accepted and received by agencies as a good thing? Are all those three agencies open to the implementation of that model?

**Mr Pilgrim:** I'd need to take that on notice to find out.

**Senator PRATT:** You say that some agencies are making progress. Are you able to tell us which ones?

**Mr Pilgrim:** I was broadly categorising that I know. I can't name specific agencies, but I'm aware there is a general move within the Public Service to improve all information management holding systems and make them more efficient, of which this would be a by-product.

**Senator PRATT:** I'm very pleased to hear that. I want to garner from you the extent to which you have to manage when agencies resist giving the public that information. It seems strange to me that agencies would suddenly have to have that access to information brokered by an Information Commissioner and then suddenly go, 'Here's a database, and here it is.'

**Mr Pilgrim:** We try to promote an open access by default approach for agencies, and we certainly do approach that. The Information Publication Scheme also promotes that standard and often-requested information be made more publicly available, and there's guidance out for

agencies, and has been for a number of years, on how they can go about that. As I was saying, we will continue to promote that approach. We would encourage agencies to be looking at that as they do start to modernise their information-holding systems to make that more available, because, ultimately, in my view, it will help them reduce the cost of dealing with FOI matters when they are approached.

**Senator PRATT:** I was somewhat alarmed, in the process of robo-debt with DSS, at the number of people that needed to undertake FOI applications just so that they could respond to the very questions that the DSS had put to them about their own circumstances. Is that something that you're familiar with?

**Mr Pilgrim:** Not referring specifically to the robo-debt issue, but I think, as I said in my opening statement in the annual report, one of the issues you'll note from the statistics that have come out from the broader range of applications to government agencies is that approximately 83 per cent of the requests under the FOI Act are for access to personal information. Now, I don't have the figure to hand, of that 83 per cent, how many are individuals seeking their own information, but I would suggest that would be the majority. In those circumstances, I strongly encourage agencies to be giving people access to their own personal information without having to go through often very complex processes to access their own personal information.

**Senator PRATT:** Is that why there has been an increase in the number of FOI applications over the last five years? Is that the source of the driving up of the data?

**Mr Pilgrim:** I would need to check the statistics over the last few years, but I do know that that has been a consistent feature, that the majority of those requests are for personal information.

**Senator PRATT:** What advice would you give to DSS when customers are asking for their personal records? You would suggest they shouldn't have to undergo an FOI process?

**Mr Pilgrim:** I would suggest. I believe that in quite a number of cases they don't necessarily have to go through that, but, when a person is seeking access to their own personal information, they should be able to get that in the easiest possible way. Now, it could be, and it is often the case in some of the matters that, for example, DHS would be dealing with, that information will be intertwined with a third party's information. There are very good reasons why they then need to have a process to allow the agency to go through those documents to make sure that they're not inappropriately releasing a third party's information. Similarly, there could be a request from, say, a couple, for one party to be seeking information on the other party, and there could be a number of very important reasons, such as domestic violence reasons, why that shouldn't be released as well. There will obviously be important situations whereby agencies will need to look carefully at that personal information without automatically putting it out. But I would suggest that the default situation should be that, in the majority of cases, people should be able to access their own personal information easily.

**Senator PRATT:** To what extent is DSS relying on FOI in order to trigger the access of clients to their own information?

**Mr Pilgrim:** I'd probably have to look at the statistics on that one and get back to you.

**Senator PRATT:** From what I could tell from our robo-debt inquiry, there were some officers happy to hand over the information, but other officers were simply directing people to

FOI. There didn't seem to be any consistency around that. If you could take on notice what DSS's practice looks like to you in that regard, that would be terrific.

**Mr Pilgrim:** Yes, we will do that.

**Senator PRATT:** The report found that the AGD had a higher proportion of refused applications relative to other entities over the last five years. Why is that?

**Mr Pilgrim:** I don't know off the top of my head why that is. AGD may wish to answer that, but I would have to go back and look at some of those matters to be able to provide an answer.

**Senator PRATT:** Is AGD able to answer that for us?

**Mr Reid:** I don't have the information before me about the submissions we made to the ANAO report, but I will take that on notice.

**Senator PRATT:** About the refused applications relative to other entities.

**Mr Reid:** I'm not sure what data went into that number.

**Senator PRATT:** Why do you think there has been an increase in certain operations and national security exemptions within the FOI space?

**Mr Pilgrim:** Again, it might take a longer analysis, but I would have to look at the matters before me in the Information Commissioner reviews I receive to see whether there has been an increase in applications to those particular agencies that would hold that sensitive information.

**Senator PRATT:** I know you've characterised it as a longer analysis, but these questions of what access people have to information regarding so-called certain operations and national security matters are of deep importance, as is the need to maximise the transparency of those matters to the public where possible, so if you are able, on notice, to answer that as best you can, that would be terrific.

**Mr Pilgrim:** I'll certainly take that on notice.

#### **Attorney-General's Department**

[20:50]

**CHAIR:** We will move onto the Attorney-General's Department Group 1, Civil Justice and Corporate Group: Attorney-General's Department Operating Expenses; Civil Justice and Legal Services; Justice Services; Family Relationships; Indigenous Legal and Native Title Assistance; and Royal Commissions.

**Senator SIEWERT:** For a start I want to follow up some questions that I've asked previously about the report of the United Nations Committee on the Rights of Persons with Disabilities regarding Mr Marlon Noble, and the answers you've already given on the national principles. We've had a discussion about this before: have you been monitoring the situation with Mr Noble, and are you aware if all the committee's recommendations about Mr Noble have been fulfilled? I'll come to the broader state party requirements in a minute.

**Mr Reid:** I might ask Mr Clarke to address the most recent developments in Mr Noble's communication.

**Senator SIEWERT:** That would be appreciated.



**Mr Clarke:** Australia has submitted its response to the views, and that's now available on the website, so you will have seen that. The matters there relate to actions or measures of the Western Australian government, so implementation of those views would mostly be a matter for them.

**Senator SIEWERT:** I'm aware of that. Are you aware of the latest details from Western Australia?

**Mr Clarke:** No, other than what is described in the response to the views.

**Senator SIEWERT:** Other than that, you're not monitoring the most recent events?

**Mr Clarke:** No.

**Senator SIEWERT:** Can I go to the national principles.

**Mr Reid:** Which national principles?

**Senator SIEWERT:** Australia gave an undertaking to develop national principles around incarceration of people with cognitive impairment. In your answer you articulated issues about what the working group had been doing. The operative process here is the working group also presented the draft national principles to the Law, Crime and Community Safety Council on 19 May this year, where the attorneys-general committed to take these back to their respective cabinets for consideration. You said there will not be a public consultation period, as the national principles is the subject of cabinet processes. Will the correlated and analysed data on the fitness to stand trial on the defence of mental impairment that was presented to the Law, Crime and Community Safety Council be made publicly available? I am not asking about the principles—I'll come to that in a minute—but will that data be made available?

**Mr Reid:** Not that we're aware of. That matter is going before the new Law, Crime and Community Safety Council on 1 December.

**Senator SIEWERT:** You've pre-empted one of my other questions. Will they be made available after 1 December?

**Mr Reid:** I don't think a decision has been made on that yet.

**Senator SIEWERT:** So there's not a definite no yet? I understand the no before it goes to the council.

**Mr Reid:** That's right.

**Senator SIEWERT:** Is there a reason the information couldn't be made available after that council meeting?

**Mr Reid:** That'd be a matter for the attorneys. I wouldn't want to hazard a reason for any decision they may or may not make on 1 December.

**Senator SIEWERT:** I beg your pardon if I phrased that poorly. I'm not asking you to express an opinion on whether they will or they won't, but is there a prima facie case for it not to be released? Is there a fundamental reason or rule already that prevents it from being released if the attorneys-general were so minded?

**Mr Reid:** No.

**Senator SIEWERT:** Why didn't the draft principles go out for consultation before they went to cabinet? There's no reason that something going to cabinet can't go out for public

consultation before that. This is an issue that a lot of people—I am probably exaggerating—a number of deeply interested people are very actively engaged in and have strong opinions on. Is there a reason they didn't go out prior to their going to the various cabinets?

**Mr Reid:** I am not aware.

**Senator SIEWERT:** Could you take that on notice to find out? Minister, perhaps you might want to take this.

**Senator Scullion:** It would be the usual process. As you'd be aware—perhaps you wouldn't be aware—taking something to cabinet is not something you do lightly. Consulting about something before cabinet approval is unlikely to be the way you would normally operate. You'd need to seek the in-principle agreement of cabinet before you go out and consult on people's expectations. That would be the normal way across government.

**Senator SIEWERT:** But the government had already made a public commitment to draft the principles. It's not as if it had been a national secret; it was on the public record that they were going to be drafted as a response.

**Senator Scullion:** Indeed, but as I'm saying, the granularity of the approval through cabinet would often be the case that they not go through a consultation process on a series of principles that may not be approved by cabinet. Government may well have made a public statement on that, but it would still require cabinet approval, and in this case, as you indicated, it did.

**Senator SIEWERT:** We could argue all night about not consulting just because something is going to cabinet. I could present a list a mile long of things we have discussed in the community that have then gone to cabinet. I don't buy that.

**Senator Scullion:** That may well be the case, but in some cases—this may well be the case, and the officer has been good enough to take that on notice—there are some circumstances you would be aware of where that isn't the case.

**Senator SIEWERT:** We'll have this argument another time. Can you articulate, given there wasn't any public consultation, what information, reports or evidence were used as the basis for developing the national principles?

**Mr Reid:** I don't have all of that information in front of me, but I will take it on notice.

**Senator SIEWERT:** Is there an expectation that the draft principles will be agreed after this next meeting on 1 December?

**Mr Reid:** That is the hope.

**Senator SIEWERT:** That's the hope, rather than expectation?

**Mr Reid:** It's the Attorney's intention.

**Senator SIEWERT:** Is the usual process after that to make an announcement of what was agreed?

**Mr Reid:** Generally after these meetings there will be a ministerial communique.

**Senator SIEWERT:** I knew I'd missed the appropriate term. I don't want to return to the specific issue around Mr Noble, but where there are other comments or recommendations around specific cases, is it the general practice—I'm not trying to confuse the state party with

our states and territories—that you never monitor those actions of the state beyond reporting back?

**Mr Reid:** You're referring to recommendations that might come out of a UN communication?

**Senator SIEWERT:** Yes.

**Mr Reid:** Depending on with whom the responsibility lies, we'll leave it generally to the relevant jurisdiction to manage those things going forward. Often these things, though, will come back for Australia as a state to deal with in its general reporting obligations and in the cyclical reporting obligations. So there will often be some, I suppose, oversight—that might be too strong a word—of what the states and territories might be doing to implement whatever the recommendation was, but generally it's left to the jurisdiction in whose responsibility the issue lies.

**Senator SIEWERT:** Thank you.

**Senator WATT:** I might step in here. I've just got a couple of questions about the recent Native Title Ministers' Meeting. I'm just interested in gaining a better understanding of the outcomes of that meeting. What is your understanding, as officials, of the comment in the communique, which stated:

Ministers recognised the maturing nature of the native title system, and as such, the need to direct their attention to a post-determination landscape with a greater focus on resolving claims and the sustainable management and use of native title lands.

**Mr Anderson:** It is worth noting—it was in June 2016 that this first happened—that we've moved, for the first time, to more determinations of native title actually having been made than there are applications on foot. So, increasingly, as claims are determined, the focus does move more to what native title holding groups can actually do with their native title, as opposed to a focus on how they attain native title.

**Senator WATT:** Sorry, just say that last bit again. A greater focus on?

**Mr Anderson:** On what they can do with their native title once they have actually attained it—had it recognised—as opposed to a focus on the process of obtaining recognition of their native title.

**Senator WATT:** Okay. That's what you mean by 'post-determination landscape'?

**Mr Anderson:** That's right.

**Senator WATT:** Right. The communique also noted the ministers' commitment to 'collaborate on a reforms process that the Commonwealth is currently in the process of developing'. Can you tell us about that reform process?

**Mr Anderson:** Certainly. During the process following the McGlade decision earlier in the year, there was a commitment by the government to look at some previous recommendations that had been made about possible changes in the native title system. So, what's being progressed now is an options paper that will be publicly released, hopefully in the next month or so, that will look at a range of possible options for legislative reform or other reform in the native title system. That will be published for comment. There will also be targeted interaction with a range of different stakeholders across the spectrum of native title interested stakeholders—the National Native Title Council, for example, which contains as its

members most of the native title representative bodies and native title service providers; state and territory governments; and pastoralists and others. All will have the opportunity to put forward views, and the hope is to have an exposure draft bill of potential legislation that can be released in early 2018.

**Senator WATT:** Could you tell us just a little bit more, then, about the nature of the reforms that are being considered?

**Mr Anderson:** As I say, we are actually in the process of developing the options paper, so I'd rather not go into the detail of it until such time as the options paper's been finalised.

**Senator WATT:** In very broad terms, it is possible to point out two or three of the priority areas?

**Mr Anderson:** There are certainly recommendations that have been made by a range of different bodies and inquiries as to the nature of the agreement-making process. As to specific types of agreements, section 31 agreements were recognised as being something that might be subject to the same sorts of issues as were recognised in the McGlade decision, in relation to ILUAs. Then there are also questions about the capability of prescribed bodies corporate, the bodies that actually hold native title after it's been determined. They're just a couple of the areas. It is really looking at areas across the spectrum of native title, so from the prerecognition through to, in particular, the postdetermination.

**Senator WATT:** I was going to ask about that. So these reforms won't be limited to postdetermination issues? They will also look at—

**Mr Anderson:** Again, I don't want to prejudge anything, because the options paper hasn't yet been finalised. I'm optimistic that it will be published in the near future. But we're certainly looking at both predetermination and postdetermination possibilities

**Senator WATT:** Okay. You gave a time frame before that something was likely to happen by early next year. What was that again?

**Mr Anderson:** The intention is an options paper in the relatively near future, and then an exposure draft of legislation—a bill—early in 2018.

**Senator WATT:** Okay. The communique also mentioned the Commonwealth's funding to improve the operation of prescribed bodies corporate under the white paper on developing northern Australia. How is that improvement process intended to be implemented?

**Senator Scullion:** Perhaps I can help there. We are providing \$5 million, the principal motivation for which is to ensure that, where the prescribed bodies corporate are negotiating with a developer, who's obviously got the capacity to employ lawyers and those sort of things, the funds are there to ensure that the PBCs can negotiate on an even playing field, so they can purchase the level of amenity to properly triage the development processes that have been put in front of them. For some of them, it's the first time that this has come, so they don't have access to resources, so there's a whole suite of developers and development that might do that.

The second part of that is that often the applications have been around a skills audit—so now I have the land—and an opportunities audit, if you like: what sort of land do we have? What sort of minerals? What sort of water? How does it sit with agriculture? But again this is all on the spectrum of the bundle of rights being all the way from the rolled-gold exclusive

possession, which needs a different set of funding, to the capacity really to ensure that we have some sort of trigger for a future act.

**Senator WATT:** Forgive my ignorance, but I take it that the term 'prescribed bodies corporate' means an entity for the purposes of the Native Title Act? It's not a reference to the northern Australia white paper?

**Senator Scullion:** No, not at all. The initial inference was correct.

**Senator WATT:** So it's about assisting prescribed bodies corporate for the purposes of the Native Title Act to obtain funding and other assets—

**Senator Scullion:** Just the operations of the prescribed bodies corporate—that's correct.

**Senator WATT:** Maybe they could get a NAIF loan.

**Senator Scullion:** If they apply, I'm sure it'll be considered with great diligence.

**Senator WATT:** I have no doubt the NAIF is considering lots of applications; it's just about getting some money out of it. Will there be some consultation with prescribed bodies corporate on this process?

**Senator Scullion:** There already has been. This has been very much a process that was expected and welcomed by the prescribed bodies corporate. This was something that they had brought up, particularly in the imbalance, if you like, with those people making an application to a PBC. The PBC's capacity to have a proper and appropriate response was very limited.

**Senator LEYONHJELM:** I have some questions in relation to firearms policy. Do we have the appropriate people here?

**Mr Anderson:** That's group 2, Senator.

**Senator LEYONHJELM:** Oh, jeez! It's the story of my life!

**Senator WATT:** Jumping the gun, so to speak!

**Senator LEYONHJELM:** Jumping the gun, yes—going off half-cocked! My questions relate to the gun amnesty. That's group 2?

**Mr Anderson:** Group 2.

**Senator LEYONHJELM:** All right. I'll wait for that.

**Senator HUME:** I just want to ask about the domestic violence units and, specifically, how the sites were selected for the domestic violence units.

**Ms Samios:** We took into account a range of information to assist in identifying the sites. Primarily, we were guided by information from states and territories about the locations within those jurisdictions with the highest need, which was also in connection with the extent to which there were existing services to meet that need.

**Senator HUME:** How many sites are there that have been identified?

**Ms Samios:** There are 18 domestic violence units in total. Six were in the most recent announcement.

**Senator HUME:** When will they be operational?

**Ms Samios:** The first 12 have been operational for some time, and the final six are expected to come into operation around January of next year.

**Senator HUME:** This is a pilot program—is that right?

**Ms Samios:** That's right.

**Senator HUME:** At what point do you evaluate the pilot? Do you evaluate the pilot on the first 12 or on the 18 that will be operational?

**Ms Samios:** To take the first part of your question, the evaluation process is expected to commence very soon. We've put out a tender and are expecting to be engaging someone in the next month or so to commence that evaluation with a completion date of no later than August of next year. What was the second part of your question?

**Senator HUME:** Do you evaluate on the original 12 or on the second six as well?

**Ms Samios:** The evaluation will concentrate primarily on the initial 12 units, but, to the extent that the evaluation period overlaps with the operation of the other units, it will also potentially take into account issues that we might learn from those further units around things like set-up, operation and building collaborative relationships with related services.

**Senator HUME:** Is there interaction between the domestic violence units?

**Ms Samios:** They're all in quite different locations, but we have a community of practice through which all of the different units come together to talk about their experiences and practice and the like.

**Senator HUME:** Is August 2018 when the pilot will be evaluated?

**Ms Samios:** Yes.

**Senator HUME:** Has there been any anecdotal evidence in the meantime as to the success of those operations?

**Ms Samios:** Initially, the feedback has been quite positive about the operation, although we haven't been able to get into the detail of each different one, and there are some different models. I can give you some statistics around what we have learned.

**Senator HUME:** That would be very helpful. Thank you.

**Ms Samios:** I don't appear to have a complete set of statistics, but, to give you a picture, between January and March of this year, the existing units—that includes, sorry, an additional five health justice partnerships that were also being piloted as a package—assisted 531 women who had not already been assisted through the units and delivered 1,143 services. Of the women who were assisted—

**Senator HUME:** 1,143 services to how many women?

**Ms Samios:** To 531 women.

**Senator HUME:** So that's approximately two services per woman?

**Ms Samios:** I should clarify that there were 531 new clients between January and March, but some of the services may have been delivered to existing clients.

**Senator HUME:** All right. That's all I had. Thank you very much—that's very useful.

**Senator PRATT:** I want to ask some questions on the redress scheme. I note that in September 2015 the commission's report on redress was handed down. There were detailed recommendations for a national redress scheme outlined at that time and the recommendations said that the scheme or schemes should be established and be ready to begin inviting and accepting applications from survivors by no later than 1 July 2017. That's correct, isn't it?

**Mr Anderson:** Senator, I should say—and I'm perhaps pre-empting your question—that a lot of work has been done but the responsibility for this is in the social services portfolio, so you should direct your questions about the redress scheme to them.

**Senator PRATT:** Does draft legislation on redress also rest with them?

**Mr Anderson:** The social services portfolio is handling the redress scheme.

**Senator PRATT:** Okay. I did clarify that with you. So, with questions about draft legislation, the legislation is being prepared by DSS?

**Mr Anderson:** DSS will be giving the instructions on that legislation.

**Senator PRATT:** I will have to ask those questions there, if that's the case. I think the other items are probably also within the Department of Social Services. That's all my questions for this group. I do have questions for group 2 and 3.

**CHAIR:** Anyone else in group 1?

**Senator RICE:** Yes. My questions are about the sex and gender guidelines, which I asked questions about at last estimates. I'm interested in how we're going with the rollout of the sex and gender guidelines. At last estimates, you indicated that you were going to have an evaluation ready, which should have been ready by this stage.

**Ms O'Keefe:** I can confirm that, since last estimates, that review has commenced. We have focused initially on discussions with people in the community and with government departments. I will take on notice the precise date, but I believe it was in September this year that a questionnaire was sent to all federal government agencies, asking about the implementation of the guidelines. We are still receiving responses on that. So, at this stage, I'm not in a position to give you a definitive guide to that. Over the coming months, we will be assessing those responses and speaking again to community about the responses that we have received and what any recommendations to government might be about the future use of those guidelines.

**Senator RICE:** Did you set a return date for the government departments to get their responses back to you?

**Ms O'Keefe:** We did. I will have to take on notice the precise date. Sorry, I have been just advised it was 2 October. We have followed-up with those agencies, and we expect that those responses will be received imminently.

**Senator RICE:** Have you done any evaluation, or are you waiting until you get those responses back before you evaluate whether the guidelines have, in fact, been rolled out across the various departments?

**Ms O'Keefe:** We have had some preliminary discussions, but I think the content of whether the extent to which they have been rolled out and any areas of improvement will need to wait until we receive all of those responses.

**Senator RICE:** Once you have received those responses—obviously 2 October is given a little bit of wiggle room—what resources are going to be put into getting that evaluation done and then working with the departments that have not yet rolled out the guidelines?

**Ms O'Keefe:** We have an officer in the Civil Law Unit whose sole responsibility is to work on the sex and gender guidelines. I'm anticipating that we should be in a position to give

some advice to government early next year and then, depending on the response from government, that will determine the next steps for that.

**Senator RICE:** When you say you are going to determine the next steps, what are the options? Are you looking at actually modifying them?

**Ms O'Keeffe:** I think that's a possibility, depending on both the responses that come back from the departments and the response that we have when we consult further with community about any changes that they think are necessary to those guidelines.

**Senator RICE:** Can you give me a bit more detail about what the community consultation has been?

**Ms O'Keeffe:** I don't have those details in front of me, but I'm very happy to take them on notice and provide you with a list of people and organisations that we've spoken to.

**Senator RICE:** In terms of the outcomes of your evaluation of how the rollout has gone, will that be a public document?

**Ms O'Keeffe:** I'm not sure of that at this stage.

**Senator RICE:** Will it be shared with the community organisations that you've been consulting with?

**Ms O'Keeffe:** I anticipate it would be, but ultimately that would be a decision for the Attorney.

**Senator RICE:** We're looking at potentially having that evaluation done, then, early next year and then waiting on the decision of government as to what happens from then on?

**Ms O'Keeffe:** That's my expectation.

**Senator RICE:** It's a very long process from guidelines that were meant to have been put in place well over a year ago, isn't it—yes. Did you get that feedback from the consultation that you did with the community?

**Ms O'Keeffe:** Not that I'm aware of.

**Senator RICE:** Can you share anything about the feedback you got with the consultation you did with the community?

**Ms O'Keeffe:** I'm afraid that I don't have those details in front of me. I'm happy to take that on notice and provide you with some more information about that. The responses really did vary. Some people indicated that there was a level of discomfort with being asked to prescribe to either male, female or X and that using the symbol X was 'othering', in their experience. That was one of the main things to come through, and it's certainly something that we'll be looking at as we continue the process.

**Senator RICE:** Thank you very much.

**CHAIR:** I thank the officers from group 1. As far as the committee's concerned, you're free to go to your homes. We'll move on to group 2.

**Senator WATT:** If you have only a few questions on firearms, do you want to cover those off so you can go? I'm going to be here after the break anyway.

**Senator LEYONHJELM:** My first questions relate to the firearm amnesty. How many firearms were handed in?



**Mr Bouwhuis:** The count that was announced was 51,000 firearms.

**Senator LEYONHJELM:** Of those that were handed in, how many were actually operational and how many were just firearm parts or not operational for other reasons?

**Mr Bouwhuis:** I don't have a detailed breakdown of the figures as yet. The figures come from the states and territories and come from the different places where they can hand in the firearms. We have an initial figure for the end of the amnesty, which is the total. But what make of firearm and which ones were operational or not operational is further data which was requested from the states and territories. They're compiling that currently. We would anticipate having that data by the end of the month. We will do a report then, based on that data, that evaluates the amnesty and sets out those details in more depth. But, at the current time, the only data which I have is that headline figure for firearms handed in rather than a detailed breakdown. But we will obtain the detailed breakdown.

**Senator LEYONHJELM:** That probably answers most of the questions that I was going to ask of a similar nature, which is additional detail. Could you please note that I am also interested in how many of those 51,000 were operational, how many were just firearm parts, how many were complete firearms but rusty or otherwise not operational, how many were returned as registered firearms to their owners, how many were taken on by dealers and sold, and how many were destroyed. What I would like ultimately is how many working firearms were handed in and destroyed, and any other data you happen to collect would be of interest to me.

**Mr Bouwhuis:** Thank you.

**Senator LEYONHJELM:** I am going to change the subject to Airsoft. It is probably unreasonable for you to know this, but in 2010 the Firearms Policy Working Group held a discussion about Airsoft. The minutes are on the Attorney-General's Department website. I have a copy here, and I'm happy to provide it to you if you would like to have a look at it.

**Mr Bouwhuis:** Thank you. That would probably be handy. I didn't bring those minutes with me obviously.

**Senator LEYONHJELM:** Fair enough, yes. I appreciate that it is seven years ago. I want to draw your attention to the last sentence of the final paragraph on page 1, which says, 'Many in the community are concerned that Airsoft promotes violence and may also serve as a screen for paramilitary training associated with illegal or terrorist activities.' That view was expressed seven years ago. I'm wondering if you can advise whether that remains the policy of the department?

**Mr Bouwhuis:** These would be the minutes of the Firearms Policy Working Group, which comprises states and territories as well as the Commonwealth. They presumably would have had a discussion about the item, but the background comment only says 'many in the community are concerned', rather than actually putting a view of the department or of the states and territories, so I'm not sure that I would characterise that as a view of the department at the time. Rather, it is a statement that there appears to be some community concern with these issues.

**Senator LEYONHJELM:** In that case, can you advise the committee of the department's current approach to Airsoft?

**Mr Bouwhuis:** I'm not sure we have a view as such. Airsoft does come up from time to time in discussions with the states and territories. I understand that there are groups pushing to import more kinds of Airsoft firearms, so we are aware of it from that point of view, but I'm not sure we have a view one way or the other. I guess we're aware of the issue is what I would say.

**Senator LEYONHJELM:** I asked Australian Border Force yesterday who determines the policy. Airsoft currently can't be imported. I asked them what was the source of the policy that determines whether it can be imported and they pointed the finger squarely at you guys. So I'm wondering if you can explain to me what the basis for that policy that informs Australian Border Force is?

**Mr Bouwhuis:** Thank you for that question, Senator. There are a couple of aspects to that question. The first point is to note more generally that firearms policy is something decided by states and territories. They have the constitutional responsibility for deciding on firearms. Obviously we're a participant in those discussions on firearms policy, but it is formally for the states and territories to decide.

You noted 'an import ban', but there is no import ban as such. The things that would be picked up on import would be airsoft ones that are fully automatic or that look like fully automatic firearms. So, if you had an airsoft item that looked like an AK-47, then that would obviously be picked up on import. But there is no import ban as such—other than those types of airsoft items that are fully automatic and those that look like fully automatic firearms. The test under the regulations would be the police certification test. If a relevant official within a state or territory certified that there was a legitimate purpose for importing the firearm, then that firearm could be imported. There is no Commonwealth ban on airsoft as such, so I just wanted to set that out for the record. It would be a matter for each state and territory to decide which items it wanted to import, and that would be a decision they would make as a matter of policy.

**Senator LEYONHJELM:** Well, nobody can import airsoft, and the Commonwealth is responsible for imports. So how can it be a matter of state decision as to whether they are permitted?

**Mr Bouwhuis:** Just to be clear, the only things that wouldn't be imported would be airsoft ones that are fully automatic or ones that look like fully automatic firearms. There is no Commonwealth ban as such on airsoft items, other than those provided that—meet the police certification test. That's administered by the states and territories, so the states and territories could admit an item under that test. That's a matter for the states and territories. So there is no Commonwealth ban on airsoft items as such.

**Senator LEYONHJELM:** So what you are saying is, if I interpret you correctly, that the policy is: if it looks like a fully automatic real firearm—bearing in mind these things are made of plastic and fire little plastic pellets—it can't be imported; but, otherwise, it can be?

**Mr Bouwhuis:** That would be a matter for the states and territories to make an assessment. I imagine they would assess the particular kind of item, whether there is a legit reason for importing it, and how actually dangerous that item is, because—although you have characterised some of them as 'just firing pellets', there is kind of a range of different items at the higher end—they can be used as weapons. So there is a range of gradations in the types of

airsoft items. They would presumably look at the application to import whatever kind of items, and then make an assessment about it within their jurisdiction—was that something that would pose an unacceptable risk or something that there was a legitimate reason for—and then make a decision on that basis, but it is not that the Commonwealth prohibits all of these at import. It would be a matter for the state and territory to decide.

**Senator LEYONHJELM:** So, if a state decided that firing little plastic balls was less of a safety issue than paintball—and I have never met anyone who would disagree with that, if I think know the two types of firearms—if a state came to that conclusion, how would then somebody who wanted to provide airsoft equipment for something like paintball matches import one, given than the Commonwealth won't allow them to come in?

**Mr Bouwhuis:** So, again, it is not that we wouldn't allow them to come in. If they met the police certification test and a state or territory certified them under the police certification test, then they would be admitted for import.

**Senator LEYONHJELM:** If a state allowed them, the Commonwealth wouldn't prevent them from being imported unless they were fully automatic?

**Mr Bouwhuis:** Unless they were fully automatic or looked like a fully automatic firearm.

**Senator LEYONHJELM:** Unless they 'look like a fully airline firearm'? What does 'fully automatic' look like? A machine gun?

**Mr Bouwhuis:** Yes. That would be a good example. they are appearance based control. Obviously, if you had something that looked like an AK-47 and you wandered around with it, that would be presumably a concern to the community and so those types of items are banned at import. But, other than that, if it met the police certification test, that is, if a state or territory deemed that they could see a legitimate reason for it and there wasn't too much of a community risk, then they could certify under the police certification test and then it could be imported.

**Senator LEYONHJELM:** So, if a potential importer wanted to determine whether it passed or failed those criteria, the appearance test in particular, where would they look to determine what that test was?

**Mr Bouwhuis:** I presume they would have to discuss that with the relevant registry.

**Senator LEYONHJELM:** I thought you were talking about the Commonwealth having an overall policy in relation to not permitting things that looked like full automatic firearms?

**Mr Bouwhuis:** Sorry, on the import aspect they can consult with us. So they could send it through to the firearms team at the Attorney-General's Department, and they could provide advice on whether it falls to appearance based controls. In terms of the police certification test, that would be administered by the states and territories, so it would be a matter of consulting them. If you were looking to import in Victoria, you would contact the Victorian registry and have that conversation with them.

**Senator LEYONHJELM:** We are getting close to the end of my line here, but I think what you are saying is that there a is policy of the Commonwealth of not permitting Airsoft, which look like real firearms, if they are full automatic. If they don't look like full automatic, then it is up to the states. You are nodding; *Hansard* doesn't record nods, so if you could confirm that I have summarised it accurately.

**Mr Bouwhuis:** Yes, that is correct, Senator.

**Senator LEYONHJELM:** My question then is: isn't there a regulation or a clause in Customs regulations or import rules or something like that where a potential importer can say, 'Well, what do you consider to be a full automatic?' There are a lot of firearms that could be converted to full automatic and, of course, an AK47, which is the instance cited, has a selective trigger on it—the real one—so that it doesn't always fire full automatic. I am just wondering, how would a potential importer be able to know what might be or might not be permissible?

**Mr Bouwhuis:** If they are in doubt they could consult with us. If we had any issues, we could consult with the AFP, given their expertise in firearms, but on that aspect, if they consult with us in the first instance, we could get back to them with a view.

**Senator LEYONHJELM:** So, there is no regulation they can refer to in the first instance?

**Mr Bouwhuis:** It is item 12 of schedule 6 under the firearms regs which are administered by the Department of Immigration and Border Protection.

**Senator LEYONHJELM:** Right. In the interests of time, I will pursue this a little bit further. In the European Union, which is generally regarded as not particularly friendly to firearms, they have excluded Airsoft devices from the definition of a firearm because they regard it as harmless. Japan, which virtually bans real firearms, have done the same. Many people regard Airsoft as a harmless sport with children participating in it. Has the department's policy been reviewed since the 2010 statement, which I read out to you, from the Firearms and Weapons Policy Working Group? Has anyone in the department ever looked at Airsoft to your knowledge?

**Mr Bouwhuis:** Certainly, Senator, we look at these issues from time to time. We get a lot of inquiries about Airsoft, so it is something which we keep under active review. As I said earlier, there is a range of different Airsoft items ranging from the lower end, which you wouldn't consider a threat, to the higher end where they can obviously be used as weapons. High-pressured air can be used to fire a pellet at a high speed which can be fatal to a person. It depends on the item and how it is configured as to whether or not it is a danger to a person, and you would need to assess that with regard to the different items.

**Senator LEYONHJELM:** Alright. I am going to ask you to take on notice a request to provide evidence that there is such a thing as an Airsoft firearm which is potentially lethal and even potentially capable of serious injury. Could you take that one on notice and get back to me with advice as to what that constitutes because I have never heard of such a thing?

**Mr Bouwhuis:** Sure, I would be happy to, Senator.

**Senator LEYONHJELM:** Thank you. I look forward to receiving that. I will investigate the regulation that you mentioned and I will have another talk to you at future estimates after I've had some feedback from people in the states who are interested in the issue. Thank you for your time.

**CHAIR:** Thank you, Senator Leyonhjelm. We might go to a break for, say, 10 minutes. Before I do that, Senator Watt, you have some questions in group 2. We are advised that Senator Rhiannon has questions in group 2 and she's the only one registered as having questions for group 3, but I have just been told she's not available. So, just for management

purposes, can you give us an indication of whether you have a lot of questions for group 2 and any for group 3?

**Senator WATT:** I have a small number for both.

**CHAIR:** Okay.

**Senator WATT:** Maybe 15 or 20 minutes on each.

**CHAIR:** That is fine. Let's have an evening break for, say, 10 minutes and we will resume with Senator Watt on group 2.

**Proceedings suspended from 21:41 to 21:50**

**CHAIR:** I'll call back to order the Senate Standing Committee on Legal and Constitutional Affairs inquiry into the additional estimates for the current financial year. We are dealing with group 2 and will then go onto group 3.

**Senator WATT:** I might just ask a couple of quick questions about firearms, since we were dealing with that. Just to give people a heads up, probably next I will ask questions about cross-examination reform in the area of family law. Thanks for coming back. Sticking with firearms for a moment, I am not sure whether you've followed this debate, but in Queensland currently there have been a range of different ideas proposed around changes to gun laws in Queensland. In particular, one of the proposals that has been mooted involves changes to the laws concerning primary producers having renewals of handgun licences. I am not across the detail of this, but as I understand it the proposal is to provide for automatic renewal of handgun licences held by primary producers if they meet a basic fit-and-proper-person test. I think that's a bit of a change from the current situation, which also requires primary producers to demonstrate that they have a genuine reason to hold a concealable handgun before getting that licence renewed. As I understand it, the current law is if you are a primary producer and you have a handgun licence you can get a renewal by demonstrating that you meet the fit-and-proper-person test and by demonstrating that you have a genuine reason to have that handgun. The proposal is to remove the second limb so you would no longer need to prove that you have a genuine reason for having that handgun. Is that proposal something that has been considered by your agency?

**Mr Bouwhuis:** Thank you for the question, Senator. No, we haven't been asked specifically about that by the Queensland government. I must say I am kind of unaware of the details of that. I am happy to take that on notice if you wanted to have us respond on that one, but we haven't been consulted on that proposal.

**Senator WATT:** What would you envisage would be the risks? I suppose I am thinking about the proliferation of handguns and the gun crime that can follow from that. What would you consider would be the potential risks of loosening the laws concerning the renewal of handguns in that manner?

**Mr Bouwhuis:** As I've indicated, I'm not across the details of what's being proposed by the Queensland government. It would be something I would want to look at in more detail. Any position on what the Queensland government is doing with regard to firearms would obviously be a matter for the Queensland government to respond to.

**Senator WATT:** I don't think it is the Queensland government that is proposing the proposal that's being floated. I'm not familiar with all of the detail of national firearms policy,

but I presume that one of the principles that underpins various national firearms agreements is that it is a good thing for people to only have firearms—whether they be handguns or other firearms—if there is a genuine need, a genuine reason, for it. Is that one of those sorts of principles?

**Mr Bouwhuis:** Yes, that's the general principle—to see whether there's a genuine need. As you indicated, the National Firearms Agreement is obviously something agreed between all jurisdictions, which all states and territories have committed to abide by.

**Senator WATT:** If laws were changed to remove the need to prove a genuine need for a handgun prior to getting a renewal of a licence, would that potentially be in breach of any of the national agreements relating to firearms?

**Mr Bouwhuis:** I'm not sure I want to be definitive about something I haven't really had a look at.

**Senator WATT:** Sure.

**Mr Bouwhuis:** Obviously we, along with the states and territories, have agreed on the National Firearms Agreement, and all jurisdictions are committed to implementing it, and we would expect it would be implemented. To the extent that any proposal might be inconsistent with that agreement, that would be something that would be of issue to all jurisdictions.

**Senator WATT:** That's it in terms of firearms. My next questions were in relation to cross-examination reform. Do we have the right people?

**Mr Moraitis:** Not really, because that comes under the family law area, but we'll try to answer any questions as best we can.

**Senator WATT:** Sorry; that should have been under outcome 1, should it?

**Mr Moraitis:** Yes. If you want to ask questions about the process, we can try to answer them.

**Senator WATT:** Some of them are. Let's give it a go and see how we go.

**Mr Moraitis:** Mr Reid has joined us. He might have an insight as well.

**Senator WATT:** I understand that submissions in relation to the exposure draft of the Family Law Amendment (Family Violence and Cross-examination of Parties) Bill 2017 closed on Friday, 25 August 2017. Can you advise us what progress has been made in respect of that exposure draft?

**Mr Reid:** Yes, submissions closed on 25 August. We received 41 submissions in relation to that exposure draft and consultation paper. We're currently going through each of those submissions to try and work out the next steps. The larger question being asked through those submissions was in relation to, where direct cross-examination was to be banned, who should be appointed as an intermediary. That will be the biggest question that we need to work through, but we are still working through all of those 41 submissions.

**Senator WATT:** I might come to those topics in a moment, but just sticking to process: when do you think we can expect to see a bill tabled in the parliament?

**Mr Reid:** That would be a matter for the government's legislative priorities into the new year.

**Senator WATT:** But you think in the new year?

**Mr Reid:** I would have thought next year at some point.

**Senator WATT:** As to the proposal to have a court-appointed person ask questions on behalf of unrepresented litigants subjected to a cross-examination ban, what qualifications will that court-appointed person be required to have?

**Mr Reid:** That is an open question at the moment.

**Senator WATT:** The department hasn't got a current position?

**Mr Reid:** No, not until we've finished going through the submissions.

**Senator WATT:** You may have similar answers for these questions. What restrictions will be imposed upon the court's power to appoint such persons?

**Mr Reid:** That will be a matter we consider when we've finished the submissions.

**Senator WATT:** And again no preliminary position from the department?

**Mr Reid:** Not at this stage.

**Senator WATT:** What ethical obligations will apply to such court-appointed persons?

**Mr Reid:** The same again.

**Senator WATT:** It would be likely that there'd be some ethical obligations attached to that kind of role?

**Mr Reid:** Certainly some sort of obligation in some sense, yes.

**Senator WATT:** Something akin to an obligation to the court?

**Mr Reid:** That would seem sensible.

**Senator WATT:** Would you expect that a court-appointed person would be under any duty to the court?

**Mr Reid:** I think that's reasonable, but a final position will need to be reached after we've finished considering the submissions.

**Senator WATT:** What about a duty to the person on whose behalf they're asking questions? Would you consider that to be likely?

**Mr Reid:** I think that is an open question.

**Senator WATT:** So it's more likely there would be some form of duty to the court and it's less certain at this point whether there would be a duty in respect of the person?

**Mr Reid:** At the moment, everything is 'less certain' until we have finished the consideration of all of the submissions, but I think that is a reasonable assessment.

**Senator WATT:** Would you envisage this court-appointed person might come under some sort of duty to any other party or person in connection with the proceedings?

**Mr Reid:** That is probably an open question. There weren't a lot of submissions that raised 'other' obligations.

**Senator WATT:** So it's primarily thinking about duties to the court and to the person on whose behalf they are acting.

**Mr Reid:** Indeed.

**Senator WATT:** Will the person under the cross-examination ban have any say on who the court-appointed person is?

**Mr Reid:** That is an open question. There were submissions that went to that point.

**Senator WATT:** Were they all one way or the other or were there different views?

**Mr Reid:** I couldn't say.

**Senator WATT:** But there are pros and cons, as you see it?

**Mr Reid:** Yes.

**Senator WATT:** Do you expect that the court-appointed person would be paid?

**Mr Reid:** I'm not sure about that. I think that's probably still an open question.

**Senator WATT:** No real consideration's been given to that yet?

**Mr Reid:** Not that I'm aware of.

**Senator WATT:** What budget would there be to pay these people if it was decided they should be paid?

**Mr Reid:** I wouldn't want to hazard a guess.

**Senator WATT:** Would you expect that it would be something that would need to be funded by the courts?

**Mr Reid:** That's a hypothetical question at the moment.

**Senator WATT:** Okay. We await that with interest. My apologies if this also should have been under group 1. My next bracket of questions are about the National Domestic Violence Order Scheme. I understand that the CrimTrac pilot program for the National Domestic Violence Order Scheme was supposed to report back in 2016. Did that report occur?

**Mr Pahlow:** There was an initial prototype that had been worked on with funding from the Department of Social Services which was cancelled when the latest scheme started to be developed. Is that the one you're referring to?

**Senator WATT:** Yes, I think so.

**Mr Pahlow:** When the decision was made to just go with the schemes that are being put in place at the moment, that prototype work was cancelled. The funding for that was then contributed to the current scheme.

**Senator WATT:** So there was a CrimTrac pilot program that was operating a couple of years ago—

**Mr Pahlow:** Yes.

**Senator WATT:** and that got canned, did it?

**Mr Pahlow:** It got canned. It was a prototype involving three jurisdictions with an information-sharing system being developed to determine how that would work to then go back to state, territory and federal ministers to determine whether that was workable or not. That particular project was cancelled when the decision was made to go straight to the system that's in place now, which is an interim system to be put in place until the final system is launched in December 2019.

**Senator WATT:** When was that interim system established?

**Mr Pahlow:** I would have to take the exact time on notice.

**Senator WATT:** I'm actually just still trying to work out whether the pilot program that I'm referring to is what you've termed the interim process or the one that preceded it.



**Mr Pahlow:** There was the prototype initially, which I think was referred to as 'the prototype'. Then there was a further round of negotiations on model laws with states and territories and an agreement to implement model laws to automate domestic violence orders across jurisdictional borders. In order to implement that, a COAG agreement was achieved between states and territories in December 2015. That agreement involved setting up an interim system—

**Senator WATT:** Would that be the one that was to cost about \$3.3 million?

**Mr Pahlow:** No, that was the original prototype.

**Senator WATT:** Okay. Let's stick with the original \$3.3 million one. That was rolled out by CrimTrac and, I understand, was supposed to report back by 2016.

**Mr Pahlow:** Yes.

**Senator WATT:** What you are saying is that that got canned and was superseded by the—

**Mr Pahlow:** It was overtaken by the decision to put the current systems in place.

**Senator WATT:** Was there ever a report back in around 2016?

**Mr Pahlow:** Not one in 2016. I would have to take on notice whether there was any—there was, I suppose, an update to COAG more broadly, but I don't know whether that would be classified as a report back.

**Senator WATT:** What feedback was received in relation to that prototype?

**Mr Pahlow:** I don't know that it got far enough along in terms of being able to report back. That sort of work, as you mentioned, was due to be finalised by 2015-16, to come back to ministers for a decision—then whether they want to go with a full system. I don't think there was enough work progressed along to give that sort of feedback.

**Senator WATT:** You are saying it was overtaken? Was that partly because the prototype was considered to be not particularly effective?

**Mr Pahlow:** No, more because there was more agreement then on how we could proceed, and—number 1 and number 2—an interim solution leveraging off the National Police Reference System was developed that would enable the National Domestic Violence Order System to be put in place earlier. If we waited for the prototype system it would probably be 2020 or later before we actually had the scheme up and running. Therefore, with the interim system that's in place at the moment, and the national system, which is being developed by the ACIC at the moment, that would all come on board significantly earlier than if we stuck with the prototype, came back with ministers, got agreement, and moved forward onto a final solution.

**Senator WATT:** As at the present day we have this interim scheme?

**Mr Pahlow:** The Interim Orders Reference System, which is based on the National Police Reference System. It has a few limitations in that it shares information, so it doesn't support enforcement and information of an evidentiary quality. But that's at least enabling the National Domestic Violence Scheme to kick off and be in place until a broader national system that will provide that level of information is in place.

**Senator WATT:** So, the National Domestic Violence Order Scheme, as it has been bagged, is not up and running yet, because there's an interim process in place?

**Mr Pahlow:** An interim system is in place at the moment. A lot of work's happening within states and territories and between states and territories to get all the administrative arrangements in place. We are waiting on one last jurisdiction—Western Australia has its legislation before parliament at the moment—with a view of kicking it off on White Ribbon Day, 25 November.

**Senator WATT:** When would you expect the full National Domestic Violence Order Scheme to be up and running?

**Mr Pahlow:** The broader national system—the Domestic Violence Order Scheme will be up and running on 25 November. The broader more capable National Orders Reference System is targeted to be up and running by December 2019, although at the moment we're a long way from December 2019. Hopefully that's a target date that we can achieve—or shortly thereafter.

**Senator WATT:** You mentioned that some of the downsides in the current interim scheme are that police, I think it is, don't have sufficient information for evidentiary and enforcement purposes.

**Mr Pahlow:** The current system leverages off a national police information sharing system, and that system shares information only. A lot of the documentation around domestic violence orders that provide information on conditions, or further parties, or additional information like that, won't be available because of the limitations of field size and that sort of thing in this National Police Reference System that we're using in the interim. But that enables us at least to kick the National Domestic Violence Order Scheme off earlier than towards the end of 2019.

**Senator WATT:** Regarding the limitations around evidence and enforcement, they will continue to be limitations until the scheme is fully up and running in 2019?

**Mr Pahlow:** They will be limitations, yes. They will be limitations of the information sharing system—the interim system. What that means is that a police officer requiring that information will get an indication from the interim system that there is a domestic violence order and sufficient information on that domestic violence order to then be able to inquire to the relevant jurisdiction for further information. So, it's just a more convoluted process, but it means the scheme can be up and running.

**Senator WATT:** This might be another way of saying the same thing: I understand that the department—it might have been you—at an inquiry conducted by the Social Policy and Legal Affairs Committee said that this interim scheme is only able to share a limited amount of information and police would still be required to contact the relevant jurisdiction directly to receive sufficient information. Is that another way of describing these evidentiary and enforcement issues?

**Mr Pahlow:** That would have been me. That's the same issue that we've just been talking about.

**Senator WATT:** What is the government doing to protect victims of domestic violence in the meantime—to protect them both from violence and from the limitations in the current system?

**Mr Pahlow:** In the 'meantime' being between when the interim system kicks off on 25 November and—

**Senator WATT:** Yes.

**Mr Pahlow:** The effect will be much the same because information will be automatically available to police officers and courts, et cetera, through the interim system. It's just that they will have to make further inquiries. Rather than getting all the information from the systems straight away that they need, all the information on that domestic violence order, they will have to make further inquiries if they need further information. If all they're interested in is whether or not there is a domestic violence order out on an individual—say they're attending a call-out to a residence late at night and all they want to know is whether or not there's a domestic violence order relating to someone there—they will be able to get that information. If they want further information about conditions on it, whether there's a no-approach order or other conditions on the order, then they will need to go to the relevant jurisdiction to get that further information. So that's the major limitation on the scheme at the moment, which, of course, puts additional impact and resource on law enforcement, but it means they do have that information available, whereas, at the moment, they don't.

The other important aspect of the new system is it supports the model laws, and the key aspect of the model laws is it means that a domestic violence order taken out in one jurisdiction is automatically registered in all other Australian jurisdictions, which addresses a range of issues for victims of domestic violence in that they might not be aware that their domestic violence order isn't automatically registered. Currently, they have to take it to a courthouse in the other jurisdiction and manually register it themselves. There might be a range of other reasons they don't want to register it themselves, too—for instance, the fear that it will identify where their current location is to the perpetrator, or some issue like that.

**Senator WATT:** I just had a couple of quick policy questions around domestic violence. Are you in a position to answer those? Are there other people, or have they departed?

**Mr Pahlow:** If they're more family violence, then it's not us. If it's more about how states run domestic violence—

**Senator WATT:** It's probably more policy relating to family violence. Is there anyone still here who's in a position to answer those?

**Mr Moraitis:** Mr Reid, if you could—

**Senator WATT:** Sorry, I've had this in the wrong section. I'm sorry if I've missed the right people. Thanks, Mr Reid, for coming back again. Obviously, the issue of family violence is something that has attracted a lot of attention, particularly in recent years. There's a range of views about what we should do to deal with this. I'm not sure if you've seen this, but there have been some proposals put recently that the law should be altered to open up access to fathers in the event of a marriage breakdown, even where a court has awarded an emergency protection order. So, currently, it's obviously a lot more difficult to obtain access if an emergency protection order has been issued as a result of family violence. And there have been some proposals that that should be revisited and that fathers who are the subject of those kinds of orders should be able to have more access to their children, despite those orders. From a policy point of view, can you see any risks to children or family members from widening access in those circumstances.

**Mr Reid:** I have seen that media reporting in the last week or so which makes those suggestions based on some of the difficulties of obtaining relevant evidence in those cases. It's

not something that we have looked at in the department, as far as I'm aware. I wouldn't want to hazard an opinion on it.

**Senator WATT:** You mentioned that in conjunction with this there's been a bit of a debate about the type of evidence that should be provided and that it has been advanced by some people in this debate that women who are seeking to limit access to children by fathers who are the subject of these types of orders should be required to prove their claim with evidence of injuries or medical files. Is that something that you would consider to be best practice in setting out policies that courts should be observing?

**Mr Reid:** Sorry, Senator, what aspect as best practice? Access to evidence?

**Senator WATT:** Changing the evidentiary burden, I suppose, on women in a case that is concerning access to children, requiring women to demonstrate injuries or produce evidence in their medical files before fathers who are the subject of these domestic violence orders should have restricted access to their children.

**CHAIR:** I don't want to interrupt at this stage of the night—I hoped we might be finished by now—but asking an official whether he thinks that this is best practice—

**Senator WATT:** I suppose I am just asking for a policy opinion or policy position of the department.

**CHAIR:** The policy position of the department is what the government has done.

**Senator WATT:** But the department prepares policy options and positions for government.

**CHAIR:** Yes, but you are asking the officer what he thinks is the best practice and it's difficult for the officer.

**Mr Moraitis:** Senator, the department hasn't formulated a policy position on this.

**Senator WATT:** Thank you. That's fine. I think that brings me to the end of group 2.

**Senator HUME:** Through you, Chair, I want to ask a particular question. I think maybe I have missed my opportunity. I might have mucked up my programs. I want to ask a question about the same-sex marriage survey—the safeguards bill that was introduced. Has the Attorney received any complaints following the introduction of that safeguards bill? I'm not sure what program—

**Senator Brandis:** What are you referring to, Senator Hume?

**Senator HUME:** The same-sex marriage survey which introduced the safeguards. I want to know whether you received any complaints following the introduction of that safeguards bill?

**Senator Brandis:** There is a section of the safeguards bill, section 15, which provides for a civil penalty for conduct which vilifies, intimidates or threatens to cause harm to a person on the basis of their views on the marriage law survey, and various other grounds as well, which, you will recall, was introduced by the Acting Special Minister of State because it was said by some people that Australians couldn't have a respectful debate about same-sex marriage.

**Senator HUME:** Just so.

**Senator Brandis:** That section contained an unusual, though not entirely unknown, provision requiring the consent of the Attorney-General before any proceedings were brought against a person under it.

**Senator HUME:** Have you given any consent?

**Senator Brandis:** I have not been asked to consent to a single proceeding—not one. I understand the department has received a relatively small number of complaints, which it assessed did not meet the conditions of the section. But not one complaint has been sent to me by the department as answering the description of the provision, asking for my consent or otherwise for a proceeding. Senator Hume, if I may say so, it just goes to show that all of those people like Senator Wong and people on the left who said that we couldn't have a respectful debate about the issue of same-sex marriage without vilification have been proven to be completely wrong—just as people like, for example, Mr Andrew Bolt and people on the right wing of this debate who said that section 15 was an even more egregious limitation on freedom of speech than section 18(c) of the Racial Discrimination Act have been proven to be completely wrong. We now know as of today that 74.5 per cent of Australian electors have returned their marriage survey forms and by the time the postal survey closes one would expect that number to be higher—perhaps close to 80 per cent. It is a remarkable result and a huge success and vindication of the policy.

But the point I make to you is that those, whether they be from the left or the right, who denied that Australians could go about this debate respectfully and without vilifying each other have been demonstrated comprehensively to be completely wrong. Not a single complaint answering the description in this section has been received—not one.

**Senator HUME:** Thank you, Attorney. Chair, I have some questions on group 3 but I haven't any further questions on group 2.

**CHAIR:** Okay. We have finished with group 2. Any relevant officers are free to leave as far as the committee's concerned. We now move to group 3, national security Attorney's department, national security and criminal justice, and Australian government disaster financial support. Senator Watt, I might start with you and then go to Senator Hume.

**Senator WATT:** I just have some questions coming out of the recent COAG agreement around identity matching services. I think there has been some concern raised in the community as to potential infringements on right to privacy and what safeguards will be in place around these new laws, particularly—

**Senator Brandis:** Are you talking about the biometric identification?

**Senator WATT:** Yes, I was just going to say particularly in relation to facial biometric matching. Obviously, all around Australia we see the increasing use of CCTV cameras, whether it be by private businesses, police or governments. How will this new database be reconciled with people's right to privacy?

**Senator Brandis:** The department will no doubt be able to provide you with some more detailed information about operations or how it will operate, but please let me respond by making these observations: what this is about is interpreting data that is already available by matching it. I do not understand the argument that that is a privacy concern. There is, as you know, quite extensive CCTV surveillance of public places in Australia. I would have thought that privacy advocates, if they want to complain about something, might complain about the

fact that the surveillance is taking place at all. I myself think it's a good thing, for obvious law enforcement reasons, that we do have that capability. But, given that the surveillance is taking place and the data is recorded and available, this is merely about facilitating the identification and the accurate use of that data. So how this is a privacy issue, I'm afraid, is lost on me. If it is okay to harvest the data, surely there can be no objection to using it or interpreting it. That's the general policy response, but perhaps Ms Harmer or others at the table can explain how this will operate in a more practical way.

**Ms Harmer:** If I could add to the Attorney's comments, a couple of observations about the services that were discussed at the COAG meeting and which were, ultimately, endorsed through the signing of an intergovernmental agreement, the identity-matching services that will be provided relate to both the potential for face-verification services and face-identification services to be provided to support identity security and protection and to support legitimate law enforcement and security outcomes.

In terms of the specific privacy question, there are a couple of observations that I would make about the operation of the system but also the means through which identity-matching services would be accessed. I think the most important one is that all access to identity-matching services would require a lawful basis for collecting and using images in the same way that occurs now. Images are stored by a range of agencies who provide identity documents, and access to those images requires a lawful basis for access to be provided.

**Senator WATT:** Does that mean for an agency to conduct some real-time facial recognition—you need a lawful basis to do that. Does that suggest some sort of a warrant would be required?

**Ms Harmer:** There would be a range of mechanisms under which information can be shared. There is existing legislation which governs the sharing of information, so there is not a single answer to that question. If I could just take you back to your point about real time, the service itself is about identity matching. And while that could be done faster, there have been some misconceptions about real-time surveillance of crowds and such like. The service that's being provided is one under which an image can be matched to verify the identity of a person, or to identify a person, but that real-time concept relates to the checking to be able to occur faster than current processes, which involve the manual transfer of an image and the comparison of it to existing holdings.

**Senator WATT:** As a layperson, the current process sounds to me as if—whether it be photographs or emails between different state and Commonwealth agencies or however they are actually transmitted—is that the case, at the moment, that images are transmitted from one agency to the next? And can you explain how exactly it will work in the new system?

**Ms Harmer:** That's correct. The new system will provide an access mechanism for that matching to occur, so it would already be the case that an agency might require an image to be matched, and it would do that more manually, and this system would provide what we can describe as a hub-and-spoke model. My colleague, Mr Rice, can provide more detail about the design of the system and I might hand over to him in a moment. Before I do so, I want to draw attention to a couple of pieces of information that are publicly available, in relation to the design of the service and privacy impact assessments that have been done, to support the design of the facial biometric matching services that have been agreed. Those are available via the Attorney-General's Department website.

In addition to the design, which Mr Rice can provide some comments on in a moment, it is also the case that participation in the services would still be required to be underpinned by formal data-sharing agreements between the providers of the images and the users of those images, which again will provide a series of safeguards and ensure that the capability is used in accordance with existing lawful processes.

**Senator WATT:** Mr Rice, this might be what you are going to, but is the new system going to involve officers within security agencies literally sitting by a computer or TV screens, watching someone walk down the street and saying, 'That person looks a bit interesting; let's take a snapshot of them,' plugging it into the computer and seeing what shows up on state and territory agencies? Is that how it would work, or am I getting it wrong?

**Mr Rice:** There is a range of potential uses. Ms Harmer mentioned the face-verification service, which is a one-to-one matching service. It's a verification—I want to verify that you are who you say you are and you have proffered an image of yourself, and I'm comparing it against the record—so that's a one-to-one check. We would expect that to be the vast bulk of the system's use. The face-identification service is the unknown-person's service. We would see that operating in a range of settings, but it's mostly an intelligence and investigative tool, so it's probably more of an after-the-fact issue. Say a police surveillance team takes a photo of a group of people and wants to identify an unknown person; they have the ability to match that image against the image holdings from Immigration, passports and drivers licences. That notion of that real-time assessment of images and clipping out, we would think is unlikely. The system, as Ms Harmer was saying, is not geared towards that. It actually requires an image to be taken out of the stream of image, and then to be placed into the system. So, as to the notion of real-time monitoring of CCTV, whilst it is possible, the system is not geared for it; it must have the image extracted and then matched against the holdings.

**Ms Chidgey:** It's also worth mentioning that that face identification service would have more limited uses for community safety, like identifying a missing person or more serious offences. So the kind of use you described, it wouldn't cover.

**Senator WATT:** But you don't envisage a situation where a security agency would be accessing footage of what's going on in Civic right now or, in Brisbane terms, the Queen Street Mall, or Pitt Street mall or anywhere, and be watching that to find a particular person at that moment in time? You think it's more likely to be an after-the-fact use?

**Senator Brandis:** That's the way it works. That's the point I was trying to make to you. This is merely about appreciating data that is already derived.

**Senator WATT:** I thought what you meant was that state and territory agencies, for instance, have drivers licence photographs and this is about facilitating more speedy access from Commonwealth agencies.

**Senator Brandis:** It could work in that way, too, but my point is: we are merely talking about the more expeditious or swifter identification of images that have already been derived.

**Senator WATT:** But you acknowledge, Mr Rice, that it is possible under the system for that more colloquial real-time analysis to be conducted? You wouldn't envisage that it would be used that way, but it is possible for it to be done?

**Mr Rice:** It's possible. There are a few limitations. Facial recognition, to be effective, needs a good quality image, and a face-in-the-crowd video image is, by necessity, generally

poorer quality. The biometric technical experts talk about 'pose'. You have to be looking at the camera and so forth. The difficulties with that real-time assessment are: you're getting a range of poor quality images. So there is much more efficiency and effectiveness in terms of taking an image, and using technology to make it a better quality image and then querying it. It's a bit of a garbage in, garbage out type problem. Poor quality images get bad results. That's why we're not foreseeing it being that real-time.

**CHAIR:** Senator Watt, unless you're nearly finished, I will go to Senator Hume for a couple of questions.

**Senator WATT:** I probably will need a bit more time.

**Senator HUME:** I only have a couple of questions regarding the review of espionage and foreign interference laws. My understanding is that, in May this year, the Prime Minister asked you, Attorney, to conduct a review of Australia's espionage, foreign interference and related legislation. I'm wondering if you could provide the Senate any information about that review and its progress?

**Senator Brandis:** Well, the review is—I was going to say 'well advanced', but it's effectively complete. It was a very substantial body of work by officers of my department, led by Tara Inverarity and her team. It involved meetings with Five Eyes partners, including: I spent a whole afternoon with the Department of Justice in Washington in July with all of their lawyers who administer their Foreign Agents Registration Act, and officers of the department also travelled to the United States for a similar purpose, and longer sessions with them, and I also discussed the matter with other Five Eyes partners as well. Australia is determined to develop world-leading espionage and foreign interference laws, and that is what we are doing. The final drafting instructions were given to the Office of Parliamentary Counsel—how long ago? Two weeks ago?

**Ms Inverarity:** Two or three weeks ago.

**Senator Brandis:** About two or three weeks ago. That's been an enormous body of work. It's involved many, many hours of meetings between me and officials of my department and lawyers from ASIO and the AFP, in particular. Subject to final sign-off from cabinet, I intend to introduce the bill in this sitting.

**Senator HUME:** Excellent. There was some inference that the catalyst for the review was a *Four Corners* program. I would assume, if the Five Eyes were involved and there was the extent of work that you've described to us, that it would take more than an ABC expose to initiate work of that magnitude.

**Senator Brandis:** There was a very attention-getting and interesting *Four Corners* program about foreign interference, particularly Chinese foreign interference, that went to air in about June or July, but the Prime Minister, on the basis of discussions that we'd had earlier, asked me to embark on this very large body of work by a letter which he sent me on, I think, 17 May—it was certainly in May. By the time the ABC *Four Corners* program went to air, the work was very well advanced. In fact, I'm reasonably certain in saying that the *Four Corners* program went to air sometime in July or perhaps August, because, by the time it went to air, I'd already had the meetings in Washington with the Department of Justice that I've described. So did this body of work have anything to do with the *Four Corners* program? Absolutely nothing whatsoever.



**Senator HUME:** That's answered my question—

**Senator Brandis:** Sorry, let me correct that. I think I said the Prime Minister's letter to me was on 17 May. It was in fact 12 May.

**Senator HUME:** Thank you for that clarification, Attorney.

**Senator WATT:** Coming back to the biometric matching issue, Ms Harmer, we touched on this in passing. You mentioned that a lawful basis would be required to conduct this sort of facial recognition. I didn't quite catch whether you said that a warrant would be required.

**Ms Harmer:** I think I said that existing lawful processes would be required. Matching doesn't necessarily require a warrant but, rather, matching processes about the exchange of information. There are a range of laws that govern the exchange of personal information and a person's biometrics is personal information, so existing laws around exchange of personal information would be applicable, including the Privacy Act but also the laws that regulate the activities of agencies. It would depend on the circumstances, but it would not necessarily be a warrant; it would be a range of existing lawful processes that would be applicable.

**Senator WATT:** What sorts of additional safeguards and oversight mechanisms are you giving consideration to putting around this new system?

**Ms Harmer:** There are actually a very significant number. We can talk about the design of the system—Mr Rice can talk about the design, which is a very significant feature of it. We know it as by privacy by design, where the system itself, in terms of the exchange of information, has had privacy built in from the outset around how images are exchanged and who has access to images. An important point there is that the department itself does not have access to or store copies of images, which are, in the case of Commonwealth images, held by their respective agencies, but rather provides effectively an exchange service to channel queries and channel responses backwards in return. So there are the design aspects of the system itself.

I mentioned previously the participation agreements that would be required to support access. In relation to the sharing of information, there would need to be agreements between the holders of biometric images and those agencies who need to access that, and that will regulate the terms and conditions of access. You have already alluded to the intergovernmental agreement that was executed at COAG a few weeks ago. That in itself actually outlines a number of principles that would limit the use of the services. In particular, Ms Chidgey has referenced the fact that the identification service, which is that 'unknown person, identify a person' type of request, would be more limited and limited to a specific set of uses around law enforcement and community safety uses. As I said previously, there is no enhancement to powers so much as reliance on existing lawful processes. So we're enhancing access but relying on existing legislative mechanisms.

**Mr Moraitis:** Correct me if I'm wrong, Ms Harmer, but I think Privacy by Design also involved consultation with the privacy commissioner at various stages of this process.

**Ms Harmer:** Yes, and with privacy commissioners nationally, I should say. There have been a range of fora. We've consulted with the Office of the Australian Information Commissioner at the Commonwealth level and, because this is a national service, have involved consultation with state and territory privacy commissioners as well.

**Senator WATT:** In the interests of the time, I won't ask anything more about the privacy safeguards, but are there some documents that are publicly available that spell out in more detail some of the safeguards that you're considering?

**Ms Harmer:** Yes, indeed there are. There is a range of information on the Attorney-General's Department website which includes information about the services offered and the design of the system but also publishes privacy impact assessments. I say 'assessments' in the plural because there have been multiple over the course of the development of the services, and those are available via the department's website.

**Senator WATT:** Okay. This facial biometric matching—what is the type of law enforcement activity that it can be used for? Is it restricted to concerns around terrorism, or are there wider purposes as well?

**Ms Harmer:** In terms of the facial identification services, the intergovernmental agreement specifies that it should be used for the investigation of crime punishable by not less than three years imprisonment, so it sets a threshold around serious crime. I should say that a focus has been on the use in criminal matters, but of course a key purpose of identification services is to enhance identity protection to provide greater identity security. So our use is obviously in the national security and law enforcement community, but an important feature of it is to enhance identity protection.

**Senator WATT:** Sadly, in Australia's history, we have seen some governments that have used the state to suppress protest, whether that be around workplace protests, environmental protests or pro-democracy protests. From time to time we have seen governments that have facilitated legal action against protesters in those sorts of settings, and sometimes those protests, if deemed illegal, have been able to result in jail terms. If we were to have a government in the future in Australia or a state that took that kind of an approach, would it be able to use this facial-biometric-matching system to identify protesters at that sort of peaceful protest?

**Ms Harmer:** I think there are two elements to that question, in terms of what identification services are capable of and then what the uses of the system might be. As I mentioned previously, the uses of the system are limited by existing lawful authority. So the system itself is not creating a greater power or ability to exchange information or identify persons than otherwise exists but is rather providing a mechanism for facial matching. In terms of what facial biometric technology is capable of doing, it is capable of matching images and identities, but the system itself requires authority and will require entry of records around who was the authorising officer and what the purpose of the use was, and those are governed by the intergovernmental agreement.

**Senator WATT:** But, were we to have a government in the future in Australia, whether at a federal or a state level, that took a more hardline approach to protests for whatever purpose and had laws that allowed for those types of jail terms, it is possible that this kind of technology could be used to identify people participating in those kinds of protests?

**Ms Harmer:** I think your question goes to a hypothetical around the legislation that would either criminalise particular acts or enable information sharing. The system allows biometrics to be matched in circumstances where there is an existing lawful authority. That is probably the best I could say there.

**Senator Brandis:** It could be done at the moment, albeit more laboriously, whenever, for example, a CCTV image is captured, which is the point both Ms Harmer and I have been making to you—that this is about the more efficient and swifter use of an existing technology. But the point is the way in which that technology is allowed to be used, and the case you've quoted is not one of the ways in which it is proposed this technology should be allowed to be used. That's not the purpose.

**Senator WATT:** I'm not suggesting that the current government would want to do that, but you and I both know, coming from Queensland, that we have seen governments in Australia's history that have taken a bit of a different approach.

**Senator Brandis:** Well, I remember reading, when I was studying political science at the University of Queensland, about the Labor government of Premier Cooper or Hanlon, who bashed a member of the state parliament, the member for Bowen, to within an inch of his life because he was protesting in a protest march in the 1940s against the Labor government. So you are right, Senator, sadly.

**Senator WATT:** You will notice, Senator Brandis, that I was not the one to make a partisan point there. I wasn't talking about governments of any persuasion.

**Senator Brandis:** No, I was just calling to mind—

**Senator WATT:** You went there, so good for you.

**Senator Brandis:** the most infamous example I can think of.

**Senator WATT:** Sure, the most infamous Labor example.

**Senator Brandis:** Mr Fred Paterson, I think it was—

**Senator WATT:** I know exactly who you mean.

**Senator Brandis:** who was bashed to within an inch of his life on the instructions of the Cooper or Hanlon Labor government in Queensland.

**Senator WATT:** You're right. Were we to see a draconian Labor or conservative government in the future, the concern that some people have voiced is exactly what you have identified: that this does allow for the faster analysis and transmission of facial images which, falling into the wrong hands, could be used to antidemocratic ends.

**Senator Brandis:** Senator Watt, you're right, but it's a debating point, because you could say that about any technology, can't you? You can say about any technology that, if it fell into the wrong hands, it could be abused.

**Senator WATT:** Sure, but I think you'd have to agree that—

**Senator Brandis:** Are you being some kind of 21st century King Canute here?

**Senator WATT:** I've never thought of myself in those terms.

**Senator Brandis:** Seriously, you're not going to stop the advance of technology, are you?

**Senator WATT:** No, I'm not arguing that. What I'm asking about is safeguards.

**CHAIR:** Can we have a question?

**Senator Brandis:** And we've explained the safeguards to you. The point is that, as Ms Harmer as explained in great detail, part of this package is to hedge it in with very strong safeguards.

**Senator WATT:** Is there any change proposed to how CCTV footage would be stored?

**Ms Harmer:** Not as a result of this capability, no.

**Senator WATT:** My understanding is that it's proposed that private companies, whether they be banks or others who conduct this sort of CCTV footage, as well as government agencies such as Centrelink, would also be able to connect to the database, as long as they have approval from a state or territory minister. Is that correct?

**Ms Harmer:** That's correct. There are two separate questions in that, though. You have named government agencies and the private sector.

**Senator WATT:** Yes.

**Ms Harmer:** We are certainly exploring the extent to which the private sector could use a verification service in future. I quite deliberately said 'a verification service', because the services we're speaking about with facial image matching relate to verification of the identity of a person and identification of an unknown person. Business and the private sector have a need and, indeed, a statutory obligation in some instances to identify the persons that they are dealing with, and so we are certainly exploring the extent to which the private sector may be a user of the face verification services at some point in the future.

**Senator WATT:** Under the current system, does the private sector have the ability to exchange images with agencies now?

**Ms Harmer:** Can I just add a couple of things. The private sector is a user of the existing Document Verification Service. You might be familiar with the Document Verification Service, which allows either a government agency or a private sector entity to verify the identity of a person by checking the authenticity of an identity document which they have been provided. The other thing that I would add is that the intergovernmental agreement envisages the potential for but would require the agreement of states prior to any use of the verification service more broadly than is currently set out in the agreement.

**Senator WATT:** Beyond state, territory and Commonwealth agencies and the private sector, are there other potential users of biometric matching services—overseas governments, for instance?

**Ms Harmer:** That is not something that is contemplated this time, no.

**Senator WATT:** My concern around the private sector is partly around the greater risk of hacking into systems and the potential misuse of images by people hacking into private sector databases and technology systems. There are risks around identity theft, among other things. How is it intended to guarantee the security of that information from hacking, given the exposure to the private sector?

**Senator Brandis:** It is a very important observation that you make, Senator Watt. That is why the Australian government has a cybersecurity strategy, and the policy lead is with the Department of the Prime Minister and Cabinet, in which the Attorney-General's Department has a very large degree of involvement. I can take you through the elements of the Australian government cybersecurity strategy if you like, but the very problem you identify is something of which this government is acutely aware and on which we have been very, very nimble and ahead of the game, if I may say so.

**Mr Moraitis:** Senator, you mentioned identity fraud as a consequence of this. I would suggest that one of the benefits of this process is that individuals who have to prove their identity to a bank or others can be expedited through this process. It is a big problem where people spend a lot of time trying to show to someone they are actually so-and-so that they assert to be because their identity has been taken by someone else. So this system will benefit those people.

**Senator WATT:** On the proposals around pre-charge detention, I can understand that there might be some benefit in some further consistency around the period of pre-charge detention between the Commonwealth and the states. Why was the longest current period selected as the basis of the agreement?

**Mr Coles:** That model was a model that was developed by the department in consultation with state and territory officials, and it was the model that officials collectively put to first ministers for consideration at the COAG meeting.

**Senator WATT:** But why was this one chosen? Why this period rather than some of the others?

**Mr Coles:** It was in part advice from agencies to reflect their operational requirements.

**Senator WATT:** Security agencies?

**Mr Coles:** Yes, police in AFP but police in states and territories as well.

**Senator WATT:** Has such a long period ever been required in any previous investigations? My understanding is it is proposed to be 14 days? Have previous investigations ever used a 14-day pre-charge detention period?

**Mr Coles:** That might be a question best put to the AFP. I think I am right in saying, although I would want to reserve the option of correcting this, that in the case of Operation Silves that was referred to earlier, the ultimate period of detention for at least two of those individuals was about 10 days. But your question about whether any investigation has required a period of 14 days is something I would have to take on notice and consult.

**Senator WATT:** I think Senator Brandis has the answer.

**Senator Brandis:** I can confirm that. Can I make this point to you, Senator. We're talking about a maximum here and obviously a maxima only applies in the rare case where that maximum may be needed for the purposes of the investigation. The initial period of detention is not 14 days but eight hours. So you start from the baseline of an initial period of detention of eight hours and then an application may be made to a magistrate to extend that period for up to seven days against certain specified statutory criteria. Then, in a rare case where the magistrate is satisfied to a higher threshold of satisfaction, a second application can be made for a further period of seven days. Just as in any legal proceeding there are minima and maxima and the maxima are for the hardest cases, the maximum chosen here, the 14 days, is not the typical period. The typical period is the initial period of eight hours, but with a capacity, judicially supervised against statutory criteria, and in the event of a second application against a higher threshold for not more than 14 days.

**Senator WATT:** Would that maximum 14-day, pre-charge detention period apply to children as young as 10?

**Senator Brandis:** It applies to people to whom it applies—that is, people who are subject to the criminal law. The age of criminal responsibility in the various states is different, but in some states it does apply to people as young as 10 years of age.

**Senator WATT:** Which states are they?

**Senator Brandis:** Let me just check that. I will get some advice on that, but I am advised that in at least one state it is 10 years. The principles of criminal responsibility are the same.

**Senator WATT:** In that state where the age of criminal responsibility is 10, if we're talking about a 10-year-old in that state about whom there is a suspicion, they could be detained for up to 14 days?

**Senator Brandis:** If the statutory criteria were met, but as well—and it's important to make this point—where one is dealing with the pre-charged detention of children under the age of 18 years, there are special protective provisions in operation because of their age.

**Senator WATT:** My understanding is that there have been different answers about this issue from different ministers. I think Minister Keenan has said that it is conceivable that this could apply to children as young as 10, but I think the Prime Minister has said that is not the case. You are saying it depends on—

**Senator Brandis:** I'm not familiar with the statements you're quoting. My point is that this is not a function of this legislation; it is a function of the ordinary law of criminal responsibility. It applies to a person charged with a relevant offence who is otherwise criminally responsible. There are special provisions for people to protect people under the age of 18.

**Senator WATT:** It might be that in at least one state 10-year-olds can be convicted of a criminal offence, but this does amount to a change if what we're talking about is subjecting 10-year-olds in that state to up to 14 days of pre-charge detention.

**Senator Brandis:** As I said, Senator, you seem to be disregarding it—subject to special protections, which wouldn't, by the way, necessarily apply if a very young person were charged with an ordinary crime because they had reached the age of criminal responsibility and were being dealt with in the Children's Court. But there are special provisions, just as there are special provisions, by the way, in relation to Commonwealth control orders that apply to people under the age of 18 in acknowledgement of the fact that it is a special case.

**CHAIR:** We might have to leave it there. Any other questions will have to be placed on notice. I want to thank the Attorney-General and his department for their assistance today. I thank my colleagues, particularly Hansard and the secretariat for their assistance

**Committee adjourned at 23:00**