



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

LEGAL AND CONSTITUTIONAL AFFAIRS
LEGISLATION COMMITTEE

Estimates

TUESDAY, 27 FEBRUARY 2018

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SENATE

LEGAL AND CONSTITUTIONAL AFFAIRS LEGISLATION COMMITTEE

Tuesday, 27 February 2018

Members in attendance: Senators Cameron, Dodson, Hanson, Hinch, Hume, Leyonhjelm, Lines, Ian Macdonald, McKim, Molan, Patrick, Pratt, Rice, Siewert, Steele-John, Watt, Whish-Wilson, Wong.

HOME AFFAIRS

In Attendance

Senator Cash, Minister for Jobs and Innovation

Senator McKenzie, Minister for Regional Communications, Minister for Rural Health, Minister for Sport

Senator Seselja, Assistant Minister for Science, Jobs and Innovation

Department of Home Affairs

Mr Michael Pezzullo, Secretary, Home Affairs Portfolio

Ms Rachel Noble PSM, Deputy Secretary, Executive

Ms Linda Geddes, Acting Deputy Secretary, Policy

Mr Steven Groves, Acting Deputy Secretary, Corporate, Chief Operating Officer

Ms Maria Fernandez PSM, Deputy Secretary, Intelligence and Capability

Ms Malisa Golightly PSM, Deputy Secretary, Visa and Citizenship Services

Mr Paul Grigson, Deputy Secretary, Home Affairs Programmes

Mr Tony Sheehan, Deputy Secretary, Commonwealth Counter-Terrorism Coordinator

Mr Alastair MacGibbon, Deputy Secretary, National Cyber Security Adviser/Head of the Australian Cyber Security Centre Commonwealth Cyber Coordinator

Mr Mark Carroll, First Assistant Secretary, Strategic Policy

Ms Shannon Frazer, First Assistant Secretary, Executive Coordination and Services

Mr Lachlan Colquhoun, First Assistant Secretary, Countering Violent Extremism Centre

Ms Cheryl-anne Moy, First Assistant Secretary, Integrity, Security and Assurance

Mr David Wilden, First Assistant Secretary, Immigration and Citizenship Policy

Mr Hamish Hansford, First Assistant Secretary, National Security and Law Enforcement/First Assistant Secretary, Enterprise Strategy, Reform and Performance, Chief Risk Officer

Mr Andrew Chandler, Acting First Assistant Secretary, Traveller, Customs and Industry Policy

Mr Anthony Seebach, Acting First Assistant Secretary, International

Mr Ben Wright, First Assistant Secretary, Corporate Services

Mr Murali Venugopal, First Assistant Secretary, People

Ms Stephanie Cargill, Acting First Assistant Secretary, Finance, Chief Finance Officer

Ms Pip De Veau, First Assistant Secretary, Legal, General Counsel

Mr David Nockels, First Assistant Secretary, Detention Services

Ms Claire Roennfeldt, Acting First Assistant Secretary, Children, Community and Settlement Services

Ms Elizabeth Hampton, First Assistant Secretary, Health Services and Policy

Mr Tim Catley, First Assistant Secretary, ICT, Chief Information Officer

Mr Cameron Ashe, First Assistant Secretary, Intelligence

Mr Michael Milford AM, First Assistant Secretary, Major Capability

Mr Joe Franzi, First Assistant Secretary, Identity and Biometrics

Mr Steven Davies, First Assistant Secretary, Data Management

Ms Christine Dacey, First Assistant Secretary, Visa and Citizenship Management

Mr Luke Mansfield, First Assistant Secretary, Refugee and Humanitarian Visa Management

Ms Peta Dunn, First Assistant Secretary, Community Protection

Mr Andrew Kefford PSM, First Assistant Secretary, Visa Delivery Transformation

Ms Sachi Wimmer, First Assistant Secretary, Office of Transport Security

Mr Mark Crossweller, First Assistant Secretary, Emergency Management Australia

Mr Pablo Carpay, First Assistant Secretary, Critical Infrastructure Centre

Mr David Chick, Assistant Secretary, Counter-Terrorism Policy, Centre for CT Coordination

Ms Sandra Ragg, Deputy National Cyber Security Adviser, Cyber Security Policy

Mr Damien Kilner, Assistant Secretary, Visa and Citizenship Management Division

Australian Border Force

Mr Michael Outram APM, Acting Commissioner, Australian Border Force

Mr Clive Murray, Acting Deputy Commissioner, Operations

Ms Mandy Newton APM, Deputy Commissioner, Support

Ms Erin Dale, Assistant Commissioner, Border Management

Ms Rachel Houghton, Assistant Commissioner, Operational Practices Command

Mr Stephen Hayward, Assistant Commissioner, Close Support Command

RADM Peter Laver, Commander, Maritime Border Command

Ms Kaylene Zakharoff, Assistant Commissioner, Strategic Border Command

Mr Kingsley Woodford-Smith, Assistant Commissioner, Detention and Offshore Operations

Ms Sharon Huey, Assistant Commissioner, Enforcement Command

AVM Stephen Osborne AM CSC, Commander, Operation Sovereign Borders JATF

Australian Criminal Intelligence Commission

Mr Michael Phelan APM, Chief Executive Officer

Ms Nicole Mayo, Acting Chief Operating Officer

Ms Rochelle Thorne, Executive Director Technology

Mr Col Blanch, Executive Director Operational Intelligence

Mr Jeremy Johnson, National Manager Strategic Policy and Engagement

Mr Matt Jones, Chief Technology Officer

Australian Institute of Criminology

Mr Michael Phelan APM, Director

Dr Rick Brown, Deputy Director

Australian Federal Police

Mr Andrew Colvin APM OAM, Commissioner

Ms Sue Bird, Chief Operating Officer

Ms Leanne Close APM, Deputy Commissioner Operations

Mr Ramzi Jabbour, Deputy Commissioner Capability

Mr Ian McCartney, Acting Deputy Commissioner National Security

Mr Peter Gunning, Chief Financial Officer

Mr Nigel Ryan, Acting Assistant Commissioner, Reform Culture and Standards

Committee met at 09:00

CHAIR (Senator Ian Macdonald): Morning all. I reopen this hearing of the Legal and Constitutional Affairs Legislation Committee inquiring into the additional estimates for 2017-18. We are continuing with the Department of Home Affairs.

Australian Federal Police

[09:01]

CHAIR: I welcome the minister, Senator McKenzie—thank you for being with us—and also the officers of the AFP and other people whom we spent the day with yesterday. I think it's only the AFP to finalise this portfolio, and I think that the officers at the table are experienced estimates attendees so I won't go through all of the rules and regulations that I went through at the beginning of the proceedings. If anyone has any doubts about the rules of the committee, they should just check with the secretariat. There are some rules about the media if there happen to be any media here, but there aren't. With that, I welcome Commissioner Colvin and his team.

First of all, Minister, did you want to say anything at the opening?

Senator McKenzie: No.

CHAIR: Okay, thank you very much. Commissioner, do you want to say anything?

Mr Colvin: No, no opening statement, Chair, thank you.

CHAIR: Then we will go first to Senator Pratt, the Deputy Chair.

Senator PRATT: Thank you. I just wanted to begin by making some inquiries of Minister McKenzie about the changes in arrangements. I thought Senator Cash was due to be here this morning?

Senator McKenzie: My understanding is that it was Senator Seselja who's been held up. So I'm with you until 10.

Senator PRATT: Right, okay. Thank you. I'm going to start by asking some questions about the budget.

CHAIR: Unusual for an estimates hearing.

Senator PRATT: In previous estimates we've had some discussions about how your budget constraints affect discretionary areas in your work. At that time you highlighted

difficulties in child protection, organised crime and illicit drugs, that these were affected by funding cuts. I was pleased to see good news in the MYEFO, that you've had a budget boost. But you still have budget cuts over the forward estimates. I've been looking at the difference in funding each year for outcome 1, and it still appears that you will be \$137 million worse off in 2020-21 than you would be if the government maintained this year's funding levels. Is that correct?

Mr Colvin: I'll refer to my chief financial officer for an exact figure. I think that the figure you mentioned, 131, is correct. But, certainly, over the forward estimates we are projected for our budget to decrease. As I've said previously at estimates, this is mostly the result of lapsing or terminating measures. That is part of the routine cycle of government in making an application for measures to be continued or new measures to come on. But I'll ask the CFO. The figure you said was 131, I think?

Senator PRATT: It was \$137 million.

Mr Colvin: I'll just ask the CFO.

Mr Gunning: Senator, can I just clarify the 137 you're referring to? Which page of the additional estimates is it on? That might help me respond specifically, if you could?

Senator PRATT: Okay. It's on page 77 in the AFP Additional Estimates Statements.

Mr Gunning: Are you referring to the total for program 1.1 or are you referring to program 1.2?

Senator PRATT: I am referring to outcome 1.

Mr Gunning: Going to page 78 of the estimates, outcome 1 total expenses for the current year 2017-18 are \$1.274 billion. In 2020-21 the forward estimate total expenses—I am reading at the bottom of that table—will be \$1.203 billion and that is \$71.4 billion lower than the 2017-18 number. There are a number of programs that are due to terminate across the coming years. That includes the Timor-Leste Police Development Program.

Senator PRATT: Can I just clarify, that \$71 million is or is not made up from things like the Timor-Leste program?

Mr Gunning: It is made up of things including the Timor-Leste program. So that \$71.4 million reduction, there are five programs that terminate and that is the largest part of that over the next couple of years.

Senator PRATT: Have you added up what those five programs' value is?

Mr Gunning: It is \$77.9 million.

Senator PRATT: Am I correct in the \$137 million decline?

Mr Gunning: I am trying to track where you get the \$137 million number from.

Mr Colvin: I think you said it was out to the 2020-21 year?

Senator PRATT: That's right.

Mr Gunning: I am looking at 2017-18 through to 2020-21 on page 78 of total for outcome 1 and it is 1,274 in 2017-18 and 1,203 in 2020-21 as the total expenses for that outcome.

Senator PRATT: On page 198 of the MYEFO it says:

The Government will provide \$44.0 million ... for the second phase of the ... Unified Operational Communications system.

This is slightly contradictory because MYEFO says government will provide it, and clearly government provides the money but it has also said that that money will needed to be met from existing AFP resources. How will you cover that cost?

Mr Colvin: That is correct. We are absorbing those costs as part of our normal business-as-usual improvement to our systems and technology. But being a program measure, we need to come back to government to get approval for that. Government has approved it but we are absorbing the costs.

Senator PRATT: Has the government given a reason for not providing additional funds for this?

Mr Colvin: I would have to go back to the original NPP and the discussion but I don't think we ever actually asked for additional funding for it. We said that we will absorb the costs.

Mr Gunning: In relation to the unified operation of the comms program, it was a program to place radio another communication technology over a period of time. That was on the forward agenda. Where an expenditure item is greater than the \$30 million program, we have to come back to government and ask permission. At that stage, in negotiation with government, determine whether additional funds are provided or take it out of what is already provided in the forward estimates to pay for those elements.

Senator PRATT: So where are you making cuts in order to fund that particular program?

Mr Gunning: In relation to the capital elements of that program, which is a large component of it, we get funded on departmental capital budget amount and within that we would prioritise towards the radio elements. The impact of that is that there are other assets that we might replace in a later year but we look at our overall asset base and look to replace assets as—

Senator PRATT: What kinds of assets might they be that you are not replacing because you've got to put in this new technology?

Mr Gunning: It might be vehicles, it might be other technology equipment, it might be police equipment, it might be furniture and fittings, office fit out—there is a whole series of assets that we have in 'office equipment'.

Senator PRATT: It is good to know. I want to ask now about staffing impacts. I notice there is a planned reduction in your ASL for outcome 1 for this year—that is, you've got 5,306 personnel to 5,261 personnel. And your estimated ASL outcome for outcome 1 in 2015-16 was 5,507. That seems to demonstrate that, since the Turnbull government came in, your staffing level has fallen by about 250 personnel; is that correct?

Mr Colvin: Senator, I just want to make sure we're looking at the figures that you are, because the figures I have are headcount figures, so slightly different. Do we have them?

Mr Gunning: Page 78 of the PAES is the page where the number's referred to—the ASL numbers, the average numbers.

Mr Colvin: The answer is yes, our numbers have declined—our ASL.

Senator PRATT: Your AFP portfolio budget statement on page 96 is where those figures are revealed. Did you have some other figures you were also referring to, Commissioner Colvin?

Mr Colvin: It just depends on whether we're talking ASL or FTE. I had FTE figures in front of me, but you're looking at the PBS, which is based on ASL figures.

Senator PRATT: Perhaps you could also give me the FTE figures for the same years then.

Mr Colvin: You're looking for the last four years?

Senator PRATT: Yes, thank you.

Mr Colvin: I'll ask the chief operating officer to read that onto the record.

Ms Bird: I'm not sure if I've got the last four years here, Senator. Yes, here we go. Headcount—which is the figure that we use—as at 31 December this year was 6,498. As at the end of the 2015-16 year, it was 6,657, so that was as at July 2016. At July 2015 it was 6,751.

Senator PRATT: It would seem that that's fairly proportionate to the ASL in terms of the overall decline in headcount—

Mr Colvin: It's similar, yes.

Senator PRATT: without being exact about that.

Mr Colvin: That would relate to programs that ended. For instance, the RAMSI, the Regional Assistance Mission to Solomon Islands, came to a conclusion, so understandably that FTE reduced. There are ongoing ons and offs of different measures.

Senator PRATT: I understand, though, that you have many positions where you've got one person fulfilling multiple roles, and I understand that's not unusual. Some of those roles might be full-time roles. Surely you've got demand to keep that kind of headcount within the AFP?

Mr Colvin: In terms of people filling multiple roles, everyone's allocated to a position. Certainly we expect officers, depending on the role they're in, to multi-task, and the AFP is a unique organisation in that you change every day, in some instances, what your job may be. We have a supply-and-demand challenge; there's no question of that. The demand for our services is increasing. The crime environment is increasing. Like any police commissioner, I have to make sure that I appoint my resources as best I can against that demand.

Senator PRATT: You mentioned the ceasing of RAMSI. Could you give me a list of the other programs that have ceased, where you've got no staffing, and other areas where staffing has been reduced.

Mr Colvin: If we were to go back to 2014-15, we'd have to take that on notice to get all the programs that have finished in that time. It's easy for us to do, but I don't have the material with me.

Senator PRATT: Okay. In terms of ongoing areas of responsibility, are you able to give me a headcount over the years in those as well?

Mr Colvin: Measures that continue, so the National Anti-Gangs Squad measure?

Senator PRATT: Yes.

Mr Colvin: What we can provide to the committee is those measures that have terminated, those measures that have rolled over and new measures that have come on in that time.

Senator PRATT: Yes, and what the headcount for each is. Within that headcount, does it add up to your 6,498, or does your headcount include people who are tasked within multiple projects?

Mr Colvin: Definitely people tasked within multiple projects. And, within that 6,498, there are those that are base appropriations, so they're not actually attributed to a specific program of funding, and then there are those that are program funding. There are also those that are cost recovered—for instance, our ACT policing commitments and our uniformed protection commitments are often cost recovered.

Senator PRATT: But there's only one person for each number in that 6,498?

Mr Colvin: That's a headcount, so that is an actual person, yes.

Senator PRATT: An actual headcount—all right. In terms of the staff responsibilities in the other, that's not an actual headcount—well, it's a headcount, but it's multiple roles within that headcount?

Ms Bird: Sorry, the average staffing level numbers?

Mr Colvin: ASL will be—

Senator PRATT: Yes, good. That's probably a more accurate way, therefore, of doing it.

Mr Colvin: Yes, and the numbers you're referring to are ASL.

Senator PRATT: So if someone is—I don't know—working 50 per cent of their time on gangs and 50 per cent of their time on online something else, you'd count them half-half in each?

Mr Colvin: We would, but there's not a lot of that.

Senator PRATT: Thank you.

CHAIR: We'll come back to you, Senator Pratt. We'll go to Senator Patrick, unusually. He has another commitment where he's the only one involved.

Senator PATRICK: Thank you very much, Chair. Good morning, Commissioner.

Mr Colvin: Good morning, Senator.

Senator PATRICK: I just want to follow up with some questions relating to PTSD. You'll recall the conversations you had with former Senator Xenophon on this issue over the last few estimates.

Mr Colvin: Yes.

Senator PATRICK: First I want to go to the Broderick review. You very helpfully provided an update in terms of what recommendations have been implemented. I'm wondering if you could confirm whether all of the recommendations have now been implemented.

Mr Colvin: No, the recommendations haven't all been implemented. In fact, it's my view and my assessment that they'll take many years to implement fully, and, even once they are implemented, there'll need to be ongoing maintenance. I can tell you that, in relation to the

recommendations, we assess that we've completed 11 of the 24 recommendations from that review at this stage.

Senator PATRICK: Has that changed from the last list that you gave Senator Xenophon?

Mr Colvin: I think the last time the senator asked me the question was probably in November estimates, and I don't think it would have changed markedly in that time.

Senator PATRICK: I've seen in the papers that you recently commissioned Phoenix Australia for a post-traumatic mental health study.

Mr Colvin: That's right.

Senator PATRICK: Is that report public?

Mr Colvin: We made that report available to our membership the week before last, so our membership have that report.

Senator PATRICK: Could you make it available to the committee, please?

Mr Colvin: We haven't yet made it public, so we just need to consider if there's anything in it that we have a concern about making public.

Senator PATRICK: So any public interest matter—that's fine.

Mr Colvin: There's certainly no intention on my behalf not to make it a public finding.

Senator PATRICK: The report in some senses is a little bit disturbing: one in four people suffering stress—

Mr Colvin: That's right.

Senator PATRICK: The Broderick report was released back in 2016. We've now got similar claims being raised about culture. Are things changing in the AFP?

Mr Colvin: I think they absolutely are changing. The Broderick report was on something quite distinctly different to what the Phoenix Australia report is, but I take your point that this is about organisational health and staff welfare. I believe absolutely that we have taken those issues very seriously. I will say, Senator, that both of those reports were something we commissioned. Neither was imposed upon us. These were assessments that we made that we needed to improve, and we wanted to get external help to do that. So, absolutely, I think we are improving, but it will take time.

Senator PATRICK: Maybe on notice—I'm not sure if you've got the figures here—can you give me some updated figures on the number of open insurance claims that the AFP have in relation to psychological or psychiatric injury?

Mr Colvin: I think we may—

Ms Bird: We don't have them for all psychological conditions. We do have some specific numbers around PTSD but not the full range of conditions.

Mr Colvin: Within PTSD, it is broken down to probably almost a dozen different contributing factors, and I think we have those figures.

Ms Bird: I can give you some figures. As at 15 February this year, we have 76 accepted and open compensation claims for an injury classified as PTSD. The mechanisms of those injuries and what led to that injury are obviously quite diverse. But I don't have in front of me numbers about general psychological claims.

Senator PATRICK: What about bullying complaints?

Ms Bird: Bullying complaints?

Senator PATRICK: How are those numbers tracking?

Mr Colvin: We'll have those.

Senator PATRICK: I don't mind if you end up taking the question on notice; I'm just trying to get a feel for how the numbers are changing, up or down.

Ms Bird: As to the way that we're dealing with bullying complaints: obviously, there are many methods by which people might make a complaint. Following the culture report, the Broderick report, we did establish the Safe Place, which is probably the most popular or common area of the organisation for complaints to be made around bullying and harassment, and you will be aware of what that report said about bullying and harassment.

Senator PATRICK: Sure.

Senator MOLAN: What is the Safe Place?

Ms Bird: Safe Place was a recommendation from the report to say that we should set up an area—

Senator MOLAN: Physical or—

Ms Bird: of support for members to be able to make complaints, including anonymously, and including when they don't actually want any action to be taken but just want to tell their story. So it was quite a broad remit. Specifically, it was an area where people could complain when they didn't actually want a formal investigation to proceed from that point—

Senator MOLAN: So it's not a physical place, I take it?

Senator PATRICK: No.

Ms Bird: It's a team, in effect; it's a team in our culture reform division.

Senator PATRICK: Do you baseline your numbers against—

CHAIR: Just before you ask that question, Senator Patrick: Senator McKenzie, I apologise; you've grown into the job so easily that I hadn't realised that this was your first, as I understand it—perhaps you did something yesterday—appearance before this committee on that side of the table. So, from all of the committee, congratulations.

Senator WATT: Hear, hear!

Senator McKenzie: Thank you, Senator Watt.

Senator WATT: Long may you return!

CHAIR: And thank you so much for filling in for Senator Seselja, who I see is now here—

Senator Seselja: It's going to be a let-down from here!

Senator McKenzie: I was just gearing up!

CHAIR: Sorry, Senator Patrick.

Senator PATRICK: Do you baseline your numbers against the ADF, who, in some sense, have a similar work environment—a stressful environment; often seeing things that are not pleasant? Also, with the bullying, they have similar rank arrangements to you guys' command structure. Do you baseline against the ADF, talking to them?

Mr Colvin: Not against the ADF, but we certainly look at comparable organisations, other law enforcement organisations and policing organisations, to see where they're tracking.

Senator PATRICK: How are you tracking against, say, other police forces in Australia?

Mr Colvin: I'd have to get exact figures—

Ms Bird: We could probably take that on notice; it's probably best done that way.

Mr Colvin: Suffice it to say, I'm comfortable that we're not particularly bad, or better; this is a trend in policing that we're all trying to manage at the moment.

Senator PATRICK: Sure. Thank you, Commissioner. Just moving very quickly to Carly's Law: there has been a report that one South Australian man has been charged under Carly's Law, but I haven't seen any other reports. Can you give any updates on the number of people who may have been charged in relation to Carly's Law?

Mr Colvin: I will ask Deputy Commissioner Operations to answer that.

Ms Close: You're correct. There is one South Australian male person before the courts. This law was passed in June 2017. That is the only case before the courts at this point.

Senator PATRICK: So that is a case where you've managed to get the DPP to cross a threshold; it has established that there is a case that could be prosecuted. Are there other cases where a charge has been laid?

Ms Close: Not in respect of that particular change to the legislation, no.

Senator PATRICK: Are there any thresholding issues? Obviously, these are new laws, and there is a threshold that needs to be crossed before you can make a charge. Are there any difficulties at this stage in the implementation?

Ms Close: No. It's simply a matter of looking at each case on a case-by-case basis and at the circumstances to see whether the actions and the evidence that we have warrant a charge in relation to that piece of legislation.

Senator PATRICK: In terms of your own internal operations about educating officers and the implementation of the law, can you give me some feel about how that is being organised?

Ms Close: Certainly. In our child protection and anti-exploitation area, we undertake regular training of our officers. We also have officers working in each of the state and territory police forces under a joint anti-child-exploitation model. We deliver training to those officers as well in respect of that, so they're always conscious of new legislation, and we ensure that they're delivered training to ensure they can undertake those investigations.

Senator PATRICK: So Carly's law is now part of that curriculum?

Ms Close: Yes.

Senator PATRICK: Generally, and this might be a subjective question, has there been any deterrent effect associated with the passing of the law?

Ms Close: That's a very difficult question to answer because we haven't got any trend analysis or data to support that. It's probably a little early too, since the legislation only came in about eight months ago.

Senator PATRICK: So the bottom line is you're comfortable at this stage. Obviously, whilst that legislation was being debated and talked about in committee there were different variations, particularly in relation to the threshold. There's no early feedback on that?

Ms Close: It's just too early to say.

Senator HUME: I have some follow-up questions. Yesterday I asked the ABF about the drug haul that was found in the highlighters, which was quite extraordinary. The ABF mentioned that the AFP were, obviously, intricately involved in that operation. I wanted to ask you about, not just whether it be methamphetamine or amphetamine importation but other illicit drugs that you're seeing coming in, your potential involvement in those operations and the trends that you're seeing?

Mr Colvin: I think the broadest trend I would say is that methamphetamine continues to be the most pervasive illegal narcotic in Australia and its use is widespread and debilitating, quite frankly. We do see large seizures of methamphetamine, and what we have seen over the past three to four years particularly is the quantity of those seizures increasing. Our investigations, along with Border Force, our state and territory partners and, particularly, our international partners, are showing that organised crime groups are targeting Australia, as we expected. The profits to be gained from the illicit narcotic market in Australia are quite high and, hence, the risk that organised crime is prepared to take. More broadly, while methamphetamine is still the number one illicit drug that we have seen through the ACIC, waste water analysis shows that there is still a cocktail of illegal narcotics being used in this country. I think the seizure yesterday was ephedrine. Again, we see a range of narcotics but the trends are all heading in the wrong direction.

Senator HUME: Talk to the committee a little bit about your cooperation with international partners. I know there is one specific operation, Taskforce Blaze. I know you probably can't get into the details of that but perhaps you can give us a broadbrush description?

Mr Colvin: I will. I'll hand to the deputy commissioner in a moment. I'll give her a chance to get her thoughts together. Taskforce Blaze that you referred to is a joint operation with our Chinese counterparts. It's one of a number of similar task forces that we have in the region where we have a very intentional strategy—the AFP has had an intentional focus for a number of years now, going back as many as 20 years—to take the battle as far offshore as we possibly can under the basic premise that a stronger region is a safer Australia. We have Taskforce Blaze in southern China provinces. We have similar arrangements with our Thai counterparts, as well as our Cambodian counterparts, working with them to try and work on distribution points and transit points for narcotics coming into this country. It's proven to be incredibly successful. I am sure by now Leanne will have got the data together and we can give you some good data about the seizures and the quantities as well.

Ms Close: As the commissioner said, international cooperation is essential in many organised crime areas and child exploitation investigations as well. In respect of Taskforce Blaze, which is our partnership with the Chinese authorities, since its inception back in November 2015 it has resulted in approximately 15.8 tonnes of drugs being seized and precursor material as well—so that includes 8,379 kilograms in China itself and 7,452 in Australia as at the end of 2017.

As the commissioner said, we have similar agreements with the Thai authorities and Cambodian authorities. There are not such significant seizures in those quantities but certainly great cooperation in terms of intelligence sharing, looking at ways that people are concealing narcotics and trying to bring them into Australia, and working with Australian Border Force and other agencies in Australia to interdict before they get to our shores. If not, we've certainly got good cooperation and intelligence so we can target the people in Australia who are attempting to bring these materials into Australia.

Senator HUME: That was my next question. I was going to ask about who it is that's bringing the illicit substances into Australia. I know that there's been a lot of work done in the antigangs task force, particularly on outlaw motorcycle gangs. Perhaps you could elaborate for the committee a little bit on the work that's been done in that space.

Ms Close: As well as organised crime gangs—and we are doing a significant amount of work internationally and in Australia with our state and territory colleagues—there are a range of organised crime groups across the world. We have relationships through our international liaison network across 33 countries. We are working from the Americas all the way back to Australia to identify who the crime groups are. Some of them are also just individuals who use the darknet or other methodologies to try and bring them through the Australian border. As Australian Border Force were talking about yesterday, there are so many ways to conceal these items, so many ways to bring them into Australia, and we're not alone in this, but we in Australia are high consumers of narcotics, so we work really collaboratively and closely with all of our partners here in Australia and offshore to try to stop and combat.

As well as combating the narcotics trade, focusing on the money-laundering aspects and the proceeds of crime are other key strategies in our fight.

Senator HUME: I know minister Dutton recently announced his intent to appoint a transnational serious and organised crime coordinator. Does that fall under that auspice?

Ms Close: Yes, it does. That role will be looking much more broadly at strategy policy legislation and how we can improve the coordination across states and territories. As we said earlier, supply is far outstripped by demand in the crime space. What ways can we cooperate better? What different strategies can we use—particularly focused on prevention and disruption. Whenever we investigate, lock people up and take proceeds of crime from people, that's a key facet of what we do, but we need to look at different preventative strategies and disruption strategies.

Senator HUME: Again are the disruption strategies part of the Serious Financial Crime Taskforce?

Ms Close: Yes, that is one aspect in terms of looking at the crimes in respect of our tax system—for example, the Panama Papers. That's a different strategy, but we'll use different methodologies and work with the Australian Taxation Office or other agencies where we can identify intelligence or information for money-laundering aspects and proceeds of crime.

Mr Colvin: It's very difficult to unpack your question in a way that I can give you simple answers at the committee now, but there are a few very key strategies that we employ. One is taking the fight offshore, as you heard the deputy commissioner talk about. There's no one crime group responsible for organised crime or drug trafficking in this country. It's a mix, and

we are always surprised at new crime groups emerging. But OMCG is clearly of great concern to law enforcement in this country.

More broadly, we have a very targeted approach to what we would call facilitators of crime: those people who are helping move the money and providing the logistics, transport and networks. We target those. We have very active proceeds of crime activity to try to strip the profit out of crime and we have a very active effort to work out who the people are who facilitate a number of crime groups. Of course, if we can start to target those hubs who are facilitating a number of crime groups, I think we can have a greater impact on the crime environment.

Senator HUME: Thank you.

CHAIR: Senator Molan, did you want to use Senator Hume's remaining two minutes?

Senator MOLAN: If I could, please. Commission, I wonder if you could add into Senator Patrick's request a comparison of your PTSD and suicide rates with society as a whole? I certainly found that the ADF looks differently if you compare to society as a whole than if you just take it as a one-off.

Mr Colvin: We can. In fact, we have done some of the work. I'm always loth to say what I'm about to say, because I don't want to in any way look like we are minimising the challenges that we have within policing, because we do have challenges, but within the AFP our suicide rate is significantly lower than the community's rate of suicide.

Senator MOLAN: And I think that was the finding of the ADF inquiry as well whilst people are serving. I think it changes after that.

Mr Colvin: And that is where law enforcement is well behind the Defence Force: understanding postservice challenges. We don't have a veterans' affairs type department or approach and we are more disparate across law enforcement in this country. Of course, it's a number of organisations, so our data is not as good there, unfortunately.

Senator MOLAN: Thank you. I'm very interested in following up on Senator Hume's question in relation to overseas deployment. Where does the overseas deployment group out at Majura stand now?

Mr Colvin: The overseas deployment group exists as an entity. We've changed some of our structures, and they support or deployments at the moment to East Timor, PNG and the Solomon Islands in particular as well as, more broadly, some of our adviser network and capacity-building networks across the Pacific. That is our capability and stabilisation missions. In addition to that we have our traditional international liaison network.

Senator MOLAN: Are the AFP officers I would have seen in embassies are they owned by the deployment group, or do they just come separately?

Mr Colvin: It's all part of our international operations. It's one division called International Operations. It has two sides to what it does: traditional liaison and stability, peacekeeping and capacity-building operations.

Senator MOLAN: Generally how many people have you got overseas?

Ms Close: We have 241 officers located in 33 countries.

Senator MOLAN: That's good—tremendous. That ends my time. Thank you.

CHAIR: Senator Pratt and then Senator Leyonhjelm.

Senator PRATT: I just wanted to go back to what I've identified as a \$137 million reduction. You read out the year-by-year figures, but can you confirm it's a \$137 million reduction, or have I gotten my maths wrong?

Mr Colvin: I'll ask the CFO to take that question. I think he did put evidence on the record before of \$1.274 billion as opposed to \$1.203 billion, which I think is where I think you get some of your—I'll leave it to the CFO, actually.

Mr Gunning: The 137 relates the cumulative amount across the forward estimates, so you're quite correct.

Senator PRATT: So you can confirm that figure.

Mr Gunning: Yes. The 19, 17, 18, number, there's some in 2018-19, some in 2019-20 and some in 2020-21. If you add up all those years, you are correct; it is \$137 million.

Senator PRATT: Thank you very much. I wanted to go back to staffing issues. I understand there are some hiring rounds going on at the moment. Is that correct?

Mr Colvin: Yes, a range of both sworn and unsworn recruitment is occurring.

Senator PRATT: How many positions are you looking to fill? How many are sworn and how many are unsworn?

Mr Colvin: We can't give you an exact figure on that, because it varies each and every day with attrition—people coming on and off. But we have three recruit courses in the college at the moment. I don't know if we have a figure on how many nonsworn recruitment actions we have.

Ms Bird: I don't have a figure with me, but we would have several rounds in relation to specialist skills, so professional staff with particular skill sets—possibly lawyers, IT people and those sorts of skills.

Senator PRATT: You said you've got three recruit rounds. What is the size of a cohort of recruits?

Mr Colvin: Each recruit round sits about 25 officers, give or take.

Senator PRATT: So that would be about 75.

Mr Colvin: But that's part of an ongoing recruitment campaign.

Senator PRATT: Yes. And you can't give me an approximate figure on the unsworn positions?

Ms Bird: Not with me, but I'm happy to take that on notice.

Senator PRATT: Okay.

Mr Colvin: Part of the reluctance is because it changes. A figure I give you today could be different tomorrow. It's not a set number that we are recruiting to. It depends on the needs. It depends on the budget. It depends on how we can use that budget to achieve the effect that we're looking for.

Ms Bird: We also try to create employment pools to speed things up later for natural attrition reasons.

Senator PRATT: If it's about 25 in each recruitment round and you had a cut previously and have had some of that money replaced, has that changed the frequency with which you can run those new recruit rounds?

Mr Colvin: It does, absolutely. This is one of the challenges that the AFP has. To recruit, train and make competent a police officer, it takes time. So what we try to do is project forward, as far as we can, to what our budget measures will be and recruit against that. So, yes, it does fluctuate from time to time.

Senator PRATT: If you could give me the figures of how many new recruits you've brought through over the last four years—

Mr Colvin: The last four financial years?

Senator PRATT: Yes, that would be—

Mr Colvin: We'd have to take that on notice, but yes.

Senator PRATT: Terrific.

Mr Colvin: Can I just make the point, though, I'm reluctant for the committee to only look at it through a lens of sworn officers. A lot of the delivery of outcomes for the AFP are delivered by non-sworn officers as well.

Senator PRATT: That depends on how easily Ms Bird can give me those figures to put alongside that. I do understand the point that you're making.

Mr Colvin: We're in a recruitment round at the moment, particularly because in the last budget there was an injection of the \$321 million to the AFP for specific recruitment of specialist capabilities. At the moment, we're recruiting against that measure.

Senator PRATT: How does this forecast reduction in staffing align with hiring rounds you're undertaking at the moment? You're now at 6,498 and you were, a few years back, at 6,751. Are those 75 recruits and other non-sworn officers just replacing attrition—or will it start to bump you up again?

Mr Colvin: It's partly to replace attrition; it's partly to meet the new budget measure in last year's budget, the \$321 million for the specialist capability, so we need to recruit against that. It's also trying to project to what our needs may be, going forward, as well. It's a range of things coming together to help us determine our recruitment needs.

Senator PRATT: Did you request an increase in funding from government so that you could return to your former ASL, those figures back in 2015-16?

Mr Colvin: I don't think it would be appropriate for me to talk about what my discussions were with government about new measures. That's ongoing and, as I've said before at estimates, that's a constant discussion that we have about the needs of the organisation.

Senator PRATT: So how do you characterise the needs of the organisation, in terms of whether you can meet your mandated duties, currently?

Mr Colvin: Senator, as I said before, we have a supply-and-demand challenge at the moment. The demand for our services outstrips our ability to supply, but that's not unusual.

Senator PRATT: If you had another 300 officers, where would you put them?

Mr Colvin: There are many areas I would put them. I would probably try and address my most pressing needs, which, at the moment, I would suggest, are against some of our national security and organised crime mandated responsibilities.

Senator PRATT: National security and organised crime.

Mr Colvin: I don't want that to be interpreted that we're not doing that now. I need to move resources around, accordingly.

Senator PRATT: Yes. I understand, from looking at your additional estimates, employee benefits in outcome 1 ultimately fall over the forward estimates. You've got around \$857 million this year down to \$830 million by 2020-21.

Mr Colvin: So we know what you're looking at, which page is that?

Senator PRATT: It's page 82 of additional estimates.

Mr Colvin: Yes, we're with you.

Senator PRATT: Looking at those forward estimates, you have around \$857 million, this year, down to \$830 million. That leaves you about \$13 million worse off than if employee benefits for this year were maintained. Is that correct?

Mr Colvin: That's correct, yes.

Mr Gunning: That's correct. It's \$857.8 million this year and \$830.0 million in 2021.

Senator PRATT: Is that an indication that employee entitlements are reducing in lieu of wages increases?

Mr Gunning: What it's indicating is the proportion of the measures that are due to terminate over the next four years, which we spoke about earlier. It's the salaries associated with those measures. It's the salaries associated with illegal guns, Timor-Leste, Papua New Guinea, and the APEC commitment that's currently there for this year.

Mr Colvin: The largest portion of our budget is for people. Any movement in our budget will be reflected in employee benefits most significantly.

Senator PRATT: I understand you have a new enterprise agreement. Congratulations on that. Eighty per cent of AFP members voted in support of it and I understand the agreement still needs the approval of the Fair Work Commission. Assuming it gets the tick-off, it has three per cent, two per cent and one per cent pay rises over the three years. I note the AFP Association have calculated this as around an additional \$2,000 per member over the life of the agreement. Is that correct?

Mr Colvin: I haven't heard the figure quoted like that. I won't question what the association have said. I would probably have felt that it was a little less than that, to be honest.

Senator PRATT: Mr Gunning, are you able to assist?

Mr Gunning: If it were three per cent, two per cent and one per cent, the cumulative value of that is six per cent. On an average salary, if it were around \$80,000 to \$100,000, it would be more likely \$6,000.

Mr Colvin: I would have thought it was more.

Mr Gunning: Yes—\$6,000 cumulative to each member by the end of the period.

Senator PRATT: So about \$6,000 per member?

Mr Gunning: The \$2,000 might be a reference to an on-average per-year increase.

Mr Colvin: Do you want an exact figure, Senator?

Senator PRATT: No, I understand. What I'm trying to work out is the cumulative cost of pay increases relative to the savings you're making in cutting employee benefits and, therefore, where you're funding your pay rises from.

Mr Colvin: Senator, what you're talking about is the full cost of the enterprise agreement, which we know and we have. The cost of the enterprise agreement and the pay rises will be absorbed by the organisation. We'll extrapolate that over the forward estimates, in the years of the EA, across all of our programs.

Senator PRATT: You've said, Commissioner Colvin, that the majority of your costs are in staffing.

Mr Colvin: Yes.

Senator PRATT: How can you absorb those costs without cutting staff further?

Mr Colvin: We've had to show the Public Service Commission that we can only achieve this pay rise through productivity and efficiency gains. The CFO will be able to give you exact detail on that, if we have it with us. In effect, we will have to consider staffing as well.

Senator PRATT: So you'll have to consider staffing reductions as well. Could you confirm with me the total cost of the increase of the new enterprise agreement?

Mr Colvin: We can get that. We just don't have it with us at the table.

Mr Gunning: From memory—and I will confirm this—\$121 million was the total additional cost over the three years of the pay rise.

Senator PRATT: How much of that are you saving? That's the additional cost after savings in changes to employee benefits?

Mr Gunning: That's the total additional cost of the agreement. Offsetting that would be a series of savings and efficiencies. I haven't got that list with me, but I know that one of the key initiatives—and this ties back to some of the initiatives around mental health and stress in the workplace—is encouraging our staff to take their full leave entitlements. If people take their full leave entitlements, we have less cost from an accounting analysis perspective.

Senator PRATT: You don't have to pay it out at the end of their—

Mr Gunning: Correct, so we're encouraging staff to take that extra leave.

Senator LEYONHJELM: Commissioner, in October 2016 I first asked questions about Mossack Fonseca and the Panama Papers and then I followed up at estimates hearings all through 2017. Is it still the case that no-one has been charged as a result of the Panama Papers? Do you still hold the bullion you seized in 2016?

Mr Colvin: Yes, it is still correct that no-one has been charged and, yes, we would still hold the bullion.

Senator LEYONHJELM: Is the AFP the lead agency in this, determining who gets prosecuted or if anyone gets prosecuted, or is it somebody else that you're waiting on?

Mr Colvin: No. The Serious Financial Crime Taskforce is a combination of a number of agencies. Prosecutions and investigations that we are responsible for—yes, we will decide at

what point we put a brief of evidence to the Commonwealth DPP, and at this stage we haven't reached a point where we are satisfied to do that.

Senator LEYONHJELM: At the previous estimates, in October last year, I asked about exaggerated claims of Australian gun seizures. You took the questions on notice. I've had no answers to those questions, despite a considerable elapse of time. Can you respond now?

Mr Colvin: There are a few things on that. Yes, I recall the questions, and we have prepared an answer. I understand—and the secretariat may be better placed to inform you—that with the MoG changes and the change of portfolio there are some technicalities in terms of re-asking the question and us re-answering the question. But I can put some answers to you on the record now if you'd like me to do that.

Senator LEYONHJELM: Yes, please go ahead.

CHAIR: That would be useful, because we've had this issue that you're going into another portfolio. You are in the other portfolio, but the questions were asked in a different portfolio.

Mr Colvin: In a different portfolio—I understand.

CHAIR: But if you can give the answer now I think that would be appropriate.

Mr Colvin: Senator Leyonhjelm, I'll just give you what I have in front of me. The operation that you're mostly referring to in relation to firearms that were seized—firearms and firearm parts—was Operation Ironsight. That was a joint investigation that involved our teams across Australia as well as Victoria Police, the US bureau of alcohol, tobacco and firearms and the US department of Homeland Security Investigations—HSI. In total, that operation resulted in the seizure of 5,088 firearms, including parts—we don't necessarily distinguish between a full firearm and a part. These firearms and parts were seized as part of the operation; however, 4,785 of them were ultimately seized by the US authorities in the US. So 303 firearms and firearm parts were seized in Australia; 4,785 were seized in the US. We understand, although of course we can't say this definitively, that those firearms seized in the US were potentially destined for Australia.

Senator LEYONHJELM: There are a number of questions arising from that. I'll pick up on the last one first. What leads you to say they were destined for Australia?

Mr Colvin: That would be information as a result of the investigation. We wouldn't have taken an interest in them if we didn't think there was an Australian nexus in some way. I don't want to go into the specifics of the investigation—I suspect some of it will still be ongoing—but we had reason to believe that a reasonable portion of those 4,785 was destined for Australia.

Senator LEYONHJELM: The information that I inquired of you at the last estimates was: of the 4,785 seized in the United States, only six were in fact firearms. Can you confirm that?

Mr Colvin: I don't think that our systems, as I said, distinguish between a firearm and a firearm part.

Ms Close: I can break it down.

Mr Colvin: I take that back. The Deputy Commissioner, Operations, may be able to help you a bit more.

Ms Close: I can break that figure down a little bit for you, Senator. For the 4,785: yes, six were fully automatic assault rifles; 96 were semi-automatic handgun frames; 4,547 were unmarked handgun frames; and there were 136 receivers.

Senator LEYONHJELM: The first figure, you said, was assault rifles?

Ms Close: Automatic assault rifles.

Senator LEYONHJELM: You mean automatic, not semi-automatic?

Ms Close: Fully automatic.

Senator LEYONHJELM: Fully automatic assault rifles?

Ms Close: Yes.

Senator LEYONHJELM: Like C1s and C4s?

Ms Close: I don't have the specific type of assault rifle.

Senator LEYONHJELM: It's just that the term 'assault rifle' gets tossed around rather loosely these days.

Ms Close: I trust my firearms experts in terms of the information they've given me but I can certainly provide more details if you'd like.

Senator LEYONHJELM: Yes, actually; I would appreciate any details you have on that. So the assumption, you're saying—and I take your word for it—is that the 4,785 seized in America were destined for Australia?

Mr Colvin: Well, we believe that they were potentially destined for Australia. We can't say categorically they were.

Senator LEYONHJELM: What can you tell me about the 303 that were found in Australia? How many of them were complete firearms and how many were parts?

Ms Close: I don't have that detail with me, but I can certainly take that on notice.

Senator LEYONHJELM: If you would, thank you. If you find that—

Ms Close: Oh, sorry. I beg your pardon. The commissioner has that. Of the 303, there were an upper and lower frame for one assault rifle, 19 semiautomatic handgun frames with identical serial numbers, six semiautomatic assorted parts, and 10 kilograms of ammunition.

Senator LEYONHJELM: So no complete operational firearms amongst that lot?

Ms Close: No.

Senator LEYONHJELM: Okay. And how do you interpret this substantial number of parts as opposed to operating firearms?

Mr Colvin: Again, it's difficult for us to be definitive, but we do know that the trend in the US—and I know this from my own briefings that I've had over there with ATF—is that they are seeing more and more parts of firearms being manufactured and added to imported parts. So, in the US, of course, it's easier to get your hands on parts. You can legally buy them. In Australia it's harder so we have to watch out for the potential that there are firearm parts being manufactured illegally and what is imported is just part of the firearm to be added to what is manufactured locally. It's difficult for us to draw any other conclusions when we know we are seizing parts.

Senator LEYONHJELM: Yes. There is an issue which I'll ask you about in due course, which is about whether some of the seizures that occur at the borders are indeed destined for the illegitimate market. But I suppose that's a different issue. That's probably a question for Border Force.

Mr Colvin: I think we have to assume that a lot of this is destined for the illegitimate market; otherwise, it would be brought in via legitimate means.

Senator LEYONHJELM: Yes. As long as you're not counting the ones that are seized that the importers are arguing are legitimate and then counting them?

Mr Colvin: No.

Senator LEYONHJELM: All right. That leads me to the second part of my question here. Last year I asked you about a media release by the minister on the National Anti-Gangs Squad partnership led by the AFP. It referred to 5,700 illegal firearms and firearm parts. Again, there were independent reports suggesting just 308 of these were in fact firearms. Do you have any information another on that one? You took that on notice as well.

Mr Colvin: I did. There were two media releases by the former Minister for Justice. One was on 16 March and then there was the one that you referenced from 28 September. In those releases the minister referred to, in the first instance, '5,600 illegal firearms' that had been seized since 2013, and then in September he referred to '5,700 illegal firearms'. As you said at the time, what the minister says is a matter for the minister. Obviously we provide him with material to support that. I think that the '308' that you were referencing seems too coincidental to not be the '303' seizures that we seized here in Australia, remembering of course that they were parts, not necessarily entire firearms.

Senator LEYONHJELM: Setting aside that 308 number, are you able to provide any further breakdown on that 5,700 that the minister referred to? Can you divide them into operating firearms and parts? And do you have any further details of them?

Mr Colvin: Only to the extent of what we've given you already of the breakdown? That was in relation to one particular investigation.

Senator LEYONHJELM: Commissioner, I didn't get an answer to that question at all. That's why there's no actual prior information at all on that one.

Mr Colvin: Well the information we've just put on the record—the seizures in relation to Operation Ironsight of 5,088 firearms, including firearm parts, which was made up of the 4,785 seized in the US, the 303 seized in Australia, that is 500 or so short of the number that the minister has referred to. They would be just general seizures by the National Anti-Gangs Squad across a range of operations.

Senator LEYONHJELM: I interpret that as suggesting we were double counting the 5,600 and the 5,700. Was there double counting there?

Mr Colvin: No, I don't think so. The bulk of those came as part of one investigation but, of course, our National Anti-Gangs Squad, with our state and territory counterparts, are out seizing firearms on a reasonably regular basis. We can take it on notice to see what that 500 or 600 deficit is made up of, but we'd have to go away and do quite a bit of research and look at separate investigations and what firearms were seized.

Senator LEYONHJELM: Just to be clear, my impression was there were two announcements and two separate quantities of firearms seized. For the first, the bulk of them was seized in the United States, and a relatively small number in Australia. The second announcement referred to 5,700. The impression I have is that they were seized within Australia, and that was a separate number. I have no information as to their nature, whether they are complete or whether they were, indeed, all seized in Australia. You took that one on notice and I haven't had an answer yet.

Mr Colvin: I am very confident that that 5,700 were not seized in Australia. They include the 4,800 that were seized in the US.

Senator LEYONHJELM: Right, that clarifies it.

Senator WHISH-WILSON: I have two sets of questions. The first set are about, very quickly, yesterday when my Senate office in Launceston was plastered with white supremacist neo-Nazi posters from a group that call themselves the Antipodean Resistance. I'm not quite sure exactly how you pronounce it—'antipedes' or 'antipiday'?

Senator WONG: It's alright, they know me too. Go away.

Senator WHISH-WILSON: I understand this has happened to other MPs. It has been reported to the Federal Police. Do you know much about it, Mr Colvin? Do you know much about this group, or can you comment whether—

Mr Colvin: I don't personally. I'm not aware of the referral yesterday. I'm sure my protection liaison team work, probably, very closely with the Tasmania Police on those matters. It seems it's not a group that is unknown to a number of members of parliament but, personally, I don't have a lot of knowledge on them, no.

Senator WHISH-WILSON: I note that ASIO has made comments to parliamentary committees that they're being monitored and there are concerns that the group could turn violent. I was just wondering if you had any inter-agency discussions about the group and why they're targeting federal MPs? We've got security cameras, so it's pretty bold to cover all the offices in Nazi posters. Some of them are quite vile. I just wanted to bring it to your attention anyway, and find out, perhaps, if we could learn a little bit more about the movement.

Mr Colvin: I'm sure we do. I'm sure we know some of them. I'm not aware of ASIO specifically commenting on them but I know we do comment on right-wing extremist groups, nationalist groups from time to time and—

CHAIR: Left-wing extremist groups.

Mr Colvin: left-wing extremist groups, Chair, of course. I don't know that particular group personally but I have no doubt my officers would.

Senator WHISH-WILSON: My other questions relate to news that was nearly a year ago. On 30 March 2017, the Federal Police played a critical role in the country's biggest cocaine bust, Operation Okesi, which Federal Police statements at the time said was a 'sophisticated', 'significant' and 'robust, resilient and determined syndicate' that had been foiled at least five times. I haven't been able to find any media commentary at all since a couple of people were charged. Can you give us an update on where that investigation is at?

Mr Colvin: It would be before the court, which is probably why you haven't heard anything more. I remember the investigation and seizure of cocaine. I don't remember a great deal of the details, frankly, because there have been a number of seizures since then. If you wanted specifics we could get that on notice, but the reason that you would not have heard about it is it's before the courts.

Senator WHISH-WILSON: So I can't ask you specific questions about it now if it's before the courts?

Mr Colvin: Not while it's before the courts.

Senator WHISH-WILSON: I might wait and see.

Mr Colvin: Was there a particular interest in that particular group or—

Senator WHISH-WILSON: Yes. Firstly, it interested me that the 15-member ring was labelled by the media as being 'veteran fishermen, fishing company bosses and maritime workers around the country'. I was just trying to get into what the fishing connections were with the syndicate. One of the busted was the head of a company called Seafish Tasmania, which is a Tasmanian fishing company. I just want to know whether Seafish have cooperated with the investigations?

Mr Colvin: Perhaps what we should do is go and take a look at the investigation and where it's at. We may be able to take it offline for a private briefing. We can work with the secretariat and the minister's office. If there are specific things, we might be able to help you with that.

Senator WHISH-WILSON: Great. Thank you. That's it for me.

CHAIR: Commissioner—this was mentioned yesterday with the Border Force people—can I pass on the committee's and the parliament's congratulations to you and your team, and to Border Force, on what was a very significant drug haul—this past 12 months, actually. We recognise that you and your officers are at the frontline and you're often in danger, and we really do like to take every opportunity to publicly thank your people for what they do.

Mr Colvin: Thank you, Chair. We appreciate that. There's no shortage of work for us, that's for sure.

CHAIR: I'm going to pass to Senator Molan, but, before I do, can I also thank you for your protection liaison work. My office in Townsville is often the target of unions, GetUp! and others. I have to say the response from the Townsville police, which I understand comes through you, is exceptional, and I want to congratulate you on that. I know you do it for all parliamentarians, regardless of their persuasion, when they're under attack.

Mr Colvin: Chair, if I might say on that, it's a business that we have been doing a lot more of over the last three or four years and have had to put a lot more focus onto for all members of parliament. It does concern us, and I know it concerns you—and particularly your staff—and it's very important to us. Thank you.

CHAIR: It does concern my staff. They usually pick a time when I'm not there, but that's the way things are! Senator Molan.

Senator MOLAN: I'd like to explore a little bit more around budgetary issues, the relationship that you have with your new department, and—if I have some time left—your anti-gang activity, please. If we go back that far, Commissioner, my memory is that, in the

period following the election of the Abbott government in 2013, there was a significant increase in your budget and the budget of all security and intelligence organisations. My memory is that that was due to the fact that, even though there were very high activities and a lot of demand during the Rudd-Gillard-Rudd period, budgets of intelligence and police activities were cut. Is that your memory?

Mr Colvin: To be precise, I would need to go through each year and explain, and I don't want to give a trend. But 2014 certainly saw a distinct upsurge in counterterrorism activity. With that came a number of NPPs—budget measures—that the AFP was funded for, most recently up to the \$321 million that we were given last year around specific capabilities as well. It's an ongoing discussion.

Senator MOLAN: Yes. Commissioner, how did you characterise before—I may have missed it—your ability to fulfil your task as commissioner, or the ability of the AFP to fulfil its task as the national police force?

Mr Colvin: I think there's a popular misconception about what the AFP does. The AFP is 6,500 people strong, as you've seen. But across that there is a very broad remit that I have, including policing here in the ACT, policing at airports and policing of critical infrastructure. It is a supply-and-demand equation for me. Every police commissioner that I've ever known, be they state or federal, will tell you there is always more work than we can do. What we have to do is prioritise our work according to the demand and the amount of officers, resources and capability I can bring to bear to meet that demand. It's a constant pressure that we're under.

Senator MOLAN: Of the \$300 million—and I think it is a \$71 million decrease over the forward estimates—how closely is that linked to the termination of tasks?

Mr Colvin: Quite closely. The CFO can take you through the specific measures that come on and off. It is a normal part of the government budgeting cycle that we ask for funding for certain measures. When measures end, the funding comes off and new measures will come on. It may be a variation of what we were doing; it may be a new area to focus on, a new set of priorities for us, a new overseas mission or coming to the conclusion of an overseas mission. That's a normal part of the cycle.

Senator MOLAN: Have you noticed any economic efficiencies as you've come under the Department of Home Affairs? Are they noticeable at all?

Mr Colvin: It's early days, quite frankly—I think we're in the eighth or ninth week. So far, from an AFP perspective, it's been very much a net positive in terms of the ability for us to call upon what is now a much larger infrastructure sitting behind us in the home affairs department. We are very quickly coming to terms with how best to utilise the resources that Secretary Pezzullo can bring to bear for us. There will, over time, be efficiencies that can be derived simply through scale. I think that is one of the greatest benefits Home Affairs will bring.

Senator MOLAN: They may be operational efficiencies rather than dollar efficiencies.

Mr Colvin: Absolutely. A lot of my efficiencies can be drawn from technology. I need to be a faster, smarter, more agile organisation who is using technology better. Some of that will be enhanced by our ability to bring scale and size to the problems that Home Affairs can help us with.

Senator MOLAN: Secretary, how have you seen the amalgamation?

Mr Pezzullo: I welcome the opportunity to make a few points about the establishment of Home Affairs and to build on my remarks yesterday, specifically in relation to the relationship between the department and the AFP. A couple of foundational points: the statutory independence, both of the commissioner himself and his officers, is completely unfettered and unchanged by these administrative arrangements. The commissioner reports to the Minister for Home Affairs, who sits in the cabinet. He does not report to me or to the department, and his statutory independence is, in that sense, completely unchanged.

I see my role as the secretary of the department to work with all of the agency heads—in this case, the AFP—to help them build their core capabilities. You've heard a lot about that this morning in terms of their people being the best, premier capability, highly professional expert workforces. But they need support in terms of budgetary investment, technology, and so on and so forth.

The portfolio will be able to leverage considerably more resources, simply because it's larger and it's got more depth—the commissioner just touched on that. Some examples that I mentioned yesterday, that I'll quickly repeat for the *Hansard*, relate to things like data exploitation; identity biometrics; intelligence analysis; data storage—data storage is extremely expensive; the more you can consolidate that and gain efficiencies, the better off you are—the application of new techniques such as artificial intelligence and the natural machine learning that I mentioned yesterday; and more extensive links with the national intelligence community.

The Prime Minister, when he announced the establishment of Home Affairs, made it very clear that it was not being done principally for financial or economic reasons, primarily at least. But certainly, as we consolidate our capabilities, should efficiencies inevitably arise, it's the government's intention to ensure that they go to the frontline wherever possible and boost our frontline resources.

Finally, going back to a point that Senator Hume made—it's relevant to your question—Mr Dutton has foreshadowed the establishment of a new strategic task force: a joint task force to be headed by up a transnational serious and organised crime coordinator. That officer, who will be an AFP officer, will be an officer of my department. They will not have any command authority because the department does not command operations. But, working across all agencies and bringing the capabilities of all agencies to bear, the coordinator will focus on emerging risks, develop high-level plans for execution by agencies, address policy and legislative gaps, and work collaboratively across the law enforcement community at the Commonwealth level. They're just a number of examples of the synergies we're going to be able to achieve by bringing the department together with the AFP and the other operational agencies.

Senator MOLAN: And it's such an early stage. The ongoing management—

Mr Pezzullo: Week nine.

Senator MOLAN: That's right, week nine. The ongoing management will start to show these things in due course, you would hope.

Mr Pezzullo: Indeed.

Senator MOLAN: In the time I have left, on the transnational serious and organised crime coordinator, I saw on the highway the other day a motorcyclist—probably an innocent

fine man—who was wearing, I think, Rebels colours with 'Fiji' written across his back. There were reports in the past about links—international crime links—with motorcycle gangs. Is that the kind of stuff that this transnational serious and organised crime coordinator would be into?

Mr Colvin: 'Into'? I'm not sure in a very positive way.

Senator MOLAN: That's right.

Mr Colvin: The coordinator will have a role—and a role that I'm quite excited about frankly—to try and leverage whole of government effort. A constant challenge, of course, for me is not everything is going to be solved by police and law enforcement. We need a whole-of-government effort. Pivoting to your question about OMCGs and you seeing a patch member with Fiji, there's absolutely no doubt that organised outlaw motorcycle gangs in this country have significantly increased and expanded their international remit and their offshore footprint over the last five or six years. That, unfortunately, includes the Pacific—countries where structures and governance probably makes it a little bit easier for them to set up as opposed to Australia where we have very strong laws against OMCGs.

Senator WATT: I'd like to ask a few questions about the investigation by the Federal Police of leaks from Minister Cash's office relating to the Registered Organisations Commission raid of the AWU. Can you just remind me, when did that investigation into the leak commence?

Mr Colvin: We commenced that investigation into the disclosure of information on 25 October 2017.

Senator WATT: 25 October?

Mr Colvin: Yes. That was the day after the AFP assisted the Registered Organisations Commission with their investigation which included the execution of those search warrants in Melbourne and Sydney.

Senator WATT: The raid was on 24th?

Mr Colvin: The search warrants were executed on the 24th, yes.

Senator WATT: And then the investigation commenced on the 25th?

Mr Colvin: Correct.

Senator WATT: What triggered that investigation?

Mr Colvin: I'll ask the Deputy Commissioner to remind me.

Ms Close: When the AFP and other officers assisting us attended the two premises in Sydney and Melbourne, media were already present at the premises. So, we instigated the investigation the next day to understand how information had been disclosed.

Senator WATT: When your officers arrived, there were media present at both locations?

Ms Close: Yes.

Senator WATT: At both locations. Did your officers report back to you—that's obviously a pretty strange circumstance to have media present when you arrive to execute search warrants?

Ms Close: They did report back to us that afternoon of the 24th, yes.

Mr Colvin: It was immediate, Senator—we were watching it on the TV at the same time the officers were executing the search warrant.

Senator WATT: You certainly had no awareness that the media were going to be present when your officers arrived at the AWU offices?

Mr Colvin: No.

Senator WATT: You commenced the investigation the following day. Did you commence that investigation of your own volition?

Ms Close: Yes.

Senator WATT: Because you were concerned about the media being present at this raid?

Ms Close: Yes.

Mr Colvin: We will always be concerned, despite what people sometimes think about media exposure of police activity—it puts our officers' lives in danger. Now, this was a fairly routine search warrant but I know it's been described as a raid—but we need to be careful of the language that's used. It was a knocking on the door of a business premises, quite different to what I think is inferred by 'raid', but it still puts our officers' lives in danger and so we will always be concerned about that.

Senator WATT: For someone to tip off the media about the execution of a search warrant potentially can put your officers in danger?

Mr Colvin: Yes.

Senator WATT: And presumably could prejudice whatever it is you're investigating?

Mr Colvin: It compromises the investigation. It compromises the ability to gather evidence, of course, if the people that we are looking to gather evidence from may, in fact, be aware of our presence or the fact we're coming. But I think we also need to keep in mind that this wasn't an AFP investigation. This was a Registered Organisations Commission investigation, where we needed to assist them to execute the search warrant. I'm sure the Registered Organisation Commission was also concerned about the potential compromise of their investigation.

Senator WATT: I'm just trying to remember now: when we looked at this matter late last year I seem to recall that there was evidence that when media personnel arrived at the AWU offices and informed AWU personnel that they were there for the impending raid—execution of search warrants or whatever you want to call it—that was the first that the union knew about it as well and they were pretty surprised. Have you heard similar?

Ms Close: I'm not aware of that—that level of detail.

Senator WATT: One of the reasons I have asked about what triggered the investigation, and you have said that that was initiated at your own volition, because of your concern, is that it has been asserted to committees that what triggered the investigation was a referral by the Registered Organisations Commission, and I think I have seen a letter to that effect. Are you saying that came after the investigation had been initiated?

Ms Close: Yes.

Senator WATT: So, in fact, what happened was that your officers turned up at the AWU, found media there, you were horrified, commenced an investigation the following day and

only after that did the Registered Organisations Commission seek an investigation by yourselves?

Ms Close: That is the timeline, yes.

Senator WATT: Did any minister or any minister's staff have any contact with the AFP about the need for an investigation?

Mr Colvin: Not to my knowledge, no.

Senator WONG: Can you check?

Mr Colvin: We'll make sure.

Senator WATT: So, beyond your having your own concern, establishing the investigation and then receiving this letter from the Registered Organisations Commission, can you check, or do you know, whether any other arm of government or person within government sought an investigation?

Mr Colvin: I'm quite confident it was only the Registered Organisations Commission, who wrote to us a couple of days later, as well, with the same concerns—it might have been the next day.

Senator WATT: If you could double-check for us that would be great. What criminal offence or offences is the AFP investigating here?

Ms Close: In terms of the alleged unauthorised disclosure of information, we're looking at section 70 of the Crimes Act.

Senator WATT: Can you remind me of what that section—

Ms Close: Yes, I can.

Mr Colvin: There are two unauthorised disclosure provisions of the Crimes Act. They relate slightly differently to different information.

Senator WATT: It is unauthorised disclosure of government information?

Mr Colvin: Effectively, yes.

Senator WATT: Do you know what the maximum penalty is?

Ms Close: Two years to that offence.

Senator WATT: Two years' jail?

Ms Close: Yes.

Senator WATT: Is that the only offence that's being investigated?

Ms Close: I will have to take that on notice. It is being investigated, so it will depend on the circumstances that arise throughout the investigation into—

Senator WATT: Sure. If you find more, you would investigate and consider charges along those lines?

Ms Close: Yes.

Senator WATT: How many officers are assigned to the investigation?

Ms Close: We have the head office investigations team assigned to this. That comprises two teams of investigators. Not at any one time will those investigators be looking just at this investigation, though. They have a large range of investigations they're responsible for,

everything from war crimes to any specific more-sensitive or long-term type investigations. They're the team that receives those. They're not specifically just looking at this investigation.

Senator WATT: How many officers roughly are in this head office investigations team?

Ms Close: There are about eight per team.

Senator WATT: About two teams, each with about eight people. But this would be one of a number they would be investigating?

Mr Colvin: Yes.

Ms Close: One of a number.

Senator WATT: Is the investigation ongoing?

Ms Close: Yes it is.

Senator WATT: When do you anticipate it will be concluded?

Ms Close: We're hoping it will be fairly soon, but every time the team starts to look at some other avenues of inquiry, or they await different information, they are receiving new referrals of different crimes to investigate. So, the time has probably gotten a little bit longer than I would have preferred, but they are prioritising it amongst everything else that they have.

Senator WATT: As the investigation has continued, I think you said they become aware of new information, which leads to potentially new crimes to be investigated?

Ms Close: Or new witnesses to speak to—new avenues of inquiry.

Senator WONG: But in relation to this?

Ms Close: Yes.

Senator WONG: I wasn't clear whether it was different.

Senator WATT: New witnesses to be interviewed, potentially new people who might need to be charged?

Ms Close: Or might need to be interviewed potentially.

Mr Colvin: We're not narrowing our view here of who may have released this information, including a police officer. The challenge we have here is that while this is only a two-year offence, they are quite complicated because there's a lot of people we have to talk to. We have to discount a lot of avenues of inquiry to prove the fact of a leak occurring. To prove that a leak occurred, we have to disprove other people didn't, and that takes a lot of time. The point the deputy is making, which I'll be a little bit more blunt on, is that this is prioritised in amongst everything else we are doing, and while we want to find out where this information came from, it's not the greatest priority of work that the AFP has at the moment.

Senator WATT: So you would say that this investigation is not the greatest priority the AFP have?

Mr Colvin: No, not at all.

Senator WATT: Why not? Isn't unauthorised disclosure of government information a pretty serious matter?

Mr Colvin: It is, but across the range of the matters the AFP works on this isn't the only leak investigation that we have. This is not the only sensitive investigation we have. Across the range of the work we do, we have to prioritise all of our matters.

Senator PRATT: In terms of the caseload of those two teams, are they also dealing with offences that have more than the two-year jail term?

Mr Colvin: Absolutely. To be quite frank to the committee, the AFP rarely, if ever, investigates a crime that has a two-year penalty.

Senator WATT: You mentioned in passing there that it's not the only leak you're investigating. How many other alleged leaks of government information are you investigating at the moment?

Mr Colvin: We always have a number of leak referrals. I'm not sure if we have the number at the moment?

Ms Close: We do. I have a very large time frame in front of me—I have since 1 July 2013. We have received 50 allegations of unauthorised disclosures contrary to section 70, as we talked about before.

Senator WATT: 50?

Ms Close: Fifty, over that five-year period of time.

Senator WATT: I think a certain government was elected in about 2013.

Ms Close: Twenty-seven of those have been finalised and 30 are still under investigation.

Senator WATT: So 30 are ongoing?

Ms Close: Yes.

Senator WATT: Chair, are we going to break at 10.30.

CHAIR: No we're going to break at 10.45, in accordance with the program. We're finished with the Australian Federal Police then.

Senator WONG: We would like to keep them, please, just for a few more minutes. We will try to be brief.

CHAIR: Sorry, no. We are finishing at 10:45. This is Home Affairs portfolio—

Senator WONG: Chair, the standing orders—

CHAIR: Would you like me to finish or do you just want to keep interrupting?

Senator WONG: Certainly. I'm very happy for you to finish.

CHAIR: The program has been set. We finish with the Home Affairs portfolio at 10.45. We have a big day with the Attorney-General, which starts at 10.45 with interstate agencies. That's what we are doing.

Senator WONG: Chair, we will try to be quick. As you know, the standing orders do permit us to continue to ask questions of a particular agency. We think we can finish this with minimal disruption to the program. We will require the AFP for a little longer, certainly from the opposition's perspective. If we can try to resolve this—every other committee works and manages this. If we can please have the commissioner stay so that we can resolve a few outstanding questions that the opposition has.

Senator McKIM: Chair, if I could indicate, I have a small number of questions for the AFP.

CHAIR: I'm sorry. I'll take some advice on this.

Senator WONG: Yes, you can.

CHAIR: You raised an issue of the Senate rules on continuing to ask questions whilst there are questions to ask. But this is the end of the session on the Department of Home Affairs. It's like we have reached 11.00 at night. We don't—

Senator WONG: I recommend you take advice, Chair.

CHAIR: We don't continue. After that we're going to a completely new portfolio, a new ministry. There are people waiting to do that. I'll take a little advice, but my ruling at the moment is that we will finish as planned at 10:45. Senator Pratt, you have a point of order.

Senator PRATT: You are contradicting your order of yesterday, which was that you would allow questions to continue until they had been exhausted.

Senator WONG: Chair, if I can make a suggestion—

CHAIR: Just let me deal with Senator Pratt's point of order. This is the end of the estimates hearings for this portfolio. It's not a question of allowing questions to go. It's as if we reached 11.00 o'clock at night or if we reached Thursday in a session. You can come back and spill over if you particularly want to, but that is a matter for you.

Senator WATT: Chair, if we are not interrupted we could have it finished by 11.

Senator WONG: Exactly. In every other committee we deal with this in an adult way.

CHAIR: I'm not interested in any other committee—this is this committee—

Senator WONG: You appear not to be interested in behaving like an adult, either.

CHAIR: I beg your pardon?

Senator WONG: There are a few questions that the opposition have. The standing orders allow us to proceed. I would ask respectfully if you could ask the commissioner and his people to stay to enable Senator Watt to finish the opposition's questions. It should not take too long and, frankly, we probably could have gone through half of them in the time it's taken to argue about this.

CHAIR: I've made my ruling.

Senator WATT: Are you going to seek advice?

Senator WONG: I request that you seek advice. I've requested that.

CHAIR: Senator Watt—

Senator WONG: I'm Wong.

CHAIR: Senator Wong, you're wasting time by repeating what I have already said I would do three times. You keep wasting time by saying you want me to seek advice. I have already indicated I will do that.

Senator WONG: Through you, Chair, perhaps the minister could consider this. I would prefer not to have to go to the Senate and seek a majority for a resolution to require these officers to come back. It really is a sledgehammer to crack. If we could have 10 minutes more we could resolve this.

CHAIR: Senator Wong, you've wasted 10 minutes now. If you hadn't gone on with this we would have gotten back to you. We have 10 minutes for the government and then we will have five minutes for you. If you can assess your questions appropriately, you might be able to do it in five minutes. Otherwise—

Senator WONG: Fine. Sorry, Commissioner, I apologise—

CHAIR: Hang on. Would you please be quiet while I'm indicating the—

Senator WONG: They'll have to come back on another occasion.

CHAIR: Senator Wong, that is your right and your entitlement. If you want them to come back at a spill-over, that's entirely up to you. We set these programs. The committee unanimously set this program. The committee comprises two Labor members and a Greens member, and there was no discussion about this. This is the time when this finishes, but I will seek some advice.

Senator WONG: Hooray.

CHAIR: In the meantime, if you like, we can get on. You will have five minutes at the end, and if you've got an ability you'll be able to get your points across in five minutes. Please, Senators, if you need to discuss something, could you go outside? It is very difficult to hear when there's noise coming from that end of the table.

Commissioner, the previous questions were a segue into my questions about your priorities and serious criminal activity. Can you just tell me your involvement with returned foreign fighters—people who come into Australia and may cause death and mayhem to Australians? I don't want you to disclose anything you can't, of course.

Mr Colvin: I won't, Chair.

CHAIR: Sorry, I should have started with that. I don't want you to disclose things you shouldn't, but can you tell us where you are generally at with those investigations?

Mr Colvin: As you know, the conflict in Syria and Iraq has changed demonstrably over the last 12 months. For some time now, security agencies and law enforcement in this country have been concerned about the prospect of foreign fighters returning. There is a range of legislation available to agencies and the government to deal with that particular challenge, but it is an absolute priority and one of our clearest focal points at the moment to make sure that we are partners and that we are addressing the potential for returning foreign fighters.

CHAIR: Have any arrests been made? Is it something that the AFP would be involved in, or is it some other agency?

Mr Colvin: If arrests are to be made and prosecutions mounted, it would be a joint effort between the AFP and the relevant state and territory police. My deputy commissioner for national security is getting his paperwork out; I might ask him to address the specifics of the question.

Mr McCartney: As the commissioner has noted, this is a key priority for the work that we do in the counterterrorism portfolio. In terms of statistics, over the last couple of years we estimate approximately 220 Australians have entered into the conflict zone. As of last year, the figures from ASIO are that approximately 110 Australians are still actively involved in the conflict zone. In relation to those individuals, the AFP has worked with its partner agencies, ASIO and the state and territory police, and we've obtained 21 arrest warrants in relation to

those persons. There have been some individuals who have returned from the conflict zone and a number of those individuals have been arrested by the AFP working with its partner agencies.

CHAIR: I read in the paper about children returning. Are they subject to criminal investigations?

Mr McCartney: The AFP, working with its other partner agencies, has a very robust system in place in terms of risk assessment of people coming back into the country. I note the reporting last week in relation to the female and the child of that female coming back into the country. We assess on a case-by-case basis, and that is what we did in that case in relation to the child and the female.

Mr Colvin: Chair, I might just add to that. Each case has to be taken [inaudible], particularly for children. There is an age of criminal responsibility under our legal system. Many children who may potentially return sit underneath that age of criminal responsibility. They become an issue that we need to work through as a whole of government, effectively.

Senator MOLAN: These people who come back to Australia, do they just front up at an airport somewhere or are they smuggled in? Let's say a woman and a couple of children.

Mr Colvin: Without wanting to disclose too much of our capabilities obviously, we would hope that we have prior notice and that there is some trigger mechanism rather than someone just presenting at Sydney airport, because that then gives us less time to work out what our treatment's going to be.

Senator HUME: I want to change the pace almost entirely for a moment and ask some questions of Deputy Commissioner Close. Last year you ran, for the first time, an all-female applications program for entry-level positions to the AFP. I think that opened in September. Can you give the committee an update as to how that went?

Mr McCartney: Certainly. I don't have the specific figures in front of me, but it was quite successful. When we advertise for positions we often get a significant number of men apply. Interestingly, we have had about 23 per cent women sworn into the AFP and generally about 25 per cent of women are applying for our recruitment rounds. In this instance, because we wanted to make sure we had at least 50 per cent male-female in each course, we went out again with a specific female-only marketing drive, and that was quite successful. That's allowed us to ensure we have 50 per cent women and 50 per cent men on every one of our recruit programs.

Senator HUME: And that was announced at a graduation where there it was fifty-fifty men and women—is that correct?

Mr Colvin: I don't know that we announced a special recruitment round at a graduation, but we certainly talk about it regularly at graduations. The special recruitment round did cause a little bit of hysteria at times—a lot of it was misdirected and misguided—but it's been very successful from our perspective, and I note other police organisations around the country are doing something similar.

Senator HUME: Is there a time line associated with the fifty-fifty gender target that the AFP has?

Mr Colvin: There are a range of targets that sit within that, and there are a range of time lines that go out as far as 10 years. At the moment around 36 per cent of our workforce is female; we have a target to get that to 50 per cent. I'd have to double-check the time line. I think it's five years from 18 months ago, and we are working towards that. We're not dropping any standards in terms of changing our recruitment gateways. We're just changing the marketing, and, frankly, I think the AFP presents a very good package for a very diverse range of recruitment personnel, and that's we're trying to do.

Senator HUME: Why do you think there is reluctance by women to apply for roles in the AFP?

Mr Colvin: Frankly, Senator, I think we have not done as good a job as we can in marketing what the AFP do and who we are, and I think there are preconceived ideas about what police work in the modern age is. Those ideas are shaped by old-fashioned thinking of what police work is. So police work is not a male-dominated, macho profession anymore; it's far more nuanced and far more professional than that. We should be offering a much broader array of opportunity for a much broader and more diverse talent pool.

Senator HUME: Like politics.

Mr Colvin: Like politics.

CHAIR: Senator Hinch has indicated he has some questions on this, so I might use the government's time to go to Senator Hinch.

Senator HINCH: I hope this hasn't been covered before, but there was a perturbing article in *The Australian* yesterday about ISIS losing ground and the so-called black widows infiltrating back to Australia, which the chair was sort of touching on as well. Are you aware of this? And can you tell us what you're doing about it?

Mr Colvin: Yes. Well, let me be clear: the way media portrayed it is a little different to the way I would portray it, with the breakdown of ISIS—the returning 'black widows'. But, as we just discussed, with our security partners we are very consciously monitoring the return of Australians who may wish to come from the conflict zone to Australia. That includes women and children who may have been there wittingly or unwittingly alongside their husbands. Now, I need to be very careful, and we just put some numbers on the record about how many people we believed had travelled to the conflict zone. I want to be careful, though, about what we say. But absolutely we're aware of it, and we're working with our partners to mitigate any risk that somebody returning from the conflict zone poses to Australians.

Senator HINCH: Yes, because we have had cases—I know one case is before the courts, so I'll be careful—where young women have come to Australia and there have been stabbings involved of innocent people here. I just worry, with the so-called black widows coming back here, how you are finding out whether they were willing participants or unwilling participants with their husbands.

Mr Colvin: That's a very good question. The reference, though, to young women coming here and stabbing is a matter before the courts. That's not an individual who we believe has returned from a conflict zone, so I wouldn't put it in the same category as a returning foreign fighter. But we have a range of measures at our disposal across government to try to make these assessments. And of course we'll apply the law as best we can to make sure we're protecting the community in Australia.

Senator MOLAN: My question is really just an extension of what I was talking about before: the National Anti-Gang Squad. My understanding is that this is something that covers over what the states do, and the states hold prime responsibility for anti-gang activity—is that the case?—particularly, say, in Melbourne, where we get so much publicity on what I think are called Sudanese gangs or Sudanese groups, or however we're referring to them.

Mr Colvin: The African youth gang issues that are occurring in Victoria at the moment are by and large almost solely a Victoria Police/Victoria jurisdiction challenge. Where the AFP and the National Anti-Gang Squad will get involved is when we feel that there are organised criminal groups—gangs—who are getting involved in cross-border transnational crimes, and then the jurisdiction sits between the states and the Commonwealth. It may be Crimes Act offences of importing prohibited goods. It may be international offences. It may be gangs setting themselves up in overseas jurisdictions but still impacting Australia. That's where our focus is. It's the transnational serious organised aspects of those gangs.

Senator WATT: Where have we got to on—

CHAIR: Well, I'm waiting for some written advice from the Clerk, so we'll get that. But go ahead just for the moment. We'll just see what the advice is in writing from the Clerk.

Senator WATT: Just getting back to the investigation concerning this leak of information from Minister Cash's office—

Mr Colvin: Sorry, Senator: I don't want to be associated with a comment that says that that's where the leak's come from.

Senator WATT: Sorry—the potentially unauthorised disclosure of information—

Mr Colvin: Yes. Thank you.

Senator WATT: in breach of the Crimes Act, punishable by two years jail. How many interviews have been conducted to date for this investigation?

Ms Close: I haven't got that information. It is an ongoing investigation, so we also have to be careful about how much information we have in the public domain.

Senator WATT: I understand that there's an investigation underway. How exactly would it prejudice the investigation to disclose the number of interviews that have been conducted?

Ms Close: It wouldn't, but I don't have the number in front of me.

Mr Colvin: There have been a number, though.

Senator WATT: Would it be dozens, or handfuls?

Ms Close: I honestly couldn't even guess.

Senator WATT: More than 10?

Ms Close: Yes.

Senator WATT: Could you take that on notice?

Ms Close: Of course. And perhaps I could clarify something I said earlier. I said that we'd had 50 unauthorised disclosure investigations since 13 July. Of the 50, we accepted 30 referrals; 27 have been finalised and three are ongoing.

Senator WONG: Of which this is one?

Ms Close: Of which this is one, yes.

Senator WATT: Have you interviewed any staff from Minister Cash's office?

Ms Close: I can't talk about that at this point.

Senator WATT: Again, could you just tell us how it does jeopardise the investigation to advise whether you've—

Mr Colvin: Senator, we—

Senator WATT: I'm not asking who, but have you interviewed any of their staff?

Mr Colvin: No, I understand that, but, as a matter of principle, while the investigation's ongoing we don't want to talk about who we have or haven't spoken to, because that may give somebody else a sense of whether they are next on our list or not. I understand why that would be important, but from our perspective, for the integrity of the investigation—I'm happy to give a number of how many people we've spoken to, and that would range from a simple face-to-face chat through to a proper interview, a witness statement. It could be a range of things. But I don't want to get involved in who we've spoken to and where they may be working.

Senator WONG: Just to be clear, the claim for public interest immunity on the basis of an ongoing investigation has two limbs. It's that there is an investigation but also—it's a reasonable question from Senator Watt—we are entitled to ask you. And you are, frankly, required to indicate to the Senate, so that we can accept the claim, what damage it does, what prejudice is occasioned by answering the question to the ongoing investigation. So, it's reasonable for Senator Watt to put that to you. But, similarly, the Senate doesn't simply accept, 'Oh, there's an ongoing investigation—full stop.' We have to be clear about why you assert that that would prejudice the investigation.

CHAIR: Commissioner, you have given the explanation, which I would have thought was self-evident, or obvious, particularly to anyone who's been involved in the law. But you've given the explanation, which I'm sure the committee accepts. So, Senator Watt, can you move on?

Mr Colvin: And we'd need to take it on notice at any rate, because we certainly wouldn't have it, and that would—

CHAIR: You've explained why, very clearly. As I said, it's self-evident.

Senator WATT: Without getting into which minister's office, have you interviewed any staff from ministerial offices generally?

Ms Close: Yes, we have.

Senator WATT: Okay. And that's across multiple ministerial offices?

Ms Close: There's more than one, yes.

Senator WATT: Have you interviewed any ministers?

Ms Close: No.

Senator WATT: Is it intended that any ministers will be interviewed at this point in time?

Ms Close: The matter is still under investigation. That's a matter for the investigators to look at what evidence we have available to us.

Senator WATT: So, it's possible that you may end up interviewing ministers—you may end up interviewing a range of people—as the investigation goes on.

Ms Close: We certainly will.

Mr Colvin: And I might say that there are a few aspects to that. One, I don't know, and neither would the deputy commissioner. We'd need to talk to the lead investigator as to what their investigational strategy is. I don't want to forecast what that strategy might be, though, because we're very intentional about the order in which we would speak to people.

Senator WATT: In a sense you work your way up?

Mr Colvin: No. We have a strategy about how we do it. It's nothing to do with working up or working down. It's about where we think information will be available to us.

Senator WATT: Have you interviewed anyone from the Registered Organisations Commission?

Ms Close: Yes. We have spoken to them.

Senator WATT: And the Fair Work Commission?

Ms Close: Yes.

Senator WATT: The employment department?

Ms Close: I don't know, I'd have to take that on notice.

Senator WONG: The host department.

Senator WATT: Yes. But the Registered Organisations Commission and the Fair Work Commission?

Ms Close: Yes.

Senator WATT: Are there any other bodies that you've interviewed personnel from?

Ms Close: Not that I'm aware of.

Senator WATT: And I'm not for a moment alleging that this leak came from the AFP or that they were involved. But obviously the AFP were involved in the execution of these warrants. Is anyone interviewing members of the AFP?

Ms Close: We certainly are. We're looking at the whole time line of who had what information when, including the AFP.

Senator WATT: And those interviews of AFP personnel are conducted by AFP personnel?

Ms Close: Yes.

Senator WATT: You've got an ethical standards unit or something like that, have you, that does that?

Ms Close: We do, but in this respect the head office investigations team could also undertake those interviews if they wanted to. If the team thought that there was any impropriety by a member of the AFP, any allegations of corruption would automatically be referred to ACLEI, to the Australian Commission for Law Enforcement Integrity, or to professional standards, depending on what the allegation was.

Senator WATT: But nothing has been referred to ACLEI at this point?

Ms Close: Not at this point, no.

Senator WATT: And I presume that nothing has been referred off to the DPP or anyone else who would ultimately prosecute something here?

Ms Close: No.

Senator WATT: What equipment has been seized or obtained by the AFP as part of this investigation?

Ms Close: I don't know.

Mr Colvin: We'd have to check that.

Senator WATT: There's obviously been a fair bit of interest in things like telephones, laptops and iPads that may have been used.

Mr Colvin: We can take that on notice, but I'll just flag that as part of taking it on notice we will consider whether we feel that that is compromising the investigation, and we may need to seek advice on that.

Senator WATT: One particular aspect of this equipment that I've certainly had some concerns about is it's already been on the public domain that a former staff member of Minister Cash, David De Garis, seems to have been involved in this. I know that's being investigated. We have repeatedly tried to establish with Minister Cash and others whether his phone—

CHAIR: What is your question?

Senator WATT: I'm coming to my question—whether his phone has been obtained by the AFP for this investigation. There seems to be some delineation between a government issued phone that he may have had and a personal phone that he may have had and may have used in leaking this information. I'm particularly interested to know whether this personal phone has been obtained by the AFP as part of its investigation.

CHAIR: Commissioner, you—in fact, I'll rule the question out of order.

Senator WATT: On what basis?

Senator WONG: It's not up to you to do that, Chair. He's entitled to make a PII claim.

Senator WATT: It looks like the commissioner was about to say something anyway.

Senator WONG: If he makes a PII claim the committee can consider it. That's the appropriate way of dealing with it.

CHAIR: The claim's already been made and responded to by the commissioner.

Senator WATT: I can't get an answer to this question in the number of times I have asked this question.

Senator WONG: Can we hear what the commissioner is saying?

CHAIR: Senator Watt, that's because of your interrogation ability.

Senator WATT: No, it's because of you running interference and covering up ministers, that's why.

CHAIR: Commissioner—

Senator WONG: Can we not muzzle the AFP? If the commissioner has something to say, can he say it?

CHAIR: Commissioner, you've already indicated that these sorts of questions will interfere with any investigation.

Senator WATT: I haven't asked any other question about phones.

CHAIR: You're asking about individuals, about the things—

Senator WONG: Can the commissioner respond to the question, please?

CHAIR: Commissioner, I think you've made the appropriate claim previously, about interfering with the investigation as something you wouldn't do, and which has been clearly understood for as long as I've been in parliament. Perhaps, for those of poor hearing, if I could ask you, again, what you will take and what you will comment on while any investigation is under active way.

Mr Colvin: Chair, I think we need to be specific about what we're asking. It's a moot point, in many ways. I'll just check. We don't actually know the answer to the question anyway. So if it suits the committee I would like to take the question of the specifics of the phone on notice. If we are concerned about our ability to answer or otherwise, we'll step through the appropriate process to do that.

Senator WONG: Thank you for that.

Senator WATT: If you haven't yet turned your mind to the need to obtain this personal phone, and you may well have, can I humbly ask that you turn your mind to that?

Mr Colvin: Thank you. I trust that my investigators know exactly what they are doing.

Senator WATT: I'm sure they do. The only reason I'm labouring the point is that we have repeatedly tried to get answers about this, and it seems quite important.

Senator WONG: He's not trying to channel Poirot; he's just trying to be accurate.

Senator WATT: No. I haven't got the moustache, to begin with!

CHAIR: Or the brain.

Senator WATT: I wouldn't be going there! Just getting back to the duration of the investigation, can you confirm that counsel for the AFP told the Federal Court in January that the investigation into the leak would take a short number of months, more than a month, but not a lot of months?

Ms Close: That's correct.

Senator WATT: And that's pretty similar—you think that's an accurate statement?

Ms Close: I still do but, as I said earlier, there have been additional matters that have come into those teams to investigate, so they have to prioritise that amongst their other priorities.

Senator WATT: I haven't got too many more questions on this. You're probably aware that in the hearings we had last year the minister made certain claims of public interest immunity and said she couldn't answer certain questions because of the investigation. You might remember where this began. There was an email sent by Detective Superintendent Andrew Smith, at 7.05 pm, on 26 October. That was, I think, the day after you said that the investigation commenced.

Mr Colvin: That'd be right, yes.

Senator WATT: The only copy we've ever had of this email is quite heavily redacted. Are you able to tell us who that email was sent to?

Ms Close: No, I don't—

Mr Colvin: No, I'm not aware of that. Andrew Smith is the superintendent in charge of the area, so I'm not surprised that he would have sent the email. We'd have to go and look at the provenance of the email ourselves.

Senator WONG: I've just suggested, Commissioner, it was tabled before the employment et cetera committee—it's gone. I've just provided a copy—you don't have a copy here?

Mr Colvin: No.

Senator WONG: I provided a copy to the chairs, in fairness to you. It probably doesn't need to be tabled because it's been tabled before the Senate by another committee, but you may wish to have it in front of you.

Mr Colvin: Thanks.

CHAIR: Okay, thank you, Senator—

Senator WATT: I haven't got too much longer.

CHAIR: No, your time's finished. You didn't come—

Senator WATT: If you could give me until 11 o'clock, that would be ample.

CHAIR: No, other senators have questions. Until I get the written advice from the Clerk, and against my better judgement, we'll continue the questioning. The government has some other questions and I think Senator McKim has other questions, and this means that we may not finish Attorney-General's later. But I'll come back to you if the Clerk can give me some written advice and explanation of his ruling where it's contrary to what my understanding of this was. It seems like the preliminary advice we've got means that we can go on asking about Home Affairs until three o'clock in the morning. Let's just—

Senator WATT: Get on with it.

CHAIR: It's just incredible that that could be the advice, but I'll get it in writing and see.

Senator WONG: Well, we'll probably be finished—

CHAIR: Commissioner, you mentioned before about the Solomon Islands issue—sorry, project—which is now completed. How many officers have been involved in total in the RAMSI thing?

Mr Colvin: Firstly, I would say that the Solomon Islands' assistance mission—RAMSI, as it was known—commenced in 2003 and came to conclusion in mid-last year. It transitioned to a new program, so we still continue to have AFP officers in the Solomon Islands in a capacity-building sense. The total number of officers that have been there since 2003 would be well in excess of a thousand, but I would have to check the numbers. At its height we had upwards of 300 officers in the Solomon Islands, so I would have to check and take that on notice.

CHAIR: How many have you still got in the Solomons doing capacity building?

Ms Close: We still have 41 officers in the Solomon Islands.

CHAIR: Is there a plan for their longevity or—

Ms Close: There is. We work with Department of Foreign Affairs and Trade, and the Solomon Islands' authorities as well. So we have a plan for continuing to develop the leadership and the capacity of the Royal Solomon Islands Police Force, and of the law and justice sector as well more broadly. There is drawdown plan, but we've worked hard to

understand how we can continue to ensure that the great work of the RAMSI mission doesn't diminish or that things revert back. So it's a continuing, long drawdown to ensure that that capacity—the leadership within the Royal Solomon Islands Police Force, for example—is developed over time.

CHAIR: And as well as assisting the Royal Solomon Islands Police Force, is there some assessment on how this assists your officers in their general dealings?

Mr Colvin: I think it adds to their breadth of experience. Obviously, overseas deployments are vastly different: policing in the streets of Honiara is very different to policing in the streets of Canberra. It adds to their experience, and, frankly, from my perspective, it makes them a more rounded officer.

CHAIR: Okay, thank you.

Senator MOLAN: My question is just an extension of that: how do you now manage to hang on to those skills? It's a different skill, Honiara and everything else that you do, but how do you manage to hang on to the leadership skills and that? Do you keep people in that stream or have those people who gained all that fantastic experience now moved out of the AFP?

Mr Colvin: No, most of the more recent ones would have stayed in the AFP. In the early days of the IDG—the International Deployment Group, we relied very heavily on state and territory secondments into the IDG. Many of those went back to their home jurisdictions, but many of them came across to the AFP permanently as well. In all of our remit and all of our areas of operations across the AFP, there is a smattering of people who have been to PNG, to Timor-Leste, to Afghanistan, to the Solomon Islands or to South Sudan. In terms of retaining those skills then, of course, should the government ask the AFP to surge again into a neighbouring country, we'd be drawing on those skills first and foremost. But, by large, they now go out into the AFP.

Senator MOLAN: How fast could you put together a RAMSI again, if you had to?

Mr Colvin: It would be very difficult.

Senator MOLAN: Months?

Mr Colvin: It would rely on a few things. We have no standing capacity, so every AFP officer is busy doing something. So I'd have to draw them off. It'd be a matter of priorities. Then I would have to work out how quickly I needed to stand-up a capability, whether I needed to talk to my state and territory partners again and whether I could turn-off other AFP business and refocus towards this. It would really depend on the size, the duration and the type of mission.

Senator MOLAN: And there's no intention of changing that philosophy? That's a fair philosophy, I understand that, but there's no intention of changing that philosophy. I think at one stage the IDG did have a number of people who were more than just the cadre staff who were full-time.

Mr Colvin: Even to support our three major overseas capacity-building missions—

Senator MOLAN: Which are where, sorry?

Mr Colvin: In Timor-Leste, PNG and Solomon Islands. We retain an A-based staff that we can use to supplement and to fill, as people need to rotate in and out. For every officer offshore, there is a percentage of an officer that we need back here to support them and to

keep that function going. But no. While in the past there has been a standing capacity to deploy, we don't have that standing capacity any longer.

Senator MOLAN: That's risk management, which you manage.

Mr Colvin: Exactly.

Senator MOLAN: The last question I have really goes to the deradicalisation program. I guess you bear the consequences of failed deradicalisation programs. I notice on the organisational chart that the secretary gave us the other day that there is an organisation called Countering Violent Extremism Centre. I imagine, Secretary, that's where the deradicalisation program lives, is that correct?

Mr Pezzullo: That is correct. That's one of the functions that was switched across from the Attorney-General's Department under the machinery of government change. It is a whole-of-government unit. It's a joint unit, in effect, principally staffed by former AGD staff. They work very closely with state and territory police and other agencies, with the Federal Police and with colleagues in ASIO. They also look at international best practice and they have very strong links to other jurisdictions including the UK and elsewhere.

Senator MOLAN: Roughly, how many people are in that?

Mr Pezzullo: I'd have to take that on notice.

Senator MOLAN: My understanding is that the results that they achieve in prisons, for example, are very low, which I guess you can somehow understand. In other areas though, they're quite spectacularly successful. I guess they're managing state based activities, is that correct?

Mr Colvin: It's not a precise science, and I guess that's the key issue here. Success can depend on a number of factors. I think there has been successful deradicalisation diversion activity to try to take people off a path of radicalisation. From a policing perspective, as you said, we bear the consequence of it, as does the community. My preference is that we drag that as far forward as we can to prevent people radicalising. I'd rather been talking about prevention of radicalisation than deradicalisation.

Senator MOLAN: There's an aspect that I would call 'pre-emptive arrest'.

Mr Colvin: Disruptive arrest.

Senator MOLAN: Can you tell me which jurisdiction that exists in? Does that exist at the federal level?

Mr Colvin: It does, and what it effectively means is that the parliament has seen fit, over a number of legislative amendments, to criminalise earlier and earlier activity on that spectrum of terrorism activity. There are a number of acts in preparation, if you want to look at it that way, that are now criminal in a terrorism context. That gives us the ability to intervene at the earliest possible moment and disrupt something from happening.

Senator MOLAN: Does it exist in any jurisdiction at the moment?

Mr Colvin: It sits in Commonwealth legislation.

Senator MOLAN: Is it tied to a time period or an act?

Mr Colvin: It's an act.

Senator MOLAN: So they have to do something before?

Mr Colvin: Yes.

Senator MOLAN: So you could be doing something—well, you don't know what's going to happen in the future, of course.

Mr Colvin: It's an act in preparation.

Senator MOLAN: Do these people go to jail?

Mr Colvin: Absolutely. The sentence around acts in preparation for a terrorism act is, I think, 25 years imprisonment.

Senator MOLAN: It's got to be a lot more specific than the old Irish Troubles days of the '60s and '70s? This a different thing all together.

Mr Colvin: Very different.

Senator MOLAN: Thank you.

CHAIR: Proceedings will now be suspended, and hopefully we'll have decent advice to determine whether we can move on to the Attorney-General's Department.

Proceedings suspended from 11:04 to 11:20

CHAIR: I propose that we have a private meeting. Can you give me any indication of how much longer you'll be?

Senator McKIM: Five minutes.

Senator WATT: At most 15. Fifteen all up, I'd say.

CHAIR: My inclination, after talking to the Clerk during the break, is to have the committee agree to meet again on spillover, at a time to be fixed. If I can rely on the five and 15 minutes, we might finish now. Otherwise, the committee can go into a private meeting and resolve, in accordance with the standing order, to schedule additional hearings for the purpose. If we don't finish by quarter to, then that's the position I will adopt, in accordance with the standing orders. It will be up to the committee, of course, to decide whether we should schedule additional hearings, in the hope that we may finish this. I'm very conscious that we have a whole department of the Attorney-General waiting to deal with matters which were scheduled to start at 10.45, and we perhaps should have taken this course at 10.45—

Senator WATT: That sounds like a good deal, Chair.

CHAIR: but that wasn't made clear at the time. In the interests of trying to get onto Attorney-General's and not have a whole department of public servants sitting around wasting their time, we'll try for quarter to. If it's not finished at quarter to, I'll call a private meeting at that time. Senator McKim, I'll go to you first.

Senator McKIM: Good morning, Commissioner Colvin and your team. I want to ask a couple of questions around a post on Facebook that was made by Mr George Christensen, the member for Dawson, where he posted a photo of himself holding what appears to be a firearm, with the words 'You gotta ask yourself, do you feel lucky, greenie punks?' Firstly, is the AFP investigating that matter?

Mr Colvin: We're assessing it. As part of that assessment, we're talking to a range of people, including complainants. Once that assessment finishes, that will determine if there's anything further for us to do.

Senator McKIM: How many complaints were there to the AFP?

Mr Colvin: I think only one or maybe two at most—formal complaints. There's been a lot said in the media, and a lot of social media, you can imagine, but, in terms of people that we need to talk to, one or two.

Senator McKIM: Would you have a time frame that you'd ordinarily expect—I think you said it was an assessment at this stage, to be complete and a decision made about whether you'll move to a formal investigation?

Mr Colvin: Part of the issue there is that we're in the hands of other people who make time available to speak to us. That's where we are at the moment. We've requested to speak to a number of individuals, and we're in their hands as to when they make themselves available.

Senator McKIM: Is Mr Christensen one of those?

Mr Colvin: Yes, he is.

Senator McKIM: Have you spoken to him yet?

Mr Colvin: Only to try and set up an opportunity for us to talk to him.

Senator McKIM: But that opportunity hasn't yet occurred?

Mr Colvin: No.

Senator McKIM: As part of your assessment, has the AFP monitored responses on social media to Mr Christensen's post and do you have concerns about anything you've seen that was posted in response?

Mr Colvin: As part of the investigation, I couldn't answer that; I'd need the investigators to tell me. But by and large, there's a lot of stuff put on social media. We see some of it but not all of it. Some of it is certainly offensive and unpleasant. To the extent that it forms evidence or gives us leads or enquiries, that's a different matter.

Senator McKIM: I'm nearly finished, Chair, within my five minutes. Is the fact that Mr Christensen later changed that post and tried to pretend that he was joking germane to your current assessment?

Mr Colvin: I think everything around the post and an individual's intention or otherwise is germane to the investigation.

Senator McKIM: What actions would be within the powers of the AFP if any investigation did find that Mr Christensen was in breach of law?

Mr Colvin: If we establish that an offence has been committed and the offence is a Commonwealth offence, then we'd be considering a brief to the Director of Public Prosecutions, and a prosecution may or may not follow from there.

Senator McKIM: And are there specific Commonwealth statutes that the AFP is looking at to determine whether or not Mr Christensen may have breached those by making that post?

Mr Colvin: This is part of the assessment—to try and understand what's actually occurred and which offences may or may not be applicable.

Senator McKIM: Thank you, Mr Colvin.

CHAIR: Thanks, Senator McKim, you were well under time. Senator Watt.

Senator WATT: Thanks, Chair. Just coming back to the email that Detective Superintendent Smith sent, the topic we're getting at is what can and can't be disclosed about

this investigation. This email was sent by Detective Superintendent Smith at 7.05 pm on 26 October, which was the day after you commenced the investigation and two days after the search warrants were executed?

Mr Colvin: Correct.

Senator WATT: I've already asked if you can advise us who this email was actually sent to, because it's not clear from the email itself. What was your answer to that?

Mr Colvin: I said I'd take that on notice.

Senator WONG: While you're taking that on notice, Commissioner, we're seeking the provision of that email in toto. The redaction, as I understand it, was not undertaken by the AFP; it was undertaken by Senator Brandis's office. We don't accept that redaction. We are asking you to take on notice—

CHAIR: Do you have a question?

Senator WONG: I'm asking politely if the commissioner could take on notice the provision of the email unredacted.

CHAIR: He said that he would.

Senator WONG: Thank you.

Mr Colvin: Senator and Chair, can I just confirm that these do not appear to be our redactions.

Senator WONG: Correct.

Mr Colvin: That's why I need to look at the email—

Senator WONG: I was informing you. I understand the evidence in the other committee is that it was Senator Brandis's office.

Mr Colvin: Thank you.

Senator WATT: Do you know what prompted Detective Superintendent Smith to send this email?

Mr Colvin: No, I don't. It's the first time I've seen the email.

Senator WATT: Ms Close, do you know?

Ms Close: No, I don't. I'd have to speak to Detective Superintendent Smith.

Senator WATT: I take it he's not here today?

Ms Close: No.

Mr Colvin: No. I think actually he might be returning from South Korea, where he was part of the security team for the Olympics.

Senator WATT: I'm sure he did a very good job.

Mr Colvin: I hope so.

Senator WATT: Could you take on notice what prompted it and, in particular, who requested that he send this email and when that request was made?

Mr Colvin: Yes, we can do that.

Senator WATT: The timing is interesting, because it was sent the night before we had a spillover day of estimates to interrogate ministers and other officials about this leak.

Mr Colvin: We'll establish that for certain. It's not unusual for departments to ask us what is appropriate to say or not say in estimates hearings on matters that we have in investigation or matters that are in the media. We'll check what the actual request was on this occasion.

Senator WONG: Commissioner, you and I had a discussion earlier about what Odgers articulates as the bases on which this claim for public interest immunity can be made. The concern I would express to you from the opposition's perspective is that Detective Superintendent Smith's email doesn't recognise—and I appreciate he may not be in the position that you and the deputy are—that there are two actually bases that have to be asserted. With respect, it isn't for the AFP to simply tell an estimates committee they can't ask any questions at all. That seems to be the tenor of the email and the way it was used by the government.

Mr Colvin: I absolutely accept that, Senator. To your point before, with these matters that we have taken on notice about the specifics, we will be quite precise about the two limbs of the privilege claim, to ensure that we are helping the committee where we can.

Senator WONG: I appreciate that. Thank you.

Senator WATT: Having seen that email now—and you may know some background to it—can you tell us what the purpose of that email was?

Mr Colvin: Again, without knowing what's redacted, for a start, and who it was sent to, I would only be speculating as to him being asked what is appropriate to say or not say.

Senator WATT: For the benefit of those who haven't got it in front of them, this email says, 'Good evening [blank]'—the name is blacked out—then:

The AFP has commenced an investigation into the alleged unauthorised disclosure of information concerning recent search warrants executed in support of a Registered Organisations Commission investigation.

Then there's another line redacted. Then:

As this matter is under investigation, it would not be appropriate to discuss the matter further.

It's hard to know, because we don't know who it was sent to, but it reads as if it was provided to—

CHAIR: Do you have a question?

Senator WATT: Would you let me get to it?

CHAIR: Please.

Senator WATT: It reads as if the email was provided either to the minister's office or to the department to provide them with advice about what the AFP was saying publicly about the investigation. Would you agree that that's how it appears?

Mr Colvin: That's a reasonable conclusion, but half the document is missing.

Senator WATT: Sure. Can you confirm that, at least in terms of what we can see before us, the email doesn't make any request that Minister Cash or any minister refrain from commenting on the matter of this leak of information?

Mr Colvin: It's hard for me to say without knowing what's redacted.

Senator WATT: In terms of what we can see here that is not redacted, there's nothing in there that has the AFP requesting that ministers not comment on this investigation?

Mr Colvin: I take Senator Wong's point very carefully. Our officers generally don't want our investigation to be discussed in the public arena, and you can understand that. Has he got the nuance right as to what should satisfy a privilege claim in this instance? Perhaps not. But I think the tenor of what he's asking here—whoever the recipient is—is that from his perspective, from an organisational perspective, we would prefer that it not be spoken about in whatever the public forum is. And I would take that to include a minister discussing any aspect of that investigation.

Senator WATT: When this came in, as Senator Cameron will remember, we certainly took it from that that this was the AFP saying that the AFP was not in a position to comment—

CHAIR: Questions, please.

Senator WATT: about the investigation. But it has been used by ministers as an excuse as to why they can't comment on anything to do with this entire leak.

CHAIR: Is there a question?

Senator WONG: I think the commissioner is clear about—

Mr Colvin: My concern about answering it is that, for all I know, this is an internal email to someone else in the AFP saying, 'Our media position is that we're not going to discuss the investigation.'

Senator WATT: 'Our media position is that'—yes.

Mr Colvin: It could quite well be that. I just don't know who it was sent to and what's redacted.

Senator WATT: Do you know whether the AFP has ever asked Minister Cash not to provide the Senate with answers to questions relating to this leak?

CHAIR: Do you know?

Mr Colvin: No, I don't know.

Senator WATT: Could you take that on notice for us, please?

Mr Colvin: Yes, I'll take it on notice.

Senator WATT: The other thing I found a bit curious this morning is that—and this is probably a question for the minister—when this committee was originally scheduled, we were told that Minister Cash was going to be here, and she isn't here. Is there any reason she was unable to attend this morning?

CHAIR: I'll see if the minister has an answer. As the committee chairman I can tell you that it was always clear that Senator Seselja would be doing this morning's hearing because the senator who was dealing with it yesterday was not available today.

Senator WATT: That's not correct.

Senator Seselja: My understanding is that it was originally Minister Fifield.

Senator WATT: No, Minister Fifield was doing yesterday and Senator Cash was doing today.

Senator Seselja: I can check that but my understanding is that it was Mr Fifield. In relation to the arrangements with Minister Cash, this area of the portfolio, AFP, is obviously not the responsibility of Minister Cash.

Senator WATT: But Minister Cash is likely to be appearing at this committee later today.

Senator Seselja: I don't know the schedule.

Senator PRATT: I have one more question. On 27 October, Senator Linda Reynolds, the chair of the Education and Employment Legislation Committee, received correspondence from Senator Brandis, the then Attorney-General, stating that, 'For the avoidance of doubt, I make the claim over all matters that are the subject of the investigation.' I want to be clear that it's not the AFP that was the source of that very broad public interest immunity claim and the request for that claim at that time. Clearly you've been rather more forthcoming in your answers this morning.

Mr Colvin: I can't speak on behalf of the former Attorney-General or where he took his advice from. I could take on notice whether we have provided any formal position to the Attorney-General's office in the course of this investigation. I'm not aware of us doing that.

Senator PRATT: In *Odgers'*, prejudice to law enforcement investigation states:

For this ground to be invoked it should be established that there are investigations and progress by an agency—

clearly that's the case—

... and the provision of the information sought could interfere with those investigations.

You've clearly stepped through that logically today and provided us with what information you could. As this is a matter for the law enforcement agency concerned to assess, this ground should normally be raised directly by the law enforcement agency, not by some other official who can merely speculate about the relationship of the information to the investigation. I want to clear up that you had not made any such request for public interest immunity in any place.

Mr Colvin: That is the first I've heard of the Attorney making that broad claim. We will take on notice whether there's been any correspondence. As you can imagine, this matter is before the Federal Court in Victoria as well, so there are a lot of aspects to it. We'll take on notice if there's been any formal advice to the department or to the Attorney's office about it.

Senator WONG: Did you just say that's the first you've heard of the Attorney making that claim?

Mr Colvin: That's the first I have personally heard the Attorney making that claim.

Senator WONG: It's been used a fair bit. I'm not having a go at you, Commissioner. I'm just surprised the then Attorney would make the claim without letting the AFP know.

CHAIR: Are there any other questions?

Senator PRATT: No.

CHAIR: Thank you very much, Commissioner Colvin. Again, I appreciate the wonderful work that you and your team do for Australia in so many ways. We really do appreciate that. We'll now change over to the Attorney-General's Department.

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

Senator Seselja, Assistant Minister for Science, Jobs and Innovation

Senator Cash, Minister for Jobs and Innovation

Executive

Mr Chris Moraitis Secretary

Mr Iain Anderson, Deputy Secretary, Criminal Justice Group

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

Mr Michael Kingston, Australian Government Solicitor, Australian Government Solicitor

Civil Justice Policy and Programmes Division

Mr Cameron Gifford, First Assistant Secretary, Civil Justice Policy and Programmes Division

Ms Kathleen Denley, Assistant Secretary, Legal Assistance Branch

Mrs Ariane Hermann, Acting Assistant Secretary, Legal Assistance Branch

Ms Sara Samios, Acting Assistant Secretary, Office of Legal Services Coordination

Ms Autumn O'Keeffe, Acting Assistant Secretary, Royal Commissions Branch

Ms Ashleigh Saint, Assistant Secretary, Family Law Branch

Ms Esther Bogaart, Acting Assistant Secretary, Family Violence Response Taskforce

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

Ms Dianne Orr, Principal Legal Officer, Family Law Branch

Civil Law Unit

Mr Michael Johnson, Acting Assistant Secretary, Civil Law Unit

Office of Constitutional Law

Mr David Lewis, Acting General Counsel

Office of International Law

Mr John Reid, First Assistant Secretary, Office of International Law

Ms Anne Sheehan, Assistant Secretary, Office of International Law

Mr Jesse Clarke, Assistant Secretary, Office of International Law

Corporate Services Division

Mr Stephen Lutze, Chief Financial Officer, Corporate Services Division

Human Resources

Ms Helen Daniels, Assistant Secretary, Human Resources

Information Division

Mr Stephen Andrew, First Assistant Secretary, Information Division

Strategy and Delivery Division

Ms Jamie Lowe, First Assistant Secretary, Strategy and Delivery Division

Ms Alexandra Mathews, Assistant Secretary, Strategy and Delivery Division

Machinery of Government (MoG) Taskforce

Ms Lucinda Atkinson, Acting Assistant Secretary

International Cooperation Division

Ms Susan Robertson, Acting First Assistant Secretary, International Cooperation Division

Mr Stephen Bouwhuis, Assistant Secretary, International Law Enforcement Cooperation

Ms Lisa Hemingway, Acting Assistant Secretary, International Law Enforcement Cooperation

Ms Karen Moore, Assistant Secretary, International Legal Assistance and Treaties

Security and Criminal Law Division

Ms Anna Harmer, First Assistant Secretary, Security and Criminal Law Division

Mr Andrew Warnes Assistant Secretary, Communications Security and Intelligence Branch

Ms Julia Gallucio, Acting Assistant Secretary, Criminal Law and Protective Security Branch

Ms Tara Inverarity, Assistant Secretary, Espionage and Foreign Interference

Royal Commission into misconduct in the Banking, Superannuation and Financial Services Industry

Ms Toni Pirani, Chief Executive Officer

Royal Commission into Institutional Responses to Child Sexual Abuse

Mr Philip Reed, Chief Executive Officer

PORTFOLIO AGENCIES

Administrative Appeals Tribunal

Ms Sian Leathem, Registrar

Mr Chris Matthies, Executive Director, Strategy and Policy

Ms Jacqueline Fredman, Executive Director, Corporate Services

Ms Elizabeth Connolly, Executive Director, Registry Operations

Ms Bernadette Ryan, Executive Director, Review Support

Ms Sobet Haddad, Senior Reviewer, Immigration Assessment Authority

Australian Commission for Law Enforcement Integrity

Mr Michael Griffin AM, Integrity Commissioner

Mr Nick Sellars, Executive Director Secretariat

Ms Sarah Marshall, Executive Director Operations

Ms Penny McKay, General Counsel/Director Legal and Policy

Australian Financial Security Authority

Mr Hamish McCormick, Chief Executive and Inspector General in Bankruptcy

Mr Gavin McCosker, Deputy Chief Executive, Chief Operating Officer and Registrar of Personal Property Securities

Ms Joanna Stone, Chief Financial Officer

Mr Andrew Sellars, General Counsel

Mr Tim Cole, Acting National Manager Regulation and Enforcement

Australian Law Reform Commission

The Hon Justice SC Derrington, President

Ms Sabina Wynn, Executive 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 of the Australian Human Rights Commission

Dr Tim Soutphommasane, Race Discrimination Commissioner

Mr Alastair McEwin, Disability Discrimination Commissioner

The Hon Dr Kay Patterson AO, Age Discrimination Commissioner

Ms Padma Raman, Executive Director

Commonwealth Director of Public Prosecutions

Ms Sarah McNaughton SC, Commonwealth Director of Public Prosecutions

Ms Andrea Pavleka, Commonwealth Solicitor for Public Prosecutions

High Court

Ms Philippa Lynch, Chief Executive and Principal Registrar

Ms Carolyn Rogers, Senior Registrar

Ms Margaret Baird, Acting Manager Corporate Services

National Archives of Australia

Mr David Fricker, Director-General

Ms Louise Doyle, Assistant-Director General, Access and Public Engagement

Family Court of Australia

Mr Warwick Soden, Acting Chief Executive Officer and Principal Registrar

Ms Virginia Wilson, Deputy 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 Hunter, Chief Financial Officer

Federal Circuit Court of Australia

Dr Stewart Fenwick, Chief Executive Officer and Principal Registrar

Mr Steve Agnew, Executive Director Operations

Ms Janet Carmichael, Principal, Child Dispute Services

Office of the Australian Information Commissioner

Mr Timothy Pilgrim PSM, Australian Information Commissioner

Ms Angelene Falk, Deputy Commissioner

Office of Parliamentary Counsel

Mr Peter Quiggin PSM, First Parliamentary Counsel

Ms Meredith Leigh, Second Parliamentary Counsel

Ms Aasha Swift, General Manager Publishing

CHAIR: The committee's inquiry this time is into the Attorney-General's portfolio. Officers are well experienced with the rules of Senate estimates, so I won't go through the long rigmarole, but if there are any questions please raise them with the secretary or the committee. I incorporate the public immunity statement.

The extract read as follows—

Public interest immunity claims

That the Senate—

- (a) notes that ministers and officers have continued to refuse to provide information to Senate committees without properly raising claims of public interest immunity as required by past resolutions of the Senate;
- (b) reaffirms the principles of past resolutions of the Senate by this order, to provide ministers and officers with guidance as to the proper process for raising public interest immunity claims and to consolidate those past resolutions of the Senate;
- (c) orders that the following operate as an order of continuing effect:
 - (1) If:
 - (a) a Senate committee, or a senator in the course of proceedings of a committee, requests information or a document from a Commonwealth department or agency; and
 - (b) an officer of the department or agency to whom the request is directed believes that it may not be in the public interest to disclose the information or document to the committee, the officer shall state to the committee the ground on which the officer believes that it may not be in the public interest to disclose the information or document to the committee, and specify the harm to the public interest that could result from the disclosure of the information or document.
 - (2) If, after receiving the officer's statement under paragraph (1), the committee or the senator requests the officer to refer the question of the disclosure of the information or document to a responsible minister, the officer shall refer that question to the minister.
 - (3) If a minister, on a reference by an officer under paragraph (2), concludes that it would not be in the public interest to disclose the information or document to the committee, the minister shall provide to the committee a statement of the ground for that conclusion, specifying the harm to the public interest that could result from the disclosure of the information or document.
 - (4) A minister, in a statement under paragraph (3), shall indicate whether the harm to the public interest that could result from the disclosure of the information or document to the committee could result only from the publication of the information or document by the committee, or could result, equally or in part, from the disclosure of the information or document to the committee as in camera evidence.

- (5) If, after considering a statement by a minister provided under paragraph (3), the committee concludes that the statement does not sufficiently justify the withholding of the information or document from the committee, the committee shall report the matter to the Senate.
- (6) A decision by a committee not to report a matter to the Senate under paragraph (5) does not prevent a senator from raising the matter in the Senate in accordance with other procedures of the Senate.
- (7) A statement that information or a document is not published, or is confidential, or consists of advice to, or internal deliberations of, government, in the absence of specification of the harm to the public interest that could result from the disclosure of the information or document, is not a statement that meets the requirements of paragraph (1) or (4).
- (8) If a minister concludes that a statement under paragraph (3) should more appropriately be made by the head of an agency, by reason of the independence of that agency from ministerial direction or control, the minister shall inform the committee of that conclusion and the reason for that conclusion, and shall refer the matter to the head of the agency, who shall then be required to provide a statement in accordance with paragraph (3).

(Extract, Senate Standing Orders, pp 124-125)

We are now dealing with the Administrative Appeals Tribunal, followed by the courts, then by the Information Commissioner and then by the Human Rights Commission, all of which are non-Canberra based agencies. Would the Administrative Appeals Tribunal like to make an opening statement?

Administrative Appeals Tribunal

[11:45]

Ms Leatham: No, thank you. We have no opening statement today.

CHAIR: I will start the questioning. Can you tell the committee what the current lodgement figures are for applications for review as at the latest time you have a date?

Ms Leatham: Certainly. We received 51,426 applications in the 2016-17 year. That was a 24 per cent increase over the applications received in the 2015-16 year. For the first half of this 2017-18 year, we've received a further 29,537 applications. That actually is equivalent to 57 per cent of what we received at the same point in time the previous year, so it's effectively a 16 per cent increase from that period in time.

CHAIR: Can you divide those up between the three divisions? The three divisions are: Migration and Refugees; Social Services and Child Support; and General and other.

Ms Leatham: There are actually eight divisions, but for convenience we generally refer to them as the Social Services and Child Support Division, the Migration and Refugee Division and the General and other division. That's probably where your understanding has derived from.

CHAIR: Yes.

Ms Leatham: We have at the moment detailed breakdowns against a range of those different divisions. If I start with the Social Services and Child Support Division, for the 2016-17 financial year, we received a total of 17,450 applications in the SSCSD.

CHAIR: If you have it there, could you indicate whether that's up or down? I assume they're all up from the other figures you've given us.

Ms Leathem: If you're just talking about the change from the 2015-16 year, that was a 12 per cent increase in those lodgements. For the Migration and Refugee Division in the 2016-17 year, there were 26,604 applications, representing a 41 per cent increase in that division. The total for the General and other division, rather than breaking them down individually, was 7,372 applications for the 2016-17 financial year. That was a modest increase, but relatively stable relative to the other divisions.

CHAIR: The big one is the Migration and Refugee Division. That's been the substantial increase.

Ms Leathem: That already represents our largest area of work.

CHAIR: Is that still increasing?

Ms Leathem: The level of increase has in fact accelerated during the first half of this financial year as well. For example, from July to December 2017, we've had a total of 19,039 applications in the migration and refugee division. That's a 51 per cent increase compared to the same period last year.

CHAIR: As the IMAs have stopped, is that increase related to the department now trying to resolve other issues with migration over the last decade or so and the department is making decisions which are then being appealed to the AAT? Are you able to give that as a general reason for the increase?

Ms Leathem: We couldn't go into too much detail about the driving factors, but I can tell you from the point of view of the case load what we're seeing for lodgements. There have been significant increases in the migration and refugee side of things, but, particularly in the refugee case load, there have been a very large number of Malaysian applications. I think they represent about 50 per cent of lodgements—

CHAIR: Malaysian?

Ms Leathem: That's correct, yes—and about 40 per cent of the matters on hand in that particular area. But we have, of course, also seen some higher rates for business related cases; student visa refusals have been up as well. So it's a complex picture in terms of the types of applications that we're seeing increases in.

CHAIR: It's a self-evident question, but the department has made decisions in relation to these applicants, who then have challenged the departmental rulings on them—is that right?

Ms Leathem: There may be an increase in the volume of what the department's seeing, but, of course, we only deal with those once they've been processed by the department.

CHAIR: Do you have statistics on how many of the appeals that go before the AAT, particularly in those three broad divisions, are allowed and how many are rejected?

Ms Leathem: If I could just make it clear, when the AAT makes a decision, it's undertaking merits review, so it's effectively standing in the shoes of the decision-maker and making the decision. For want of a better phrase, we often refer to it as 'setting aside' the decision, and collectively it's a 23 per cent set-aside rate, if you're looking at the 2017-18 figures.

CHAIR: Is that across all three of those big divisions?

Ms Leathem: That's correct.

CHAIR: How is that? Is that normal, increased or decreased?

Ms Leathem: It's actually a slight decrease from the previous year, where it was 26 per cent.

CHAIR: That's very interesting. What's the backlog of applications?

Ms Leathem: At 31 December 2017, we had a total number of matters on hand of 44,473. Again, that's collectively across all of the divisions.

CHAIR: Can you break them up between the three divisions? Can you do that easily?

Ms Leathem: I can tell you that the Migration and Refugee Division was 35,521; the SSCSD was 2,866. I don't have the collective figure for the General Division because it's broken down by other divisions, but we can provide that information on notice.

CHAIR: Can you tell me, in the refugee and migration area, what percentage has been set aside?

Ms Leathem: There would be differing rates depending on the types of applications that we're talking about. I can give you a migration set-aside rate and then a protection set-aside rate. In the migration area, it's a 30 per cent set-aside rate if you're looking at the July to December 2017 period, which is the most recent for which we have stats. The refugee set-aside rate is five per cent for that same period. I would say that that has been impacted by the high volume of Malaysian matters that have been dealt with, and there are a significant number of people in that category who often will not turn up for a hearing, so the set-aside rate has been, effectively, a lot lower for that cohort of cases, so I expect that's impacting on the overall set-aside number.

CHAIR: To get that right for a simple mind, in the refugee division, for whatever reason, most of the departmental decisions have not been set aside?

Ms Leathem: They have not been set aside.

CHAIR: And, in migration, 30 per cent have been set aside and 70 per cent have not been set aside.

Ms Leathem: That's correct.

Senator PRATT: Briefly, you will, of course, be aware of remarks made by Minister Peter Dutton questioning the independence of the AAT. Has there been any apology from the office of Peter Dutton with respect to the remarks he made about the AAT?

Ms Leathem: I'm not aware of anything.

Senator PRATT: Is there any discussion taking place, particularly in relation to education, including for ministers of government, about the separation of powers and contempt of court?

Ms Leathem: I don't think that's a role for the AAT. I'm not sure if the department might wish to say anything.

Mr Moraitis: I have nothing to add to those comments. We haven't considered that issue. I'll take that on notice. I'm not sure if Mr Anderson has considered it but I don't think so.

CHAIR: Does the separation of powers apply to the AAT?

Mr Moraitis: I was thinking that aloud but I didn't want to comment on that. I take the point about criticism of tribunals. I take that point.

Senator PRATT: It would normally be something for which the separation of powers would apply? Have tribunal members been given any reasons or information beyond what was publicly announced on 2 June 2017, with regards to the decision by the Attorney-General not to renew the appointments of some 50 members?

CHAIR: Sorry, Senator Pratt, can I interrupt and go back to the point you were just making, to clarify something with Mr Moraitis or whoever. Does the AAT have judicial status which would allow the separation of powers principle to—

Mr Moraitis: Mr Anderson just reminded me that under the AAT Act there's a provision which equates the content of contempt of court as it applies to the AAT process. I don't want to use the Latin phrase *mutatis mutandis*, but, given the differences, the concept of being in contempt is expressly referred to in the act.

CHAIR: Thanks for that. I apologise, Senator Pratt.

Senator PRATT: Thank you for that reminder. Whose responsibility is it to ask the Hon. Peter Dutton to comply with his role in separating himself out as the responsible minister, the minister for immigration, to not interfere in the courts that manage the decisions within immigration?

Mr Moraitis: I can't recall the comments made by Minister Dutton and the nature of the comments. If they're about the outcomes or process, I think it's been said in the past that the process is appropriate but the integrity of the process is something else.

Senator PRATT: What Mr Dutton said was:

When you look at some of the judgements that are made, the sentences that are handed down it's always interesting to go back to have a look at the appointment of the particular Labor government of the day.

CHAIR: I don't think that's specific to any particular member.

Mr Moraitis: I'll take that on notice.

CHAIR: You'll take it on notice. Okay. Back to your questions, Senator Pratt.

Senator PRATT: What information was given to members whose appointments weren't renewed about the reasons that they weren't renewed?

Ms Leatham: Appointments are a matter for the government, so it's probably more appropriate for the department to take that question.

Mr Moraitis: Is this recent decisions on renewal and nonrenewal from last year?

Senator PRATT: Yes. On 2 June last year there were some 50 decisions not to renew appointments.

CHAIR: If memory serves me correctly we've been through this in the last estimates.

Mr Moraitis: I was going to say, I think, we have discussed the protocol and the process about how decisions are made. You will recall that, under that process, the Attorney make a decision based on advice from the president of the tribunal whether to renew appointments, to make new appointments or to seek a process whereby new appointees are made. My recollection in the last year, or more than the last year, is the Attorney has tended to make decisions. The former Attorney made decisions based on advice from the AAT president—renewals in some cases, and nonrenewal in others, and new appointments. But to go to the

details of which ones, I'd have to ask Dr Smrdel to remind us, from June last year, what they were.

Senator PRATT: In that respect, were any of those tribunal members who weren't renewed given information beyond what was publicly announced about the reasons they weren't specifically appointed?

Clearly, the president has given advice about who could or should or shouldn't be appointed. I appreciate that these are not the same as employment, but, under normal employment circumstances, you should have a right to inquire as to the reasons why you are or aren't continued in your employment.

Mr Moraitis: Mr Anderson or Dr Smrdel will come back to me if I'm wrong, but my understanding is that the department doesn't inform individuals of the reasons for their nonappointment. I'm not sure what the practice is in the tribunal itself as an employer—unless Mr Anderson knows, in those cases back in June, whether there was any process?

Mr Anderson: Because these are appointments for a term and there's no guarantee or in any way an assurance that you will be appointed for a successive term, the usual practice is that, if you're not reappointed, you receive a letter which thanks you for your service.

Senator PRATT: So there's no disclosure about the grounds on which you may not have been renewed?

Mr Anderson: No, the government makes its considerations as to what the needs are. On all occasions, the Attorney has regard to advice that comes from the president of the tribunal and makes a decision as to what the best way to meet the needs of the tribunal is, and there's no sharing with those who are not successful in being reappointed of the reasons for that.

Senator PRATT: Even if they weren't successful, but the President of the AAT provided advice supporting someone's reappointment?

Mr Anderson: Again, it's a decision ultimately for the government of the day as to who to appoint. It has advice from the president, and, no, the government doesn't share with individuals its reasons for not appointing them.

Senator PRATT: I just want to ask quickly about the increase in the social security lodgements. Is there any way of breaking that increase down in a more defined time period? Are you able to provide the time period for us?

Ms Leathem: What I can say, which might also give you more complete information, is that, in the period from July to December 2017, we've actually seen a decrease in applications in the SSCSD. But, if we look at 2016-17, I can tell you that the Centrelink reviews were up by 13 per cent for that year; child support were up by five per cent; and paid parental leave applications were up by 26 per cent.

Senator PRATT: I appreciate that it's not for you to judge the reasons for those increases and decreases, but for us it's a matter of trying to match that back with any changes in the way that social security law is administered. I'm sure Senator Siewert's got similar questions. Thank you.

Senator HINCH: Going back to what Senator Pratt was asking about, last year the then Attorney-General, Senator Brandis, appointed more than 60 new members—I think that

included 30 or about that number of reappointments and 30 he did not reappoint. How many vacancies does that leave now on the AAT?

Mr Anderson: There are no vacancies as such.

Senator HINCH: The full quota was appointed by Senator Brandis?

Mr Anderson: It's a question of the workload of the AAT and how many members are actually required to have a composition, as well, of full-time and part-time members. So the total number can vary from time to time.

Senator HINCH: Because it's full time and part time, there are 300 or 400; am I right?

Ms Leathem: 306 members.

Mr Moraitis: It's not like the High Court. For example, it's not a judge's vacancy—

Senator HINCH: You've got a pool of about 300 or 400 people to call on when the volume of work demands it?

Mr Moraitis: Part time or full time, based on the expertise that they have.

Senator HINCH: And the expertise, yes.

Mr Anderson: 306 members in total.

Senator HINCH: Going back, you said 23 per cent of the decisions were set aside—not overturned but, you say, set aside.

Ms Leathem: That's correct.

Senator HINCH: How many of those decisions that were set aside, that percentage, did the minister, Minister Dutton, overturn; can you tell me?

Ms Leathem: Are you asking how many were appealed by—

Senator HINCH: Yes, successfully appealed.

Ms Leathem: I'll have to find our appeals statistics. I can tell you that overall, in relation to the AAT, of decisions that we make that are appellable, 3.9 per cent of those are effectively allowed on appeal. We have a target that we publish to have five per cent or less of our decisions being allowed on appeal, and at the moment it's at 3.9 per cent. Mr Matthies, can you help me with any of those detailed statistics?

Mr Matthies: In relation to decisions of the Migration and Refugee Division, my understanding is that, in 2016-17, there were seven appeals lodged by the Minister for Immigration and Border Protection, and in the six months from 1 July to 31 December 2017, there was one appeal lodged.

Senator HINCH: Can you just refresh me quickly. You make a decision, and the minister has the power to overturn that decision, which usually involves visas being cancelled and people being deported. Can you tell me or take on notice how many people were deported last year under those terms?

Ms Leathem: Once we've made our decision we actually don't have the information. It would only be the department who could answer that question for you.

Senator HINCH: But, you would keep on record a percentage of—

Ms Leathem: No, because they don't inform us whether someone has been deported. Once our decision has been made, that's the end of our involvement in the process.

Senator HINCH: So, if suddenly the immigration minister started overturning 30, 40, 50 per cent of your decisions, you wouldn't know?

Ms Leathem: We wouldn't have that information.

Senator HINCH: Wow. I thought you should.

CHAIR: Perhaps the secretary could take that on notice, if you wanted to try to get some statistics on that.

Mr Moraitis: On which one?

Senator HINCH: On percentages overturned.

Mr Moraitis: Alright, we'll follow up.

Senator HINCH: The registrar told me that it doesn't come back to you, so the figures must be somewhere in some department.

Ms Leathem: It'd be the Department of Home Affairs.

Mr Moraitis: It is not our department.

CHAIR: The secretary reminds me, put a question on notice.

Mr Moraitis: If it were immigration issues, it would be Home Affairs; if it were social security, it would be Centrelink.

Senator HINCH: I forgot where I was.

Mr Moraitis: That's understandable.

CHAIR: That was my encouragement to you, Senator Hinch.

Senator SIEWERT: I wanted to go back to the issues around particularly the social security child support area of appeals. Firstly, you gave us the figures for year to date for migration refugees and you referred to social security and child support when you were answering Senator Pratt's questions but you didn't give us the actual figures.

Ms Leathem: Certainly.

Senator SIEWERT: Could I ask for that year to date?

Ms Leathem: If you would like the 2016-17 figures for SSCSD: 17,450 applications. For the first half of 2017-18—collectively the SSCSD—there was 6,725. And if you'd like the breakdown I can give you.

Senator SIEWERT: If you could, but that's a decrease of how much over last year?

Ms Leathem: Collectively, year to date, it's 27 per cent down compared to that same period last year. For the Centrelink applications, we've received 5,506, which is a decrease of 30 per cent.

Senator SIEWERT: Sorry, 5,506 and 30 per cent?

Ms Leathem: For child support it is 1,107, which is a decrease of seven per cent; paid parental leave, 112 applications—a decrease of 13 per cent.

Senator SIEWERT: Thank you for the answers that you provided on notice last time. They were very helpful. What I take out of those answers—and I do want to go to a more specific breakdown of some of those figures shortly—is that the disability support pension is by far the highest area within Centrelink and child support, that being the second highest number of claims. And according to the way I read this table that you provided in answers to

questions on notice, DSP is by far the highest area that you've had number of applications. Is that a correct interpretation of the data?

Ms Leathem: Yes, that would be correct.

Senator SIEWERT: Could I ask for this year whether you can provide those figures and maybe just for DSP? But I will ask on notice against all of those payment types for the breakdown year to date but I won't ask you to go through them all now. But for DSP, could we go through that?

Ms Leathem: Sure. For disability support pension applications between July and December 2017, we've had 1,511 and that represents a 60 per cent decrease compared to the same period last year.

Senator SIEWERT: My take on the records to some of the data you provided today is they've been fairly stable over the last three years—or a slight increase—whereas we have seen a fairly dramatic decrease this year. Have you had any thoughts about that?

Ms Leathem: Again, we deal with what comes in the door. There is obviously liaison with the department to try and anticipate what's happening, but we couldn't make comment in particular about what's happening.

Senator SIEWERT: Are you able to provide the breakdown—if you could point me to the area in the annual report I am very happy to go and look there, but I couldn't find it—in the figures for DSP and the numbers of decisions that have been set aside. You've got the overall figures, but not for the breakdown against payment types.

Ms Leathem: I don't think we have that detailed outcome data for the categories but we can certainly—

Senator SIEWERT: My office and I couldn't find it.

Ms Leathem: We can certainly provide that to you.

Senator SIEWERT: In the table you provided in answer to question SBE 17-072 you provided a breakdown of figures over the last couple of financial years. Could you provide the rate of decisions that have been set aside for each of those?

Ms Leathem: Yes, we can do that.

CHAIR: Can I interrupt: Ms Leathem, I think you're reading from a sheet when we're asking this sort of information.

Ms Leathem: Many, many sheets, I have to say.

CHAIR: I was going to ask whether it was possible to make that available to the committee.

Ms Leathem: We're happy to, but I've probably got about a hundred sheets of data here, so it might get confusing.

CHAIR: Okay, forget it. Sorry, Senator Siewert. I just thought that might help.

Senator SIEWERT: Are you able to provide just for DSP, because I'm particularly focused on that, given the high level of complaints—I notice it's still a fairly high proportion of the total number of Centrelink and child support. We're up around a quarter of those appeals. DSP is still by my quick reckoning from the figures you have provided the highest level of appeals for one payment that you've got, even though there's a reduced number.

Ms Leathem: Still a significant piece of work in the Centrelink area.

Senator SIEWERT: Are you able to provide for 2016-17, just for DSP, the detail on the numbers of decisions that have been set aside?

Ms Leathem: Yes. We could provide that on notice.

Senator SIEWERT: You don't have that?

Ms Leathem: I don't believe we've got any data here.

Senator SIEWERT: Okay, I'll wait till I get that table. The harder issue then is are you able to provide more specific detail about what areas they related to for DSP? The National Social Security Rights Network put out a report last month—you may or may not be aware—around the disability support pension. The report looks at issues around claims and assessments since the 2015 changes. For example, they've been looking specifically at the treating doctor's reports since that process came in. I'm particularly interested in looking at, where these decisions have been set aside, whether there is data available on the reasons—what they're related to in terms of their applications for DSP.

Ms Leathem: I'm not aware that we would have that level of data available. Mr Matthies, correct me if you have any different understanding.

Mr Matthies: We may have some additional level of data about the kind of decision under review, but we'd need to take that on notice.

Senator SIEWERT: If you could. For example, they say:

Of the 22 casework files included in this snapshot, 17 clients were successful in their appeal to the AAT by providing information that a—

treating doctor's report—
would likely have covered.

I'm looking at that level of information, if possible, to look at not just their snapshot but the broader view. That's from interviews they carried out. If there is information, could you provide it on the breakdown on what the nature of the decision.

Ms Leathem: The nature of the case. We'll have to interrogate the database and see what might be available.

Senator SIEWERT: It would be appreciated if you could. In that same section, there was the process of reassessment for those under the age of 35, which was undertaken a couple of years ago, and there's the ongoing process of the reassessment of the 90,000 progressively over three years for those over 35. I'm trying to find out in relation to that assessment process how many appeals there have been, if that's possible.

Mr Matthies: We wouldn't have that level of detail in our case management system.

Senator SIEWERT: That wouldn't come up in your case?

Mr Matthies: Not necessarily. Associated with particular kind of cohorts of decisions being made. Obviously we'll have a look at the kind of data we have, but I'm not sure we do have that level of detail.

Senator SIEWERT: In answer questions I asked last time around the OCI process, I was specifically interested in the number of appeals involved in the OCI process. You said that information wasn't available. Is that because that information is not collected?

Ms Leathem: That's correct.

Senator SIEWERT: So the only way we can relate any of the data to the OCI process is to go back and look at the increase, which there was, in terms of related to that OCI process?

Ms Leathem: It would be very difficult to particularise what is involved in that caseload because we don't delineate between those matters that come in as being related to that particular program.

Senator SIEWERT: What happens if the appeal is about that particular program?

Ms Leathem: It would be a category of our debt matters.

Senator SIEWERT: Sorry, it would be what?

Ms Leathem: We have a large debt area anyway, and many SSCSD applications involve different types of debt. So we don't keep that as separate data, and we certainly wouldn't drill down to the fact that the debt may have been raised by a particular type of process. There's a whole range of different ways that debts can arise through SSCSD.

Senator SIEWERT: The manner in which the debt's raised is not—

Ms Leathem: It's not something that we have ever collected information on.

Senator MOLAN: Are your members judicial officers? Do you consider them to be judicial officers?

Ms Leathem: We do have some members who are in fact judicial officers. Clearly, the President holds a commission also as a Federal Court judge. We also have a number of judges of both the Federal and Family Courts who are cross-appointed to sit as members of the AAT.

Senator MOLAN: I'm getting towards conflict of interest of members of the AAT. What would you consider to be the kind of conflict of interest that you would advise members who are not already judicial officers to avoid?

Ms Leathem: There is a member code of conduct, which outlines the responsibilities of members in relation to expectations around independence and impartiality. There's also an ongoing obligation on members to disclose any conflicts of interest they might become aware of. If somebody was allocated a matter, for example, and they had some knowledge of the parties or they had some particular association they thought made it difficult for them to bring a clear mind, or a perception that they brought an objective mind, then the option would be to recuse themselves from that matter.

Senator MOLAN: Would membership of a political party or holding a position within a political party be a conflict of interest?

Ms Leathem: It really comes down to an assessment of whether the person can discharge their responsibilities as an independent decision maker.

Senator MOLAN: So you may find one member of the AAT who is very happy to give up membership of a party or an official position within a party to be a member of the Administrative Appeals Tribunal, yet it would be more than permissible for another member to hold membership or an official's position within a party?

Ms Leathem: I'm not sure I can speculate about that. If you have some specific issues that you'd like me to address, I'd be happy to do so.

Senator MOLAN: You don't prohibit it?

Ms Leatham: There is nothing explicit, if you like, in the code of conduct in relation to political membership of a political party.

Senator MOLAN: My second question is in relation to veterans. Now that we're putting veterans through social services and Centrelink, can you identify veterans as they come through your system?

Ms Leatham: We have a specific Veterans' Appeals Division and so, of course, we're able to report separately on those types of applications. If I'm not mistaken, that covers both the veterans' appeals jurisdiction and the MHRC.

Mr Matthies: Yes, that primarily relates to applications under the Veterans Entitlements Act, the Military Rehabilitation and Compensation Act and also the Safety, Rehabilitation and Compensation (Defence-Related Claims) Act.

Senator MOLAN: Quite often I'm requested in relation to that. Where can I find information? Can I be briefed by someone from your area about the number?

Ms Leatham: We can take on notice details and get detailed information about the veterans' appeals jurisdiction.

Senator SIEWERT: I wanted to clarify the questions I asked on notice for the breakdown of information. Can I have it for the first review and the second.

Ms Leatham: First and second tier review?

Senator SIEWERT: Yes.

Senator HANSON: In your remarks, you noted that migration is up to 26,604 applications, a 41 per cent increase from Malaysians. Is that correct?

Ms Leatham: There's been a large cohort of Malaysian applications.

Senator HANSON: Is it still the case that you can apply online to come to Australia? Is Malaysia one of the only Asian countries where you can do it?

Ms Leatham: I think that would be more appropriately answered by Home Affairs. We only deal with the review applications, once there's been a decision by the department. I'm not entirely sure I could comment on their online application process.

Senator HANSON: I think the next highest were India and Pakistan to put in applications to come before the tribunal. If someone applies to come Australia, they overstay their visas, they then apply to the tribunal. What's the cost of their application fee?

Ms Leatham: What type of visa are we talking about, Senator? A protection matter or a migration?

Senator HANSON: Anyone who has applied to come here as a tourist or anyone who's entered the country for a three-month stay and they actually overstay. They then apply to the tribunal to stay longer the country. What's the cost of the application fee?

Ms Leatham: The standard application fee in the migration refugee area is \$1,731.

Senator HANSON: To appeal to the tribunal?

Ms Leatham: Yes, to lodge an application to the tribunal.

Senator HANSON: If they're found to not be eligible to stay in the country, are they fined for that? If they can stay until the case is appealed, how long are they given to stay in the country? And can they apply for a work visa?

Ms Leatham: Again, that would have to be a question directed to Home Affairs. The tribunal's role finishes once the decision has been issued.

Senator HANSON: I'll move on to the student visas. You've said they're up. Can you explain why student refusals would be up? What is the main reason?

Ms Leatham: Senator, we just deal with the matters that come in. Unfortunately, I don't have information as to what might be driving the number of primary applications increasing. Perhaps Home Affairs might have some intelligence about what is driving some of those increases.

Senator HANSON: Can you give me any indication about the main complaints in the area of child support?

Ms Leatham: Are you asking about applications for review of decisions?

Senator HANSON: Yes.

Ms Leatham: I have information about the volume of those applications, but I couldn't tell you any more of the nuanced detail about the nature of the types of applications.

Senator HANSON: You don't keep that data?

Ms Leatham: We may well have some further data, but effectively child support is a category of work on which we report, and each of the individual cases has a variety of reasons that a party would be seeking to review a decision of the child support registrar.

Senator HANSON: You have the data, but not have it with you.

Ms Leatham: What sort of data would you like? I can make inquiries if we have it.

Senator HANSON: I'd like to know whether there are cases where applicants can't survive because of the child support they're having to pay. Would there be cases like that?

Ms Leatham: It would be very difficult without looking at every individual decision that's been made.

Senator HANSON: Would that be a case that someone takes to the tribunal—the fact is they cannot afford to pay the child support and live themselves, and so they take that appeal to that tribunal?

Ms Leatham: That would be a grounds that somebody could seek a review of the child support matter.

Senator HANSON: Right. Thank you. And would that—

Ms Leatham: That would be reviewed by the member who's responsible for looking at that particular matter.

Senator HANSON: Do you put any recommendations to the department on child support? Do you work with the minister on recommendations?

Ms Leatham: We're not a policy department. We liaise with agencies about what sort of workload we're likely to see or what sort of resourcing might be needed. The information about our appeals, for example, or decisions that are made in the tribunal are frequently used

by the agencies to reflect on whether there might need to be changes made to legislation or processes or procedures.

Senator HANSON: What I'm asking is: does the department, does the minister, sit around and talk to you and ask you for recommendations or advice on what you feel needs to be done?

Ms Leatham: It's probably more appropriate that the Attorney-General's Department deals with that.

Senator HANSON: Well, whoever deals with that.

Mr Moraitis: Which minister were you alluding to?

Senator HANSON: Whether it's to do with immigration, the home affairs minister or whether it's to do with—

Mr Moraitis: We don't involve ourselves in any way in any relations between—

Senator HANSON: So they don't ask for your advice—

Mr Moraitis: Not that I'm aware of.

Senator HANSON: or what comes over your—

Mr Moraitis: We've been involved with the AAT, for example, recently on post-consolidation of various tribunals and how to rationalise those tribunals so that people have the expertise to be able to move resources around. The former president, Duncan Kerr, and I engaged in the process to see what we could do. That's an example of where we'd be involved, but we don't, as far as I know, get engaged with individual departments to try to influence—

Senator HANSON: So they don't ask for your advice on what comes across to the tribunal and what you're actually dealing with and the main causes and the problems?

Mr Moraitis: Not directly. I caveat that. If there were any discussion in a cabinet context, we as a department, as to the rule of law, would comment on legal issues in a generic way, but that's an indirect way, if you know what I mean. That's a long-standing practice.

Mr Anderson: In addition to the point made by the secretary, if a minister of another portfolio is suggesting that the jurisdiction of the AAT should be changed or expanded, then the department will engage with other departments to talk about the impact on the AAT. We will engage in those sorts of scenarios.

Mr Moraitis: I'll give you an example. A year or so ago, the former president, Duncan Kerr, and we engaged a consultant to provide some assistance in that space, because it was about trying to rationalise the social services migration review processes and various other regimes. In a consolidation, you want to ensure that the processes are as consistent as possible. A person from the public comes in and is told, 'You go down to this door or to that door,' and they get confused at the first stage. If there's a consistent process that's rationalised, it makes sense for the public to have that process. There's an example with several departments in this case. We set out together to work out a way of rationalising how the AAT works. It provides efficiencies for the AAT as well. That's a good example of how we would engage. But directly from a department to influence the AAT and how it approaches things, no.

Senator HANSON: If I've said 'influence', that's not it.

Mr Moraitis: I'm sorry.

Senator HANSON: It's about asking for your advice, your recommendation of what may be needed, or you could be recommending: 'These are the cases we have. This is what's coming across our desk.' Maybe there are areas—

Mr Moraitis: For example, if a department said, 'We're finding that the AAT is too slow in processing our requirements,' they could come to us and say, 'Can we talk to the AAT about how we improve it?'—whether it's resourcing, whether it's more tribunal members, whether it's the expertise of tribunal members or whether there's a systemic problem. Those sorts of issues could come up in that context.

Senator HANSON: What was the budget for the AAT last year?

Ms Leathem: It was \$155 million.

Senator HANSON: And that's up an extra \$20 million from last year?

Ms Leathem: There was, I think, an increase in funding in the appropriation specifically for the IAA, which may be what you're referring to. If you need more detailed information—

Senator HANSON: So it's \$150 million now?

Ms Leathem: It's \$155 million.

Senator HANSON: That's actually an increase on the year before, isn't it? I think it was around \$124 million or \$125 million.

Ms Leathem: It was \$146.9 million.

Senator HANSON: That was the year before?

Ms Leathem: Yes.

Senator HANSON: Thank you very much.

CHAIR: Thanks, Senator Hanson, and I thank the AAT for their assistance. I very much appreciate the help you give the committee.

Proceedings suspended from 12:29 to 13:32

Family Court of Australia

Federal Circuit Court of Australia

Federal Court of Australia

CHAIR: We are dealing with the Department of the Attorney-General and we have before us the Family Court of Australia, the Federal Circuit Court and the Federal Court. Welcome Gentlemen. Do either of you want to make an opening statement?

Mr Soden: As you know, I am the Chief Executive and Principal Registrar of the Federal Court. For the assistance of the committee, I will let you know that earlier this calendar year the Chief Justice of the Family Court asked me to act as chief executive and principal registrar of that court. So I have two name tags here today. But I will just use one if that's okay. I'm here for the Federal Court and the Family Court. Dr Fenwick is here for the Federal Circuit Court. Of course as usual we are accompanied by others who are much more on top of the detail than we might profess to be.

CHAIR: Thank you for that. I was wondering why there was only two of you, but you have explained. You should have put out both name tags and we could have understood. Dr Fenwick, did you want to make any opening statement?

Dr Fenwick: Nothing from me. Thank you.

CHAIR: Okay. Let's start with Senator Pratt.

Senator PRATT: Thank you. I am going to commence with some questions regarding the discussions regarding the possibility of restructuring the court systems. Has your advice been sought on how the court systems could be restructured?

Mr Soden: I can answer that by saying I know there have been a number of conversations. Representatives of government and the department would have to speak as to the precise content of the conversations.

Senator PRATT: Has a discussion taken place at a practical level with you as administrators of the courts?

Mr Soden: Not yet in the detail that could be done.

Senator PRATT: How would you characterise the level of detail of current discussions?

Mr Anderson: There are a range of discussions at officials level, including with the court, but we're at a relatively early stage of those discussions. Ultimately it will be a matter for the department to give advice to government, so I can't say much more than that at this stage.

Senator PRATT: Do those discussions include the officials before us today? I understand you are not at liberty to answer for them, but are you consulting with the registrars of each court?

Mr Anderson: We are consulting with the officials from the courts as well.

Senator PRATT: You can all confirm that those discussions have started?

Mr Soden: I can confirm there are discussions, but I agree with the sentiment that they're developing.

Senator PRATT: You haven't had any discussions in your role as administrator of two courts?

Mr Soden: They are developing discussions. That's a good way to describe them. Much needs to be done.

Senator PRATT: I understand that; I'm trying to work out the extent to which a formal discussion is now underway that models this intention.

Mr Moraitis: To add to what Mr Anderson and Mr Soden said, this process can take some time. Public consideration of this is literally weeks old. The department will engage with all stakeholders in this process. The discussions about this were announced before or after Christmas. We are scoping out all the stakeholders about this, but as Mr Anderson said, it is a decision for the department to advise the government about the options.

Senator PRATT: I understand that; I'm asking whether registrars were aware of these emerging discussions back when they were announced last December.

Mr Soden: It would be fair to say they were aware of the possibility of emerging discussions last year.

Senator PRATT: Has the current AG had any discussions with the heads of jurisdiction in the Federal Circuit Court and the Family Court about a restructure of those courts?

Mr Anderson: The Attorney has had meetings with each of the heads of jurisdiction. The department hasn't been party to those discussions. He has met with the heads of each jurisdiction. I'm sure this would be one topic.

Senator PRATT: Minister Porter has had discussions with heads of jurisdiction?

Mr Anderson: He has been going through a process, as you would anticipate, of meeting with the heads of each agency within his portfolio, and that includes meeting with the heads of jurisdiction from the courts.

Senator PRATT: Has this topic of restructuring of the courts been on the agenda either informally or formally for those discussions?

Mr Anderson: I haven't seen an agenda as such, but I would be fairly certain there have been discussions between the Attorney and the heads of jurisdiction about the possibility of reform.

Senator PRATT: Would you be able to confirm that for me on notice?

Mr Moraitis: We will take it on notice.

Senator PRATT: Is a restructure plan to be completed by the end of this year, as Senator Brandis had previously indicated?

Mr Anderson: As I said, consideration of even the possibility of reform is at a very early stage. There's no commitment to doing anything at this stage; it's still exploratory.

Senator PRATT: Senator Brandis as Attorney-General indicated he thought it would run for about a year.

Mr Moraitis: The process of consultation.

Senator PRATT: The previous Attorney-General was asked in an interview by Ben Fordham:

Okay, but the review is not going to be handing its report back to you until the end of March 2019? But I think that was in relation to family law. What is the expected date for the review of the courts?

Mr Anderson: It is not a review as such; it is an exploration of possible options for reform, looking at the effectiveness and efficiency of the existing structure. We're working through that. We're in only a very early stage. It would be premature to give a set date as to when it's going to come to a conclusion, because if we give advice to government and they say they'll do one thing then it might have one time frame; if they say they'll do another thing, it could have a different time frame.

Senator PRATT: Will the conclusion of that restructure coincide with the retirement of Chief Justice Pascoe in nine months time? Has that been canvassed?

Mr Anderson: The eventual timing and any decisions will be a matter for government. Again, it would be speculation on my part as to what the timing might be.

Senator PRATT: Has Chief Justice Pascoe been associated with any of those discussions?

Mr Anderson: I believe he has been involved in discussions.

Senator PRATT: In the nine months before Chief Justice Pascoe must retire, will he be actively consulting with government about the restructuring of the courts?

Mr Anderson: We'll be continuing to consult. We have only just started that process at officials level. I anticipate that the Attorney will continue to have regular discussions with the heads of jurisdictions, and one of the topics they will probably discuss is that question of what options there are for possible reform.

Senator PRATT: You can confirm that Chief Justice Pascoe has already been involved in discussions?

Mr Anderson: My understanding is he has been involved in discussions.

Senator PRATT: Dr Fenwick and Mr Soden, you confirmed you have been involved in some discussions.

Mr Soden: As Mr Anderson said, they were some very preliminary discussions.

Senator PRATT: Does that include formal meetings with the restructure appearing on the agenda?

Mr Soden: It's fair to say there have been initial meetings with some of the issues on the agenda.

Mr Moraitis: I would envisage that as we go through this process there would be various iterations and discussions with heads and officials in all three jurisdictions in this department. There would be the normal process of iterating options and ideas, and testing assumptions.

Senator PRATT: Do any judicial vacancies remain unfilled in the Federal Circuit Court or the Family Court?

Mr Anderson: No.

Senator PRATT: Have any endeavours yet been made to find a replacement for Chief Justice Pascoe when he retires in nine months?

Mr Anderson: I don't believe so. Nine months is quite a long time. That said, it's always possible for attorneys to be having discussions with a range of parties. As far as the department is aware, it's a no.

Senator PRATT: Do you expect a replacement to be appointed immediately upon his retirement?

Mr Anderson: That's a matter for government. It is an important position.

Senator PRATT: It certainly is.

Mr Anderson: It would be surprising to have a vacancy.

Senator PRATT: I note that in December last year Chief Judge Alstergren of the Federal Circuit Court was given a dual appointment as Deputy Chief Justice of the Family Court. The Family Court website says:

In the absence of the Chief Justice, the Deputy Chief Justice performs and exercises the powers of the Chief Justice (s 24).

Will there be any occasions in the nine months before Chief Justice Pascoe retires that the Deputy Chief Justice will be required to stand in for the Chief Justice?

Mr Anderson: At a high level I would say that if the Chief Justice were to take some leave then the Deputy Chief Justice would need to step in. I'm not aware whether he has any plans. He also does certain things in a personal capacity that could require him to take leave. He is involved in various other international discussions on issues like surrogacy.

Senator PRATT: You don't have any documentation of when Chief Justice Pascoe will be absent and when he will be replaced by the Deputy Chief Justice?

Mr Anderson: We don't currently know, Senator.

Senator PRATT: Could you take on notice whether there any documentation of those occasions and, if there are any such occasions, what the purpose of that absence is? International surrogacy might be the purpose for that. Also, on notice, whether the Chief Justice is on paid or unpaid leave, and who will fulfil the role of the Chief Justice of the Family Court of Australia in his absence?

Mr Anderson: To the extent we can answer those, yes.

CHAIR: Senator McKim, did you have any questions?

Senator McKIM: Yes, I do have a few. I don't think I will be very long.

CHAIR: That's good.

Senator McKIM: I wanted to follow up on a couple of Senator Pratt's questions around the conversations that are occurring regarding the restructure. Did government ask that these conversations be ticked off? What was the genesis of these conversations? Why are they occurring?

Mr Moraitis: You will recall there have been some enabling services or back-office reforms in this space. You may also recall that any savings achieved in that space were actually put back into the system to sustain that.

Senator McKIM: I do, Mr Moraitis, thank you.

Mr Moraitis: I think since then there has been the logical next step in that discussion by government, to my recollection.

Mr Anderson: I would add to that if I may. Diana Bryant, when she was Chief Justice of the Family Court, made some public comments about possibilities of reform in the federal courts. So it's not a completely novel topic in that sense.

Senator McKIM: Understood. Has government been briefed on the fact that the administrators in the system and in the department are having these conversations? Does government formally know about this?

Mr Anderson: The previous Attorney-General, Senator Brandis, commented on the topic in his valedictory, so I think you can assume that the then-Attorney-General was aware of the discussions.

Senator McKIM: Obviously we've got a new A-G now. Was this covered in incoming briefs for him?

Mr Moraitis: I wouldn't comment on what advice we give, but, given the topicality of the subject, it would be surprising if it wasn't touched upon.

Senator McKIM: What I would like to understand is if the conversations move forward and get to a particular place, how would you expect the consideration of a restructure to move

forward post any decision within the group of people that are having the conversations? In other words, when might you decide that it's time for—I don't know—a discussion paper, broader consultation outside to external stakeholders, briefings to ministers and so forth? So what might the future stages of the process look like, should there be a decision to move forward?

Mr Moraitis: As I said, this is literally the first few weeks of the process of thinking about this in the department and other places, so I could ask the same question of my officials. What's the next phase? Mr Anderson and Dr Smrdel are in charge of the areas that will take this forward. There is no specific time line. Obviously, in a process like this, there will be a process of discussion and reaching out to various stakeholders. You could imagine there are very interested stakeholders in this space, so that would be a part of that discussion. As I said, there hasn't been that formulation of time lines of processes, stakeholder engagement strategies or government consideration. What are the options? We talk about restructure, but I think we are talking about reform rather than necessarily restructure, but that obviously would be an option.

Senator McKIM: That was my next question—whether any other changes are being considered as part of the conversations apart from structural changes.

Mr Anderson: This is part of a potential continuum from the 2015-16 budget changes that were aimed to put the federal courts other than the High Court on a sustainable financial footing, with the Federal Court taking over the back-office functions. It's really about a range of reforms to enable different courts, as efficiently and effectively as possible, to serve the public. There is a range of possible reforms that could be considered. The Federal Court, for example, is very well advanced in terms of digitisation of court files and things like that. That's a possible reform—I see that as a reform if that's extended across all of the different federal courts. There are questions as to how registry services might be provided, for example, and the accessibility generally of the services of those courts to the public. Those are also reforms which don't involve any consideration of structure but are about how justice is delivered as a service through the courts.

Senator McKIM: Is there any consideration being given to changes to the law which is ruled upon by the courts as part of this, or is it purely, I guess, an internal conversation amongst the courts about how efficiencies may be able to be delivered and any other structural reforms?

Mr Anderson: Each of the three courts has its own legislation, and so it may well be that reform could involve changes to one or more of those pieces of legislation.

Senator McKIM: Where it would pertain to any structural changes, Mr Anderson, is my understanding—

Mr Anderson: Well, structural or, in some cases, procedural changes.

Senator McKIM: So procedural changes may be on the table as part of this?

Mr Anderson: They may well be if that's going to advance the effectiveness and efficiency of the three courts generally.

Senator McKIM: I'm not sure if you would have a data set that would allow you to answer this, and I quite understand if you don't have the information here, but I'm interested

in costs incurred by the Federal Court regarding government appeals against AAT decisions in migration matters. Do you have data set—or Mr Soden, potentially?

Mr Soden: The costs to the Federal Court, or the costs of—

Senator McKIM: Yes. What does it cost to run the cases? I understand that they're part of the ongoing churn of cases through the Federal Court.

Mr Soden: We'll take that on notice. I don't have that depth of detail here with me.

Senator McKIM: I understand that. Is it likely that you would have the data sets that you could interrogate to provide that—

Mr Soden: We would have some data. Whether it's easy to use to answer that question, I'm not sure, but we should be able to give what I would think is a fairly good response to that question with the data we have.

Senator McKIM: Thank you. Again, I quite understand if you wish to take this on notice, but I would like that broken down by decision in terms of whether or not the government was successful in its appeals. What were the costs in cases where the government successfully appealed a migration matter that was determined in the first instance by the AAT and also where the government was not successful?

Mr Soden: We will take that on notice as well.

Senator McKIM: I have a question on waiting lists, and I'm particularly interested in the Family Court: how are we trending in terms of the length of time before matters are determined?

Dr Fenwick: The proportion of case load across circuit court, family law and Family Court is approximately 88 per cent circuit court and about 12 per cent family law matters in the Family Court. I should have a median timeliness figure here. For the circuit court, the median time for finalisation for 2016-17 was 8.45 months.

Senator McKIM: That's the circuit court?

Dr Fenwick: Yes. I'm just not sure if I have that—

Mr Soden: For the Family Court?

Dr Fenwick: Yes.

Mr Soden: In relation to Family Court matters, median time from lodgement to the first day of trial for final order applications is 17.8 months.

Senator McKIM: And that's also in the 2016-17 year, Mr Soden?

Mr Soden: Yes.

Senator McKIM: Do have the 2015-16 figures?

Mr Soden: No, I don't.

Senator McKIM: Could I ask you both to take the 2015-16 figures on notice?

Mr Soden: I'm happy to do that.

Senator McKIM: Are you able to provide a year-to-date median time for the current year?

Dr Fenwick: I do have that; it's 8.3 to disposal, so that's the finalisation of final order applications.

Senator McKIM: It's a different figure that you just gave me for 2016-17, but it's the same measure?

Dr Fenwick: Yes, roughly.

Senator McKIM: It's apples with apples?

Dr Fenwick: Yes.

Mr Soden: I will take that on notice, Senator, to give you those comparative delays over a number of years to make it easy to see the trend.

Senator McKIM: Thank you. I would appreciate that.

Senator PRATT: I have one follow-up question. Mr Anderson indicated that he would take on notice Chief Justice Pascoe's movements, but I'm wondering if Mr Soden has that in his knowledge so that it doesn't have to be taken on notice.

Mr Soden: No, I'm sorry; I don't.

Senator HANSON: I'll go back to what Senator Pratt was asking about Chief Justice Pascoe. Is he the only judge that needs to be replaced? Are there any places that still need to be filled?

Mr Moraitis: There are no vacancies in the Federal—

Senator HANSON: No vacancies, so they have all been filled?

Mr Moraitis: Chief Justice Pascoe's term comes up later in the year in December. I can't think of any other vacancies that I'm aware of.

Senator HANSON: How many judges are employed by the Family Court or the family law circuit courts?

Mr Soden: I will preface my answer by saying that we have a full quota at the moment, and that's 32 all up.

Senator HANSON: Thirty-two all up in both the Family Court and family circuit court.

Dr Fenwick: Sixty-eight judges currently serving in the Federal Circuit Court.

Senator HANSON: So that's your full quota? Who sets the quota?

Dr Fenwick: There's a budget figure that equates to a certain number of positions.

Senator HANSON: For how long has it been set at 68? Has it increased over the years?

Mr Soden: Senator, there are lots of ups and downs with the allocations—usually ups rather than downs, where government initiatives provide funding for an additional judge. I don't have that figure and I don't think my colleague has the figure of how there have been variations of all the judges in all the courts over the last couple of years or few years, but we can take that on notice and give that to you.

Senator HANSON: Okay. I'm asking that because there has been an increase in the amount of Family Court matters. You have hearings that take two to three years. Are we keeping up with more appointments of judges to keep up with the demands on the court system? Is it true to say that on a daily basis a judge may have about 60 cases to hear, and overall about 500 cases?

Mr Soden: I would say no, Senator. The answer to that is that it varies tremendously amongst the judges in different places. Some judges, particularly in the Federal Circuit Court,

have an extremely high number of cases and they may well have 60 matters in a list before them, not necessarily for hearing but to deal with on one day. On the other hand, there might be a judge in another place that has 100 matters pending or 50 matters pending. You might have one matter listed before that judge that day because that matter's on for trial. There's no way you could easily generalise—

Senator HANSON: And one judge could possibly even have, over a period of time, 500 cases that he's dealing with?

Mr Soden: Or more over a period of time. It all depends on what the period of time is.

Senator HANSON: At any one time that is waiting to make determinations on that is actually heard.

Mr Soden: Quite.

Senator HANSON: So the workload on the judges is quite extensive?

Mr Soden: I don't think any judge would argue with that proposition.

Senator HANSON: How many judges are on sick leave at the moment?

Mr Soden: Sorry, I don't have the answer to that question. I would have to take it on notice for the Family Court.

Senator HANSON: Would it be unrealistic to say that about four to six have been on sick leave for possibly three to six months or even longer?

Mr Soden: I'm not aware of that in the Family Court. I would have to take that on notice.

Dr Fenwick: In past years in the circuit court I believe that there have been significant periods of absence. I couldn't say what the current figure is. Sick leave is at the discretion of the chief judge, and case by case depending on the judge.

Senator HANSON: Those that are on sick leave for quite a lengthy period of time, are they replaced?

Dr Fenwick: No, we don't have a mechanism for replacing any variation in availability that's related to any kind of leave.

Senator HANSON: A judge is appointed until the age of 70—is that correct?

Dr Fenwick: That's correct.

Senator HANSON: There is no superannuation for judges?

Dr Fenwick: Judges of the Federal Circuit Court have a remuneration package that is salary plus superannuation.

Senator HANSON: At what age?

Dr Fenwick: They are appointed to 70.

Senator HANSON: At 70? Then they—

Dr Fenwick: No, they accrue superannuation as part of their entitlements package through their period of service.

Senator HANSON: If they retire before 70 are they entitled to anything?

Dr Fenwick: Not Circuit Court judges. As any employee, they would draw on their retirement benefits depending on what strategy—

Senator HANSON: So they're not entitled to anything before 70 in the family—Circuit Court.

Dr Fenwick: They accrue their superannuation benefit, which is put aside as any—

Senator HANSON: But they can't collect it until 70. Is that correct?

Dr Fenwick: There is nothing to draw on.

CHAIR: They'd get it at 65, wouldn't they, if they retired before—

Dr Fenwick: Sorry, 60; whatever the—it's not related to their term of service. If they've ceased—

CHAIR: I think what Senator Hanson's asking is, if they retire when they're 60, can they then draw upon whatever superannuation they have?

Dr Fenwick: I think the word that's relevant, if I may say so, is 'retired'. If they continue working they can't draw on their super, but if they make a decision to retire after 60 they're entitled to payment of their accrued superannuation.

CHAIR: Sorry, Senator Hanson; I'm just curious. Are they on a defined benefits scheme?

Dr Fenwick: No, they're not. It's the super program of their choice.

CHAIR: Okay. Senator Hanson?

Senator HANSON: It goes to my question on court funding. What percentage has increased over the past five years?

Mr Soden: I have a lot of numbers, but I don't have a simple percentage of increase over the last five years. There have been some quite substantial injections of funding over the years. There have been some savings that have been reinvested as a result of the back-office merge. The budget looks like it is increasing but that's because of marginal adjustments and other temporary additions. Whilst I could easily take on notice that question about how much it has varied over the last five years, there'd be a bit of explanation in that to make it meaningful.

Senator HANSON: Is there any indication, at this stage, to put a new Federal Court or Circuit Court at Newcastle? Is that in the budget?

Mr Soden: In the budget?

Senator HANSON: I am of the understanding that the Newcastle Family Court needs to be replaced. Is that on the agenda?

Mr Soden: Yes. It is on the agenda for the purpose of trying to work out how we might fix some ongoing accommodation problems in Newcastle family law related operations. We've been looking at that for the last few months. There's the possibility of some additional accommodation becoming available next door to the present accommodation. Some discussions have been held with the landlord of that place. There are some commercial considerations, in relation to incentives and length of lease and those sorts of things that are under discussion, but they may well need to be dealt with in the budget process. It'll mean some money will need to be found.

Senator HANSON: Can you explain the qualifications of registrars and their duties in the courtroom, please?

Dr Fenwick: In family law?

Senator HANSON: In the family circuit courts, family law, yes.

Dr Fenwick: Registrars are qualified legal practitioners.

Senator HANSON: To alleviate the pressure of the court system and judges, have you considered recommendations made to increase the number of registrars in the court system?

Dr Fenwick: We review our resourcing needs on a regular basis. There are two pathways in family law. Registrars are put to slightly different use in the Family Court and slightly different use in the Circuit Court. They're used for dispute resolution in the Circuit Court and for other case management events in the family law pathway.

Senator HANSON: Would it be feasible to say that registrars could be used to hear mentions and do the lighter duties rather than tie up judges?

Mr Soden: I can answer that. The answer to that could simply be, yes, but it always would depend on the particular case that might be before the judge or the particular list of cases that the registrar might be given. So, yes, I think you can safely assume that in the family law jurisdiction registrars already play a substantial role in alleviating the pressure on the judges. I think they could take a greater role. We're presently having a look at how we might better coordinate those registrar resources to fill the gaps that come up from time to time rather than have dedicated people in certain places.

Senator HANSON: Take a case in point: if someone has actually breached an order of the court, as far as child access or seeing the child and that type of thing—so they've actually breached it—then, instead of waiting months for it to come before the courts again, they could speak to a registrar about it and get these matters heard sooner.

Dr Fenwick: There is a process exactly like that in the Brisbane registry, and the court was funded for an extra registrar to trial a similar pilot in Melbourne. In the case of Brisbane, as I understand the pilot, as you've put it, consultation with the party clarified a lot of issues around order interpretation and enforcement, and then the matter could also be dealt with as a contravention matter if required.

Senator HANSON: Have the courts considered opening up night courts to alleviate the pressure on the system, because—correct me if I'm wrong—it's two to three years for some cases to be heard in the court system?

Dr Fenwick: No.

Senator HANSON: Would it be feasible to have night courts?

Mr Soden: I know the issue of night courts has been looked at in other places on many occasions, and pilots have been held, and studies have established that, whilst they are often thought to be a good idea, they do not turn out to be as beneficial as might be thought, because most of those pilots have never had additional resources, so you're deploying resources that would otherwise be used during the day to night-time, and there was no evidence in the pilots, that I can recall reading, that a night court without additional resources was going to produce additional outcomes; it was just delaying outcomes.

Senator HANSON: But it would be feasible, if you actually had the funding for it, to alleviate the pressure on these mums and dads out there who are going through stress and trauma. There are suicides and murders that are actually happening.

Mr Soden: I would not say it's an issue that couldn't receive careful consideration in the future, as to whether, in some places, something could be done out of hours. I must point out, though, that many, many people in the family law jurisdiction in the courts work extraordinarily long hours; I would not call them night courts, but there are many of those places that are working early into the evening often.

Senator HANSON: Has the KPMG report ever been released?

Mr Soden: I'm sorry; I can't answer that question. I don't know the answer to that question.

Senator HANSON: In the KPMG report, I believe that they recommended that an extra \$70-million-odd, or \$75 million approximately, be put into employing more judges in the court system, but the report has never been released. And you're not aware of the report? Minister?

Mr Moraitis: The report has not been released.

Senator HANSON: It has not been released? Can you tell us why?

Mr Moraitis: It's a report that was commissioned by this department, and, as longstanding practice, we don't usually release those reports. It's part of our policy formulation process. I might add: there have been some FOI requests; in fact, there is one appeal against a decision about that pending at the moment.

Senator HANSON: Is it sensitive information?

Mr Moraitis: I haven't read it lately. It's about court funding and the obvious questions. It's clear that, if we had more resources, we would deploy more judges in the daytime, and in the evenings if it suits people to have evening sessions. I've alluded to the fact that, when we did the structural reforms in the back office, the money was ploughed back; it's going to be ploughed back long-term—and we are talking \$5 million or \$6 million per annum, once we get those reforms happening. There was some injection of capital stuff for the courts recently. For the last financial year, or this financial year, I don't think there has been any more funding provided for the courts. In an ideal world, I'd love to see more funding for the courts, but—

Senator HANSON: They're setting up, and it's before the parliament, a parental management pilot scheme. That is going to be \$12.7 million. My understanding is: you have not got qualified judges making the determination about children. Is that going to be constitutional? Under section 22 of the act it states that a judge is the only one who can make these decisions with regard to it. So you're putting this in the hands of social scientists and other people who are not judges, to make these decisions—

Mr Moraitis: That's not my understanding. I will ask my colleagues who are more expert on the hearings model and what the bill propounds. My recollection is that it is a combination of legally qualified people and other people who are qualified. They're not judicial proceedings; they're about assisting people in the family law space. Dr Smrdel and Mr Anderson—

Senator HANSON: Can I say the people on the panel can be community work, family violence, mental health, drug or alcohol addiction, child development. What they're basically saying is that they're not people who have the qualifications of a judge to make these

decisions, and if they make the wrong decision, then that could go to the court system to be reviewed correctly.

Mr Anderson: Senator, if I can say a few things. The first thing is that in the 2017-18 budget there was \$10.7 million over four years for additional family consultants who work in the Family Law Courts.

Senator HANSON: That is \$10.4 million?

Mr Anderson: It was \$10.7 million over four years. There's also additional funding of \$14 million over three years being provided for the federal courts from the Public Service Modernisation Fund. That's about funding the transformation of court processes, so it's additional injections of the funding. In terms of family law generally and how those processes work—and you pointed to a range of different concerns—obviously the Australian Law Reform Commission has been tasked to do a fundamental inquiry into the Family Court system, the family law system, in Australia. That report is not due until next year, but that will canvass a very large number of issues about how the family law system works including how the actual family courts work as well in terms of the legal framework. Most family law matters are not actually resolved within the courts. They're actually dealt with outside the courts. People are doing things by consent. When the courts are getting involved, they're tending to deal with, typically, the most complex matters but not always, and there's a range of ways in which they do those things. I might now pass to the other end of the table for my colleagues from the family law area to speak specifically about some of those other things, and noting that this is moving away a bit from the practice of the courts themselves and is moving more into the policy work of the department which is later on today, if the committee is happy to hear at this stage about that.

Mr Gifford: The Parenting Management Hearing proposal is a new multi-disciplinary approach. I think one of the questions you raised was about the qualifications of the particular members who would be hearing these matters. On every particular panel, which would hear one of these matters before the Parenting Management Hearing, there would be a legally qualified member of the panel. The multi-disciplinary panel will actually have additional panel members with them which have expertise suited to the particular matter in addition to that legal member. The legal member's qualifications are actually akin to the appointment qualifications requirement for a judge. So, effectively, they'll be very well experienced and significantly expertised individuals in terms of family law matters, in particular, as well. The idea behind the Parenting Management Hearing is that we'll make sure that the panel is actually equipped to deal with the particular case and can bring the expertise necessary to assist self-represented matters at the less complex end of the spectrum to try to resolve their matters as soon as possible and keep them from the court system. So the idea, effectively, is that it is a \$12.7 million injection to try to keep these matters from actually going into the backlog within the courts and to make sure that the families who are under pressure, as you point out, have their matters dealt with as expeditiously as possible.

Senator HANSON: But they can't have any legal representation, they represent themselves in the parental management. Also, am I correct in saying that a partner, who is actually up for domestic violence, can actually cross-examine their partner. Is that correct?

Mr Gifford: No, it's not. There's a couple of things there. In terms of whether or not they're legally represented, the idea behind the panel is they're actually able to seek advice

prior to going into the panel about whether or not the panel is actually an appropriate mechanism for them. So they get a real sense about whether this is a case that should be before the Parenting Management Hearing because it's a consent based model. Both parties need to consent before they would go into the Parenting Management Hearings. There is a leave provision. The idea would be that, effectively, they will remain self-represented before the panel but the panel will actually have a leave provision so that they can give permission to parties in extreme circumstances for legal representation to be provided as well.

Ms Saint: One other point that might be worth clarifying, Senator, is that this body will be an administrative decision-making body, so it will not be making judicial decisions. The determinations that will be made by this panel will be binding parenting determinations which are able to be enforced by a court, but they will not be part of the court system. It will not be a judicial body.

Senator HANSON: So they can decide which parent a child lives with? That is binding. Can the parents then appeal to the court system?

Ms Saint: There is a right of review on a question of law to courts.

Senator HANSON: If they're not happy with the decision, can they then take that case to the courts?

Ms Saint: If there is an issue of law that's open to review then it would be open to the parties—

Senator HANSON: But the decision is binding. The decision cannot be overruled by the Federal Court?

Ms Saint: There is provision in the bill which accords with current case law, which provides that if there's been a significant change of circumstances then the matter would be able to return either in the court or in the parenting management hearing—or if there's a question of law which is open to review.

Senator HANSON: So it basically has the same jurisdiction as what the Family Court has?

Ms Saint: It has a similar jurisdiction to the current family law jurisdiction for parenting matters that are in the family law courts, but there are some express areas of jurisdiction which have been excluded from this body—for example, matters involving allegations of child sexual abuse have been expressly excluded from this body. So this body is directed at dealing with cases at the less complex end of the spectrum between self-represented litigants and only on parenting matters.

Mr Gifford: There was one other issue you raised there: whether or not the individuals could be cross-examined directly by their partners. No, that is not the case. The parenting management hearings are designed to be an inquisitorial based system. It's not going to operate as a formal legal process does, where there is a cross-examination. Rather, the panel members can equip themselves with the information they need from the particular party, which includes leading questions themselves rather than being any direct cross-examination from party to party.

CHAIR: Thanks very much for that. Senator Hanson, for your benefit, this particular legislation on the parenting management bill has been to a hearing of this committee where

we have looked into it all the issues you have raised. You might look at the *Hansard* on that as it does address many of the issues you raised.

Senator HANSON: I like to go straight to the trough!

CHAIR: These people were there at those hearings as well. Anyhow, I just give you that as a matter of assistance.

Senator HANSON: Thank you.

CHAIR: If there is no-one else, I thank the various court officers for their appearance today and for the information they have provided.

Office of the Australian Information Commissioner

[14:17]

CHAIR: We'll now call the Office of the Australian Information Commissioner. Welcome, Mr Pilgrim and Ms Falk. Would you care to make an opening statement, or will we go straight into questions?

Mr Pilgrim: I would like to make an opening statement and, if I may, take a little longer than usual as this will be my last appearance before the committee as commissioner, as I'm retiring on 24 March 2018. The Office of the Australian Information Commissioner—the OAIC—is charged with regulating two pieces of legislation that enshrine important community rights: the Privacy Act 1998 and the Freedom of Information Act 1982. I'd like to make some general observations about the operation of these acts and advise the committee on the current status of the OAIC.

Firstly, let me start by saying that the extent of the reach of the Privacy Act into the Australian economy and society more generally is vast. Issues of personal information handling arise in all aspects of our lives as we engage in the digital economy, from health, credit and consumer contexts to law enforcement, national security, government use of data and global data flows. It is fitting that I note this today, as 2018 will mark the 30th anniversary of the Privacy Act. I'd like to table this somewhat dense diagram, which sets out in detail the regulatory reach and activities of the OAIC under the Privacy Act and other legislation under which I have specific functions. A very short summation of that reach is that the commissioner has regulatory functions and powers under the Privacy Act, the National Health Act, the My Health Records Act, the Crimes Act, the Telecommunications Act, the Telecommunications (Interception and Access) Act, the Data-matching Program (Assistance and Tax) Act, the Student Identifiers Act, anti-money-laundering and terrorism funding laws, and the Personal Property Securities Register. I also handle privacy complaints related to the Australian Capital Territory public sector agencies under the ACT's Information Privacy Act 2014. The OAIC's work under this legislation ranges from responding to inquiries to monitoring and commenting on proposed enactments and agency activities that may impact an individual's privacy; providing advice and guidance to the public and private sector entities regulated by the Privacy Act; and compliance activities, such as handling individual complaints, conducting investigations, including commissioner-initiated investigations, and conducting privacy audits—or assessments, as they are known under the Privacy Act. In undertaking these compliance activities I have powers to compel information as well as wideranging enforcement powers, including the power to accept enforceable undertakings from an entity, make a determination, seek an injunction or apply to a court for a civil penalty.

As of 22 February, the OAIC has another important function under the Privacy Act: regulating the Notifiable Data Breaches, NDB, scheme. As the committee may recall, this scheme obliges all entities covered by the Privacy Act to notify individuals whose personal information is involved in a data breach that is likely to result in serious harm. The Notifiable Data Breaches scheme formalises longstanding community expectations for transparency and accountability when a data breach occurs. Our 2017 Community Attitudes to Privacy Survey reveals near universal support, at approximately 95 per cent, for this proposition.

As you can see from the variety of work that I've just described, the OAIC plays a vital role in upholding an important right for the Australian community. The significant increase in the workload of my office over a number of years is evidence of the fact that privacy and data protection continue to be core and growing consumer and community concerns. This is essential to keep in mind, particularly in the current environment where data and its use is vital for innovation, research and policy development. Good personal information handling practices will engender community trust and build a social licence for data use, facilitating a vibrant data innovation agenda.

I turn now to providing the committee with an update on our regulatory activities under the Privacy Act. As you'll recall, in the 2016-17 financial year the OAIC received 2,494 privacy complaints, which was a 17 per cent increase on the previous year. In the current financial year, up to 31 January 2018, we received 1,639 privacy complaints—that is, a 16 per cent increase on the number we had received at the same time last year. In the 2016-17 financial year we handled a total of 16,793 privacy inquiries, either in writing or by phone. In the current financial year, up to 31 January 2018, we have handled 11,151 privacy inquiries, representing a 17 per cent increase on the number we had received at the same time last year. In relation to most statutory functions relating to privacy guidance, monitoring and advice, as of 31 January we had completed 314 pieces of external privacy policy advice, a 69 per cent increase in the number provided at the same time last year.

We continue to work to enhance our efficiency in our regulatory activities. As of 31 January, we had closed 20 per cent more privacy complaints than by the same time last year. The trial of an early resolution scheme for privacy complaints is showing positive results, both increasing timely closure rates and receiving favourable feedback from parties.

Turning now to the FOI Act, my office seeks to promote open government through access to information in recognition that, as the FOI Act states, information held by government is a national resource. This acknowledges the vital role that open government and access to information play in a healthy democracy. To this end, my office has engaged in the Open Government Partnership's National Action Plan, an important initiative that supports open government, access to information and transparency.

It is clear that the public is also engaged in the concept of open government, and the substantial growth in our workload in relation to my FOI function indicates that there is an increasing emphasis on seeking information from government through the FOI process. In the 2016-17 financial year, we received 632 requests for Information Commissioner reviews, which was a 24 per cent increase on the previous year. In the current financial year up to 31 January, we have received 440 requests for review by my office—a 25 per cent increase on the amount we had received the same time last year. In the 2016 financial year, we handled a total of 2,062 FOI inquiries, either in writing or by phone. In the current financial year up to

31 January, we have handled 1,085 FOI inquiries, which is, I must admit, an eight per cent decrease on the FOI inquiries for the same period last year.

The efficiencies we are making in our regulatory activities are also evident in our resolution of FOI matters. As of 31 January, we have closed 13 per cent more IC reviews than by the same date last year. In addition to implementing internal efficiencies, the advice and guidance work that my office undertakes under the FOI Act aims to assist agencies and ministers to understand and edge engage with the FOI processes more effectively. My decisions, which are all published on AustLII, seek to provide guidance to agencies and ministers on these issues. My office regularly publishes guidance about the operation of the FOI Act, which includes regular updates to the FOI guidelines and more recently the first general procedure direction published under the FOI Act. We have also recently published an FOI regulatory action policy, which further outlines and explains my approach to using my FOI regulatory action powers.

We support agency staff working in this area through the coordination of an information contact officers network. In addition, this coming year, the OAIC will undertake a review of the information publications scheme in consultation with agencies. The IPS aims to have agencies proactively publish information about their operations to lessen the need for FOI requests.

It's clear from the picture I have painted about the work of the OAIC that the community are active in exercising their rights in these important areas. This has consistently been the case over a number of years, as evidenced by the steady increases in the OAIC's workload. Even with the significant productivity improvements we have made, we are challenged by the fact that the workload continues to increase at a higher rate. I have, of course, continued to keep the government informed of these challenges.

I hope this provides the committee with a useful overview—albeit a brief summary of the broad range of activities undertaken by my office and the challenges and opportunities that arise. As I mentioned at the beginning of my opening remarks, this will be my last hearing before the committee, as I'll be retiring as of 24 March 2018. This is after a career in the Australian Public Service of 34 years, including over the last 20 years in the areas of privacy, FOI and information management. I would also like to point out at this time that this means that I have been appearing regularly before this committee for the last 20 years. As such, I would like to note that working in the Public Service has provided me with a rich and rewarding career and one that I would highly recommend. I also want to acknowledge the support of the Attorney-General's Department over this time. Like any diverse family—shall I call it—we have had our share disagreements over the years, but those disagreements have been outweighed by the sustained positive relationship with the department, and I would like to thank the secretary and his colleagues for that.

Most importantly, I wanted to use this opportunity to pay tribute to the remarkable OAIC staff that I have had the privilege of working with during my time as Australian Information Commissioner and Australian Privacy Commissioner. They have demonstrated unfailing enthusiasm and commitment to their work even during periods of uncertainty for the office and in the face of an ever-increasing workload. I know that the office will continue to thrive with the skilled and extremely dedicated team ready to support a new commissioner.

CHAIR: Thank you very much, Mr Pilgrim. I know I speak for all parliamentarians in thanking you for your long service to the Commonwealth and to the people of Australia in the various roles you've played. You have also overseen some challenges in amalgamations and otherwise and have always been particularly good and clear and precise to this committee. Again, I know I speak on behalf of all senators in thanking you for your assistance over many, many years, and we wish you well in the future. You talked about retirement. I suspect people won't let that happen easily, but we do wish you all the best and we thank you for what you've done.

Mr Pilgrim: Thank you for that, Chair.

CHAIR: Your work as Privacy Commissioner doesn't go to individuals seeking relief from invasions of their own privacy unless it's a government department or an organisation working with government?

Mr Pilgrim: That's basically correct. The Privacy Act deals with informational privacy, and we have the set of principles in the Act. If an entity that's covered by the Privacy Act, which is most Australian government agencies and much of the private sector, is alleged to have breached those principles in the handling of an individual's personal information, the individual can bring a complaint. But, if I could use a colloquial example, if there is a neighbourhood dispute going on between two neighbours over a privacy issue of, say, someone filming into someone else's yard, the Commonwealth Privacy Act would not cover those sorts of situations.

CHAIR: That's, what, a matter for common law?

Mr Pilgrim: You would have to look at a range of other laws that do exist. For example, there are some surveillance laws in states and territories and in other jurisdictions. And then you'd have to look to see whether there were any other avenues, say, through the common law.

CHAIR: I'm not asking for you legal advice about an area which really isn't yours, but there's a lot of comment about drones and invasion of privacy with drones. That's not something that would come to you unless it is done by some government agency?

Mr Pilgrim: Generally correct. That's right. If an Australian government agency or, say, a private sector organisation that was covered by the act was using drones that were likely to collect personal information, say, in the form of filming, then they would have responsibilities under the act in terms of how they collect that information and handle it. But, generally speaking, as I said, if it was one neighbour using a drone over another neighbour's property, you would have to look to other legislation, such as surveillance laws.

CHAIR: So is it a relevant question to ask you whether a federal government agency could actually use a drone to collect information? That's not in itself an offence; it's how the information is then handled and dealt with that comes within the purview of the Act?

Mr Pilgrim: There would be two aspects we'd look at. We would look at the statute that covered the particular agency's collection behaviours in the first place. That is one consideration. We would also look at the application of the Privacy Act. Certainly, they would need to comply with the privacy principles if they were, in fact, collecting personal information by that means, in the same way they would if they were collecting it by soliciting it through a form or some other means like that.

CHAIR: Do any of my colleagues have questions? Senator Pratt.

Senator PRATT: Thank you, Mr Pilgrim, for your long service and, indeed, its usefulness to members of this place and members of parliament, not only in this forum of estimates but in greater transparency when we struggle to get access to information et cetera. It has been greatly valued. Can you confirm that your office was given fewer than 24 hours to review the government's proposed secrecy laws while they were being drafted?

Mr Pilgrim: There are two aspects to that. I might have to get some exact dates. As I recall, the secrecy provisions of the bill that I think you're asking about were provided to my office on 14 November last year and my office was asked for comments back on those secrecy provisions by the 15th, the following day.

Senator PRATT: Did you seek amendment to those provisions?

Mr Pilgrim: We made some general observations, because we did have limited time in which to comment on them. I think they went to issues of the breadth of some of the definitions. We subsequently, though, as you would probably be aware, raised some more substantial issues as part of the inquiry that is underway into those bills.

Senator PRATT: Can you confirm that that was not sufficient time to provide a detailed review?

Mr Pilgrim: It wasn't sufficient time for us to have a very detailed view of those provisions at all, but we did provide at officer level at the time some overarching comments and then followed that up with submissions to the relevant committee.

Senator PRATT: Did you ask for more time at the time?

Mr Pilgrim: I can't recall whether we specifically asked for more time at the time. I think the staff that were handling it were given a time frame, which they did their best to comply with in terms of getting some general comments back.

Senator PRATT: Mr Moraitis, do you know if more time was requested?

Mr Moraitis: I might have to take that on notice. I will ask my colleagues who were dealing with it. They're not here in the room but might arrive soon.

Senator WONG: This has been canvassed at the PJCIS public hearings. I would assume that there would be someone here who could indicate that.

Mr Moraitis: Ms Chidgey has just joined us.

Ms Chidgey: I understand that the question was about the time given to OIC. I'll have to take that on notice. I'll come back with a confirmation of the timing.

Senator WONG: One of your colleagues who just walked into the room probably has the information. No-one knows?

Mr Moraitis: Ms Harmer wasn't here; she has just joined us as well.

CHAIR: Don't be bullied by senators on this side. You act as you deem appropriate.

Mr Moraitis: The national security discussions are in the afternoon. The staff are making their way up; otherwise they would have been here.

Senator WONG: That's all right. We can come back to them. It's just that with Mr Pilgrim here it was easier to do this—

Mr Moraitis: I appreciate that.

Senator PRATT: I understand that the Attorney-General has announced recently that there will be significant amendments to the government's proposed security laws. Has the AGD contacted the Office of the Information Commissioner to seek advice on reworking the government's bill?

Mr Pilgrim: I'm not aware that we have been contacted about those matters.

Senator PRATT: You were given 24 hours to comment last time and you've been asked for no comment on the significant amendments that are now announced, despite the fact that you said you put a number of issues on the table within the short time you previously had?

Mr Pilgrim: That is correct. When I appeared before the committee examining that particular bill, there had been an opportunity for the Attorney-General's Department to look at my earlier submission to the committee, and they had provided some feedback on a couple of the issues I had raised and provided some commentary back on those. I'm struggling to remember exactly each of the issues as I work through them. Subsequent to that, I haven't had any more advice on any of the outstanding issues.

Senator PRATT: But you can confirm that you'd still be in a position to provide a detailed review of those laws if you were asked to?

Mr Pilgrim: Certainly in respect of the issues we raised we would welcome the opportunity to have further engagement.

Senator PRATT: Mr Moraitis, Mr Pilgrim has announced his retirement. The position of FOI commissioner is also vacant. When was the Attorney-General first made aware of Mr Pilgrim's upcoming retirement?

Mr Moraitis: My recollection is that Mr Pilgrim may have written to the Attorney about this.

Mr Pilgrim: The first conversation I had about my retirement with the department was in early January, when I met with the then acting secretary and advised him of my intention to retire.

Senator PRATT: I want to ask if you, Mr Pilgrim, think there is sufficient workload to justify three different people for these three different positions. Are they all being advertised together? I understand that you've been fulfilling two roles and there are indeed three. Is it the government's intention to fill all three positions?

Mr Moraitis: My understanding is that Mr Pilgrim's position will be advertised shortly, to be filled by one person—obviously a successful candidate. That process is due to be launched in the next week or so.

Senator PRATT: It's my understanding that it was originally envisaged that these would be three separate positions, and the workload is fitting of that. How do you judge the workload attached to the position, Mr Pilgrim?

Mr Pilgrim: As I've mentioned in previous committee hearings, I've been satisfied that I'm able to undertake the duties in the current environment in terms of the workload. I think that's been demonstrated by the output of the office. So I'm satisfied that the role could be performed by one person in the current structure.

Senator PRATT: If it's the right person.

Mr Pilgrim: In the current structure and, particularly, supported by a good executive team, which I do have.

Senator PRATT: The position of Freedom of Information Commissioner has been left vacant since January 2015. Why wasn't this position filled at the time? When will it be filled?

Mr Anderson: It won't necessarily be filled. Under the legislative framework, the functions of the different statutory officers can actually be fulfilled by other statutory officers, so the Information Commissioner and the Privacy Commissioner, for example, can respectively also carry out the functions of the FOI Commissioner. As Mr Pilgrim said, the question is: where are the resources best allocated?

Senator PRATT: I'm going to place a number of questions on notice. How long is the process of replacement? I am just trying to work out, if I put some questions on notice, the extent to which they'll be answered after the event or whether I'm better off—I don't want to take too much more time up.

Mr Moraitis: As I said, we want to start the process to find a replacement for Mr Pilgrim—extremely difficult as it may be to find the right candidate—pretty soon. We can take them on notice and try to answer them as quickly as we can, but in the interim there might be some progress in the period which overrides the answers or confirms the answers. But we'll try to be as forthcoming as we can about what we know and the time lines that we propose.

Senator PRATT: I will ask you about a merit based process and who's on the selection panel, but I'll put those on notice.

Mr Moraitis: We can provide that.

Senator PATRICK: Just a follow-up question from Senator Pratt's questions: I note the Labor Party introduced the freedom-of-information laws, or established the Office of the Australian Information Commissioner, and they actually appointed three officers to that position, or to the three positions. I'm a mere crossbencher, just looking, observing and noting that the Labor government were fully committed to the three positions, three people; are you saying that the current Liberal government are not as interested in the area as perhaps the Labor Party were?

CHAIR: You can answer the question, but it shouldn't be related to the various political parties.

Senator WONG: That's a rule, is it? That's a new rule?

CHAIR: I'm trying to save the Public Service from the embarrassment of them doing that. I shouldn't have to.

Senator PATRICK: There's a distinction between the previous government and this government, in that the previous government—and I'm not talking about the Abbott government; I mean the Rudd-Gillard-Rudd government—sought to have three commissioners. Obviously they did that on certain grounds. What's shifted in that we've now gone back to one?

Mr Soden: There was a model created that envisaged three different people in three different roles, but, at the same time, within the legislative framework there is the possibility of those individual officers exercising powers under the other acts as well. So the statutory

framework does enable the Information Commissioner, for example, to exercise powers under the Privacy Act and the FOI Act. The mere fact that we have three statutory positions doesn't necessarily mean that each of those three positions need to be occupied in order for the model to work well.

The government's view has been that it has been working have very well with Mr Pilgrim as the Privacy Commissioner and the Information Commissioner. The department engages with Mr Pilgrim on how the office is functioning. Mr Pilgrim has pointed to a question of resourcing; that's often a challenge for agencies in this portfolio, where they might be subject to downstream workload impacts flowing from matters in other portfolios. For example, if there are privacy issues flowing from the actions of another portfolio then that workload is felt by the Officer of the Information Commissioner. So it's a challenge sometimes to engage those other portfolios as to whether they can provide additional resourcing for the OIC to cope with that downstream workload impact.

It's the same with courts and tribunals as well, where things that are being reviewed are decisions made in other portfolios. So the OIC is not completely alone in that predicament, but we do engage with the OIC on how well it's operating. Mr Pilgrim said that he thinks it works very well if you've got a good team underneath you.

Senator PATRICK: Yes. Look, respectfully, you perhaps don't have the same view as to how well the office is working when you're not on the end of a lengthy FOI request or review. There are a number of reviews that have taken a substantial period of time, particularly in relation to information that has a temporal value. Sometimes a piece of information might be highly valuable, but by the time you actually get through the FOI process it has no value.

CHAIR: Is there a question there?

Senator PATRICK: Well, resourcing can give an indication of the importance that is attached to a function. Is it the view of the department that the importance of this function is not as significant as what it was for the previous government?

Mr Anderson: Are you asking if it's the view of the department that it's not as important under this government as it was under the previous government?

Senator PATRICK: Or the minister—

CHAIR: Well, that's a matter of opinion. As you know, you shouldn't put public servants to the challenge of expressing opinions. It's directly contrary to the rules, anyhow.

Senator PATRICK: I'm just trying to see how we got from the situation where we had three commissioners to where it's now acceptable to have one commissioner. That is a logical question

CHAIR: I thought Mr Anderson answered that. Besides, this happened—what?—three years ago and was the subject of many inquiries by this committee at the time that it happened. We're really rehashing events of—how long ago did this happen?

Mr Pilgrim: It was announced as part of 2014-15 budget. The original suggestion that the office would be disbanded was in the 2014-15—

Senator WONG: A point of order, Chair.

CHAIR: Yes. Those activities actually happened back then, and they've been the subject of many inquiries by this committee since then. Yes, Senator Wong?

Senator WONG: The fact that the committee has previously dealt with it doesn't prevent Senator Patrick from asking questions. They are relevant to the resourcing issue, which he has raised previously in the Senate. I don't think his question can be ruled out of order.

CHAIR: No, that's not valid. There is no point of order. He can ask questions about the Information Commissioner, what he's doing now and how he is coping. He's already done that, and the Information Commissioner has given a thing. But going back to what happened three or four years ago is not relevant to this particular inquiry looking at the 2017-18 budget.

Senator PATRICK: It's budget, Chair.

CHAIR: It's relevant in relation to the—

Senator PATRICK: We have an interest in this, and you don't set the time frame.

CHAIR: Well, just a minute, Senator Patrick! You'll be quiet while I'm making a ruling.

Senator WONG: This is what it's like—

CHAIR: Well, Senator Wong, I'm sorry: you think that you are a very special person and that you can interrupt at any time. Can I tell you that you're not?

Senator WONG: Oh, for goodness sake!

CHAIR: Now, as I was saying, these are matters that Mr Pilgrim has answered the question on. We're not going back to what happened in estimates three or four years ago, and you shouldn't ask public servants for opinions on what they might have thought about something that happened three or four years ago. Opinions are not relevant anyhow.

Senator PATRICK: I accept I shouldn't ask for opinions. I'm simply asking how we got from a position where the resourcing went from funding three commissioners down to one commissioner.

CHAIR: That's been answered.

Mr Moraitis: All I can say, as of now, is that the government's view is that, with Mr Pilgrim's retirement, we will undertake a process to fill that position. The government is satisfied that that position can meet the requirements of privacy, information and FOI based on their experience to date. I can't comment otherwise.

Senator PATRICK: The act requires that the Australian Information Commissioner has a law degree—is that a requirement for the—

Mr Moraitis: Yes, that would be actively considered. There'll be a process established and advertising of the prerequisites and qualifications required.

Senator PATRICK: Mr Pilgrim, you provided some statistics to former Senator Xenophon in relation to FOIs. Some of the statistics you weren't keeping. One of the ones that Senator Xenophon asked for was related to the number of times you extend an FOI review. Is it correct to say you don't grant an extension of time?

Mr Pilgrim: No, we don't keep those.

Senator PATRICK: Is it possible to understand if there are any circumstances where you refuse to grant an extension of time? Is it a tick-and-flick—how does it work?

Mr Pilgrim: We would take submissions from the relevant department, taking into account the comments from the applicant about why there is perhaps an urgency for a matter to be resolved. We certainly take those into account as part of that process.

Senator PATRICK: But you don't have any statistics on when you don't?

Mr Pilgrim: I will double-check, but I believe we don't have statistics on that.

Senator PATRICK: That would be a lot rarer than situations where you do grant, I imagine.

Mr Pilgrim: I would suggest, yes, it would be rarer.

Senator PATRICK: I want to go to a matter that was the subject of an ABC report. You would be familiar with the matter to do with the CBA and a privacy issue? You actually ruled in favour of the applicant in that matter. You found that the CBA had breached the applicant's privacy. An issue that was raised during that review was the fact that the CBA, when they initially provided you with information you'd requested about how certain persons had accessed the applicant's bank accounts, responded with information to you. However, in effect, more than 90 per cent of the accesses were denied to you—they were manually redacted. Are you familiar with the case I'm talking about?

Mr Pilgrim: Yes, I'm familiar with the case.

Senator PATRICK: I think you then went back and said, 'We're not satisfied that you've provided us with the right amount of information.' They then provided you with more but still failed to give you the full information. Is that correct?

Mr Pilgrim: That's correct.

Senator PATRICK: So 98 per cent of accesses were not provided, and the second time around you were still left with 32 per cent not provided. My understanding is there are provisions in your act that prevent people from misleading or failing to provide you with information.

Mr Pilgrim: That's correct.

Senator PATRICK: I understand you don't prosecute anyone. Obviously, there's strategic importance associated with making sure that people understand, when dealing with your office, that you don't accept situations where you are misled or information is withheld from you. In a court that would be dealt with by a judicial officer as a contempt. I know that, for example, if you mislead the Child Support Agency, they may refer the matter to a particular body and perhaps to the DPP. What's your process in those circumstances?

Mr Pilgrim: First of all, I would need to determine whether I thought the action was intentional and done with some level of malice. In the particular case you're referring to, from the information provided to me, I didn't form that opinion. I accepted what the bank said in terms of their failure to produce that information—basically being done due to an administrative error—and I accepted that on its face.

Senator PATRICK: Of course people to make errors but, when you have someone who initially starts off redacting 98 per cent of the information you're seeking and you challenge them on that, wouldn't you think a much, much higher level of care would be associated with the next round of information provided to you?

Mr Pilgrim: I would hope that would be the case. In this particular matter, as I recall it and, again, I don't have the exact memory of every detail of the case, I believe that the bank in question acknowledged that it had made an error by providing a lack of information and then sought to correct that. But I accepted that as being an administrative error.

Senator PATRICK: I just wonder what the threshold is. You can understand people looking from the outside saying, 'You're not enforcing the provisions in the act and protecting your own patch.' What's the threshold? How do we distinguish between a mistake and something that is done with malice or deliberately?

Mr Pilgrim: That would be a part of the questioning we would make of the particular entity into which we're investigating, and I'd have to assess those decisions on the information they provided me at the time. In this particular matter, their explanation seemed to be a fair and sound explanation, and we accepted it.

Senator PATRICK: Twice? Even though the second time round—

Mr Pilgrim: Twice in this particular matter, yes.

Senator PATRICK: Is there any general rule that you would have for what constitutes 'deliberately misleading'? In fact, what's the threshold required to satisfy you? This would be a criminal offence, one presumes, so there's a 'beyond reasonable doubt' threshold. Can you give some idea of what that threshold would be?

Mr Pilgrim: It's probably very difficult because we would need to look at each individual case and the information we're seeking, and then look to the actions that may have been taken by an organisation or an entity that has refused to provide information, or we then find has not released particular information. So it's very hard to say where that threshold would exactly be.

Senator PATRICK: Moving on, you were talking about your new directions. Are they published yet?

Mr Pilgrim: Yes, the direction under the FOI Act has been published.

Senator PATRICK: When were they published and where would they be found?

Mr Pilgrim: I can find the exact date for you, but it's on our website at this point in time. It was probably about a week or two ago we published the directions.

Senator PATRICK: The aim of those directions is to smooth or expedite the processes and their follow-ups?

Mr Pilgrim: Particularly procedures. You may recall the former Senator Xenophon—I think it was at the hearings in last October—raised a number of procedural issues and concerns he had. At the time I mentioned we were looking at those particular issues and ways of dealing with them. Some of them went to timeliness in terms of the production of information and also requests for putting in confidential submissions. I made the decision that there needed to be a bit more clarity around that and used the procedural direction power I have under the act to issue a direction that went to those issues and set time frames and set out more clearly my expectations around how they should be complied with.

Senator PATRICK: That sounds really good. I look forward to reading them. Best of luck in the future, Mr Pilgrim.

Mr Pilgrim: Thank you, Senator.

CHAIR: Can your decisions be appealed in the AAT?

Mr Pilgrim: Under the Privacy Act, a party is able to take my decision, when I do a determination, for review by the AAT. There are also provisions where a matter could be

taken to the courts as well and, under the FOI Act, of course, the decisions I make go to the AAT as well.

CHAIR: Thank you for your appearance today and I repeat our appreciation to you for long service to the Commonwealth in many fields but, particularly, in this role in recent years. Thank you very much.

Australian Human Rights Commission

[15:00]

CHAIR: Professor Croucher, welcome to you and your team. We understand that one of your commissioners, Ms Oscar, is not with us today because she's not well. We acknowledge that and thank you for letting us know. Would you like to make an opening statement?

Prof. Croucher: I thought it was worth just making a few opening observations, mainly to acknowledge that this week is the commencement, as of yesterday, of Australia's place on the UN Human Rights Council, in a very cold Geneva—I think it's minus eight there today. The locals call it 'La Bise', but our headline today was 'The beast from the east', which I think is more graphically Australian to describe it. It is also worth noting 2018 as being the 70th anniversary of the Universal Declaration of Human Rights. The committee that drafted that was under the masterly chairmanship of Eleanor Roosevelt. It's also the 70th anniversary of the election of an Australian as the President of the General Assembly. So it's a significant year and I thought it would be worth opening with that.

I also observe that, as Australia's national human rights institution, we do provide a crucial bridge between that international setting and the national contexts with respect to Australia's human rights commitments. We play a pivotal role in that tripartite architecture of government on the one side, civil society on the other and the national human rights institution in the middle. We're neither one nor the other and are independent of both but are crucial in that architecture. I look forward to your questions once more today and thank you for allowing June Oscar not to be here. She's pretty crook.

CHAIR: Please wish her a speedy recovery. Professor, you mentioned Australia's accession to the Human Rights Council. Is that something that your commission was directly involved in? If not, who was involved?

Prof. Croucher: No. Thank you, Chair. That's a very fair question. It's a UN election and Australia was elected by the UN to take a seat on the Human Rights Council.

CHAIR: Who was running Australia's election campaign? It wasn't you?

Prof. Croucher: Not me, no.

Senator Wong interjecting—

CHAIR: I'm conscious that, some time ago, they were actively engaging in Geneva and elsewhere. I got a nice yellow notebook out of it. Just remind me. Australia was actually, in the end, elected unopposed—is that correct?

Prof. Croucher: I understand that to be the case, but one of the important planks of Australia's bid was supporting the important role that national human rights commissions can play in that tripartite architecture that I described.

CHAIR: That prompts my next question. How do you now interact with the international human rights commission or Australia's involvement in it? Who are the personnel involved in the—

Prof. Croucher: The Human Rights Council?

CHAIR: Yes.

Prof. Croucher: That's a representative council drawn from member countries all over the world. The precise composition we could provide—

CHAIR: Who are Australia's delegates there? Is it someone from your organisation?

Prof. Croucher: No, the ambassador in Geneva.

CHAIR: The ambassador for human rights?

Prof. Croucher: No, Australia's ambassador.

Mr Moraitis: The permanent representative of Australia to the United Nations in Geneva covers the Human Rights Council.

CHAIR: And there's no special interaction between your commission and the council?

Prof. Croucher: No, other than the role that the Human Rights Commission plays regularly in the regular cycle of reviews—reporting to the UN in terms of the convention cycles. There's no additional thing, except that the significance of the role that human rights institutions play was something that Australia factored in its bid to gain a seat on the council.

Senator PRATT: I'm interested to know about the commission's view of the level of protection for religious freedom in Australia. You've made some recommendations to the review that's currently underway, and I wondered in that context, if Dr Soutphommasane—and I probably mispronounced his name like I usually do; he tried to give me lessons but I'm not a very good student, I'm afraid, but he's very polite and kind about it—has any observations of the similarity of experiences of people in relation to their racial identity which underscore the need for protection on religious grounds.

Prof. Croucher: I should just say at the outset: I am on the panel that is looking at the religious freedom issues under terms of reference from the Prime Minister. In view of that appointment, I have not been involved in the commission's submission to that panel at all. We've managed it as a separation within the organisation.

Senator PRATT: That's good. So, it's appropriate I ask Dr Soutphommasane for an answer on that.

Prof. Croucher: Or just Commissioner will do.

Senator PRATT: Thank you. Thank you, Commissioner.

Dr Soutphommasane: I'm happy to give additional elocution lessons on the pronunciation of my surname. Can I just clarify what exactly you're after? Are you interested in the overlap between race and religion?

Senator PRATT: Yes, because clearly we've got established race discrimination and antidiscrimination provisions. It strikes me that the experience of many Australians and others in our country of religious discrimination will have much in common with the race discrimination that they experience and will underscore some of the approaches to reform in this area that we could look to.

Dr Soutphommasane: You're right to allude to the fact that the Racial Discrimination Act does not cover religion as a protected attribute under the Racial Discrimination Act. Discrimination is prohibited on the grounds of race, ethnicity, colour and national origin—and also immigration status—but religion explicitly is not covered. This does not mean that certain members of the community are not given protection against racial discrimination, if they do experience it. One way of putting it is to say that, regardless of whether you are Christian, Hindu, Buddhist, Muslim or someone of no religion, if you experience discrimination based on your racial background, you will still be covered by the Racial Discrimination Act. However, you're right to say that those who experience discrimination on religious grounds feel that it can resemble racial discrimination—for example, those who may experience hostility based on their faith may feel that the hostility is directed at them also because of their ethnicity or national origin.

Senator PRATT: With respect to the balancing of the approach taken in your submission with the need to bring religious discrimination into the existing framework but also to protect people with other attributes—be they LGBTI, pregnant or other gender identity or other characteristics—from religious discrimination on religious grounds. I'm sure you would have covered that in your submission.

Dr Soutphommasane: I think in our submission we make very clear that we believe religious freedom is something that should be valued and protected, and we believe that the inquiry or review should look into striking an appropriate balance between all freedoms. This is a basic principle of what we would describe as a human rights approach. To say that is merely to underscore that no freedom is ever absolute and that, as the saying goes, 'One's freedom ends where another's freedom begins.' I may have the freedom to swing my arm in the air in front of me, but that freedom ends where your nose begins, for instance.

Senator PRATT: That's a very good analogy, thank you, Commissioner. I can hand over to my colleagues now for further questions.

CHAIR: There are four minutes left, thanks. Is that—

Senator PRATT: No, to our colleagues in another party.

CHAIR: Okay, we'll go to Senator Steele-John.

Senator STEELE-JOHN: Thank you very much, Chair. Let me just say at the outset that it's been my first opportunity to talk with the commission today, and it's an honour and a pleasure to have the opportunity to do so. My questions go to Commissioner McEwin in relation to disability discrimination. I can't help feeling, Commissioner, that, with you on that side of the glass and me on this one, we might begin to get some good work done in relation to disability. I'd like to take you to some questions asked and just continue on with a line of questioning that my colleague Senator Siewert brought up with you last time we were here. Last October, relating to disability discrimination complaints and employment, you were able to provide figures relating to the number of complaints that you'd received and those related to employment, on notice, to Senator Siewert. I was wondering whether you might be able to give me an update on those figures—I'm happy for you to take that on notice—just to the year so far and then also whether you might be able to give me a breakdown of these employment related complaints by age and geography. Would that be possible?

Mr McEwin: Thank you, Senator, and welcome. The disability community is thrilled to have a senator with your skills and attributes in the parliament. So, again, welcome. I certainly can give you an update on figures for complaints relating to the Disability Discrimination Act. For the first six months of the year, 1 July to 31 December 2017, we have received 441 complaints under the DDA. That makes up 45 per cent of the total number of complaints received by the commission. Of those complaints under the DDA, employment made up 154 of them—in other words, 34 per cent of the total number of complaints under the DDA—and that is consistent with the last five years: 33, 34 and 35 per cent. One hundred and ninety-six of them relate to goods, services and facilities, so 44 per cent of the total complaints—

Senator STEELE-JOHN: Was that 139?

Mr McEwin: One hundred and ninety-six for goods, services and facilities, so 44 per cent. And 69 of them relate to education, which makes up 15 per cent. In regard to your question around the breakdowns such as geography and age, in terms of geography, do you mean by state and territory?

Senator STEELE-JOHN: By state and territory, yes.

Mr McEwin: Certainly. Well, if you bear with me—actually, I have the figures for all of the complaints received. I don't have a breakdown of the DDA complaints, so I will take that on notice.

Senator STEELE-JOHN: I'm happy for you to take that on notice.

Mr McEwin: As well as for the age range, if we collect that information.

Senator STEELE-JOHN: That would be great. Would you mind also providing goods and services related complaints by state and territory? Would that be possible as well?

Mr McEwin: Certainly.

Senator STEELE-JOHN: Excellent. Would you be able to give me a breakdown of overall complaints received by resolution? I'm trying to get a per cent figure, of the complaints cent received, of how many got one type of resolution or another.

Prof. Croucher: I will come in here. We have some overall statistics in relation to the finalisation of complaints over that period. In our preparation documents we don't have a breakdown as per the various discrimination acts. I can give you an example: we finalised 1,042 complaints during the first six months of the reporting year. There were approximately 625 conciliation processes, of which 435 or 70 per cent were successfully resolved. If you'd like a breakdown that reflects the DDA stats, we can certainly ascertain that for you.

Senator STEELE-JOHN: That'd be wonderful. Sorry, I should have clarified, in terms of time frame for this information—and again take it on notice and take as long as you need—I've got Senator Siewert's information here from the years 2012-13 to 2016-17. It gives you a reasonable idea of trend. Would you be able to frame your responses to questions on notice within the same time frame, within the different geographic—

Prof. Croucher: We have the overall data and I'm sure we can unpack that for you.

Senator STEELE-JOHN: That would be wonderful. I know you're never going to take a question from me again! Overall DDA complaints which relate to either the inability to access

or be provided with interpretive services—I don't know whether you keep those kind of records as to the nature of complaints?

Mr McEwin: We do.

Prof. Croucher: We should be able to identify those. Obviously, the information about the complaints is a matter that's—

Senator STEELE-JOHN: It's confidential.

Prof. Croucher: It's extremely confidential, as in it's covered by secrecy. Even the commissioners are not provided that information, as they have no direct complaint handling responsibilities. But this information is of great utility to this committee and we're very happy to unpack it in that way with the relevant people.

Senator STEELE-JOHN: That would be superb. I'm not sure whether this would be for Mr McEwin; I think it probably would be. In your response, Commissioner, to my colleague Senator Siewert's questioning in relation to employment in October, you said that you were working closely with the Australian Public Service Commission on the ways we can improve recruitment practices, interview processes and making sure that applications are accessible. I wondered whether you would be able to tell me if you believed targets or quotas could play an effective role in this, and whether you've had any discussions with the government to establish these kinds of targets within the Public Service?

Mr McEwin: Thank you for the question, and it's a very good one because we do need to increase the number of people with disabilities in employment not just in the Australian Public Service but generally. I have had a number of ongoing conversations since I commenced. The last conversations I had with the Australian Public Service were shortly before Christmas around the success of their graduate programs, and trying to secure employment for graduates with disabilities. In terms of quotas and targets, the commission does not have a fixed view on one or the other. We see that both have merit and both have challenges in terms of implementation as well as ensuring that we can increase the number of people with disability. I'm also happy to give you a more detailed outline of the things that I have discussed with the Australian Public Service.

Senator STEELE-JOHN: That would be wonderful, thank you. Thanks so much for your time.

CHAIR: Thanks, Senator Steele-John. Senator Pratt, do you have any more questions?

Senator PRATT: No.

CHAIR: Senator Siewert, do you?

Senator SIEWERT: I've got some questions of the Age Discrimination Commissioner. First off, I want to go to broader issues around what your priorities are for this year. I have read your speech from a couple of weeks ago where you focused on elder abuse and ongoing discrimination in the workplace and discrimination against older people trying to re-enter the workforce. I'm wondering if those are your two main priorities for this calendar year, and I want to ask you some specific questions around both those issues.

Dr Patterson: Thank you very much, Senator Siewert. As there are only 24 hours in a day, I've had to try and limit what I do—

Senator SIEWERT: I totally understand!

Dr Patterson: and I've chosen three specific areas. The first is, as you mentioned, to look at employment of older people and ensure that we reduce the amount of ageism. I'm working in conjunction with, for example, a benevolent society in that area. They're doing a big five-to 10-year program on attacking ageism. The second thing I'm working on is elder abuse, which I think even in the last 16 to 18 months has become much more high-profile. We recently had a conference organised by Seniors Rights Service and they had 560 people—they were expecting 400. I think that demonstrates there's a lot more interest. The third thing I'm focusing on is older women at risk of homelessness, which is sort of a hidden tsunami of people.

I have some other things that I do that are smaller, but are just as important. I've got a meeting with Australia Post about removal of letterboxes, which significantly affects older people. I've been doing a project with a young woman—one of my roles is to promote positive attitudes to older people. She organised an exhibition in Victoria of 100 students painting 100 centenarians, and we're now working on getting a subsidy for her to do the same thing in New South Wales. I hope, before the end of my time, we have an exhibition at the portrait gallery. These paintings, the top ones, could have been up for the Archibald—they were so good. It's a wonderful intergenerational program.

Senator SIEWERT: I can point you to one lady in Margaret River, who I met last week, who has just celebrated her 100th birthday.

Dr Patterson: In WA, you've got a disproportionate number of centenarians. There are now, I think, 4,700 in Australia—there were 276 in 1976—and that ought to be 44,000 in 2040. It's significant for our economy and for planning for a 100-year life.

Senator SIEWERT: Thank you for that. Can I follow up, firstly, on employment issues. I notice you're following up the *Willing to work report* from 2015-16. Where is that process, in terms of progress with recommendations, up to?

Dr Patterson: I wish we had an hour, because there are a large number of recommendations and they cover a broad field, including some overlapping with the work that Commissioner McEwin is undertaking. I've been talking to the public service about reporting, in the annual reports, the number of people who are employed at various ages—50 to 55, 55 to 60, et cetera, to 75-plus—but also looking at, in the departments, when older people are appointed. We might get a natural increase, because of the removal of the 54/11 issue that meant people left. And there's a natural increase. But also, are we being active? It's very difficult to ask the private sector to do this if the public sector isn't doing it. I've also raised it with some of the states as well.

I have been working with a number of organisations that are focused on employing older people and cooperating with them. I'm hoping that we'll be able to make a submission in the Try, Test and Learn, in a partnership with a couple of organisations. We're in discussion at the moment with that. There's the Try Test and Learn series. I think we got interesting ideas that can augment the programs that are currently being undertaken. I have also been in discussions with Elizabeth Lyons from WGEA about asking companies to volunteer. One of the recommendations in the Willing report was to get companies to do it. I thought it was a bit difficult to ask them to do it when we weren't at the point where the Public Service was doing it, but to ask people to volunteer if they have the information, and we have been working on some questions that might be able to be put. And then highlighting those organisations which

were employing older people and then maybe moving towards some sort of more formal requests for information. So we'll see how we go on a voluntary basis. And Libby Lyons has been quite responsive to that, and now we're just working on some questions.

Senator SIEWERT: I have got a question that I think crosses between yours and Mr McEwin's portfolio. I was reading the report on the number of people on DSP, the changes to DSP, in the PBO. There are several reports out at the moment on this issue. I think it was the PBO report that said a number of people have come off DSP because they have aged into aged care. In other words, we're dealing with an ageing population but also an ageing population with disability who aren't being able to find work and are moving straight onto the aged pension. And I'm wondering if between the two of you as commissioners you have looked at that particular issue?

Dr Patterson: I haven't particularly looked at that issue. But I'm challenged with the load of the ones who aren't eligible for the aged pension and who are not getting jobs. Now some companies aren't employing people over 55.

Senator SIEWERT: That's the point. People are on DSP for a significant period of time and they are ageing off that onto the aged pension.

Dr Patterson: As I was saying, there are people who are not eligible for aged pension who, at 55, are not able to get jobs.

Senator SIEWERT: Yes. That's my concern. We have just been talking about people with disability. The biggest area of complaint is employment. They aren't able to be engaged in employment, so we've got older workers who are also on DSP. I totally agree; there are people on the lesser payment of NewStart that are ageing off that on to the age pension.

Dr Patterson: I know that Commissioner McEwin is aware of that area, but there's a limit to what one can do with the limited resources I have.

Senator SIEWERT: I accept that.

Mr McEwin: If I can just add, both Commissioner Patterson and I, when we meet with the stakeholders, particularly in the corporate sector, talk about the business case. We know that if you invest, say, perhaps X amount, you will save in the long term. In my conversations, and I'm sure Commissioner Patterson would agree, many people are starting to realise that. They're starting to realise that with the right support, the long-term benefit will accrue. But it's a long ongoing conversation.

Senator SIEWERT: But you haven't been specifically looking at that issue either?

Mr McEwin: In terms of what you have just described, do you mean the very barrier of people who are, for example, on the DSP not being able to get jobs? Absolutely, that's one we talk about every day.

Senator SIEWERT: I am particularly focused on the older group of workers because that's the area that I have been engaging with, that group that are ageing into the age pension without being able to find work. So I'll continue to follow that issue. It's not a criticism.

Dr Patterson: No, I get that.

Senator SIEWERT: I appreciate the huge workload but it's an area that I think needs some attention. I know that we're going to run out of time, so I very quickly want to ask about elder abuse and particularly the announcement. I'll ask AGs later about the announcement that

the Attorney-General made. Dr Patterson, I'm just wondering if you have had any interaction with that particular announcement that was made just last week out of the conference you were just talking about?

Dr Patterson: After the conference on Monday and Tuesday, there was a one-day strategy meeting. I think I might have invited myself or I was invited—I can't remember. But the focus was to be on the national action plan and pressuring for it. There was a quick sort of turnaround and now it's about what you could contribute on the national plan. I think the sector was delighted that the impetus from the ALRC report wasn't going to be lost and that Minister Porter was actually moving in the same direction and showing a keen interest.

Senator SIEWERT: So you'll be participating in that national plan process?

Dr Patterson: I don't know. It was announced only recently. I have to say that the shadow minister also announced that they had a plan that they were going to bring, but I think it was slightly gazumped on the day. I would hope that there will be a bipartisan approach because it really is not a party political issue; it is an issue that really should concern the whole community, like family abuse.

Senator SIEWERT: I agree with you. I wasn't for a second suggesting there was. I was interested in the level of involvement that you expect you'll have in the preparation of the plan.

Dr Patterson: I will insert myself in every place I think will make a difference. This is a place where child abuse and family abuse was, and in the last year and a half there's been a real focus on it. I know there's a commitment from the sector to be involved and to find as many creative solutions as possible.

Senator SIEWERT: It may be that I'm asking a question of a matter of opinion, so politely tell me to get stuffed if it is!

Dr Patterson: I would never do that, Senator!

Senator SIEWERT: In terms of aged care and elder abuse, when people are receiving homecare or are in residential care, do you consider that should also be included in the national plan? I will be following up with A-G's.

Dr Patterson: The Australian Law Reform Commission made recommendations about elder abuse in aged care. I've tried to stay a little out of aged care because, once I dip my toe in there, I'll find myself not as able to do the work for the people in the community who don't have that sort of support. But they do have an Aged Care Complaints Commissioner and various committees that look at standards, and I am sure that will be included. It's an area that I've left to those who have that responsibility, because there are people in the community who have no-one responsible when they're being abused.

Senator SIEWERT: I totally understand that rationale. Quite frankly, I'm struggling with it myself. I was looking at how you would see that fitting into the national plan.

Dr Patterson: I think it fits into the national plan, just like the Law Reform Commission had a section in a number of recommendations about—

Senator SIEWERT: So you're basically supporting their recommendations?

Dr Patterson: I've talked to some people who feel that reports are written and don't get followed up. In fact, one very interesting elder lawyer in Queensland, with whom I've had a

couple of sparring matches in a wonderful way, thought they wouldn't be acted on and I said, 'If I'm involved, it will be.' I'm determined to see as much of that report implemented as possible because I think it's absolutely vital.

Senator SIEWERT: Thank you.

CHAIR: Commissioner Patterson, I'm pleased to hear you're promoting positive attitudes towards older people. Do you think an accusation that some older person is senile and should give up work is the sort of approach that you would expect from community leaders?

Dr Patterson: I would see that as ageist, Senator. That's the sort of complaint that we get when we have complaints. The number of complaints in the aged area is very small. It's about nine per cent of the total number of complaints. It's usually about: 'You're too old for the job,' or 'You're too experienced,' or 'You haven't got what it takes because you're older.' So it depends. If people said that to someone, they can bring it to the commission as a complaint.

CHAIR: What does the commission do if it gets that sort of complaint?

Dr Patterson: I don't handle the complaints. Our president would be better able to answer that.

Prof. Croucher: People who want the assistance of the commission can inquire. We have, on average, 15,000 inquiries every year. Some of those are even from employers who want to know about doing the right thing. If something is formally taken as a complaint, then it goes through the conciliation process, under strictly confidential processes. It's not a court proceeding; it is a conciliation process.

CHAIR: In the instance I'm using, you'd be encouraging the person who made those comments to apologise and desist from doing that in the future?

Prof. Croucher: The way that is handled within the conciliation process may indeed generate an issue of apology. It may generate systemic changes, where an employer, for instance, agrees to adopt a training program or adopt guidelines. There can be systemic improvements, even arising out of what is essentially just an individual raising a question of concern. It can be an apology between the parties or it can be more systemic, but it's utterly individual within the conciliation process.

Dr Patterson: I can add to that and it would also answer another question that Senator Siewert asked. I believe there is a need for deep changes, and I mean deep changes at an educational level. I've discussed with the Human Resources Institute and the Australian Institute of Company Directors about how we get changes. This is not being critical of young people, but sometimes they don't understand why an older person wants to continue working, maybe at a lower level than they had before. It needs to be an education with students who are recruiters and human resource students—having people who have had a positive experience with employing an older person or had doubts as to how a person would fit in and they showed that they really fitted in and made a real difference to the business. I have been working with the Institute of Company Directors on trying to get directors to ask questions of their HR people about what they're doing and what they're doing to counteract any ageism culture within their HR department. That's a really deep change that I think is needed in the recruiting process.

CHAIR: That's how you're trying to promote positive attitudes towards older people?

Dr Patterson: Sometimes it's just a lack of experience. When you're 26, somebody who's 32 seems very old and when you're a bit older it doesn't. I did that when I was teaching health science students. I felt we needed deep changes. You can attack it from various levels and one of them is the education level. I've had tremendous cooperation with the Australian Human Resources Institute.

CHAIR: This is a leading question for you, Commissioner, in view of your past—

Dr Patterson: I thought you were going to mention my age then!

CHAIR: professions. No, not at all. You'd expect that parliamentarians should be showing the way, promoting a positive experience, leading the path and trying to promote positive attitudes towards older people.

Dr Patterson: I think we all need to do it because more of us are going to live longer. I say this in every speech I give: the culture that we create now is the culture we'll inherit when we're all a lot older.

Senator Seselja: Do you have a particular example in mind, Chair?

CHAIR: I don't mention any names, because I don't want to make this political, but a parliamentarian accusing someone of being too old and senile and saying they should resign.

Mr Moraitis: Who called you senile?

CHAIR: I'm not mentioning any names. I'm keeping this as—

Senator Seselja: Was it a Green?

CHAIR: No. It is a party that usually carries on about these sorts of things.

Senator Seselja: I think it was.

Senator WONG: Is this before or after you called Senator Watt stupid? Just checking!

Senator Seselja: That's not ageist.

Senator WONG: That's true.

Mr Moraitis: You'd have to ask another commissioner.

Senator WONG: It's not so dignified, is it?

CHAIR: Where does 'stupid' fit in with the Human Rights Commission, Senator Wong?

Senator WONG: And you're a well-known defender of the Human Rights Commission.

CHAIR: It just amuses me that these people, with highly skilled and feeling approaches to these sorts of things, don't practice what they preach.

Senator WONG: Sorry—'feeling approaches'? What's a 'feeling approach'?

CHAIR: We'll go to Senator Hume.

Senator Seselja: Could I just ask: what time are we due to break?

CHAIR: We were supposed to have a break 20 minutes ago, but I thought we were coming to the end of this. We'll have a break now.

Proceedings suspended from 15:39 to 15:53

CHAIR: I call back to order the Legal and Constitutional Affairs Legislation Committee's inquiry into the 2017 additional estimates. We're just slightly missing a minister, but I think Mr Moraitis will be able to oversight the government's interests until the minister arrives. I

was going to go to Senator Hume, but, before that, are there any questions from anyone for Commissioner Soutphommasane who has to leave for a particular flight. If anyone does have questions for the Commissioner then we'll deal with them now. As there are none, Commissioner, you're excused and have a good flight.

Dr Soutphommasane: Thank you, Chair, for accommodating.

CHAIR: That's fine. Senator Hume.

Senator HUME: Thank you, Chair. Professor Croucher, last year the government made some changes to the Australian human rights act. Can you explain the impact of those changes on the processing of complaints through your organisation?

Prof. Croucher: Certainly. I'm very happy to answer that question. The changes were principally to the procedures by which complaints were handled, in particular to introduce a pre-inquiry process to facilitate the closing or terminating, which is the unfortunate language that's used in the act, without having to go to a full inquiry. I do have some statistics on that very specific question. From 13 April 2017—which was the date on which the amendments commenced—up to 2 February, there were 111 complaints that were assessed as potentially appropriate for the pre-inquiry closure. During that same time frame, there were 1,483 complaints overall, so the ones that were assessed as potentially appropriate for closure represented approximately 7.5 per cent of all the complaints received in that period. I can break that down further. Of those 111, 73 complaints have been finalised; 27 were terminated; nine were withdrawn; 23 decided not to proceed; 12 were resolved; and two were administratively closed.

Senator HUME: Can you explain the difference between 'finalised', 'terminated', 'closed' and 'resolved'?

Prof. Croucher: Terminated means a decision was made about them. Finalised includes things like administrative closure—for example, if someone's already lodged a complaint in another place or resolves it themselves and withdraws it. Finalised is a nicer word; terminated is the technical one. I can break down the 27 terminated complaints further: 12 were terminated as out of time; eight were terminated as lacking in substance, which is one of the more particular grounds that were introduced; five were terminated on the basis that there was a more appropriate remedy reasonably available to the complainant or that the complaint had already been adequately dealt with; and one complaint was terminated as not unlawful. The idea is it gives an opportunity to streamline and to have a pre-inquiry assessment.

Senator HUME: You would say that the new processes that have been in place since April last year are having a positive impact on your work flow?

Prof. Croucher: We're still seeing how they work out. Until there is any specific challenge or law that's generated around it, we're still working our way through them. Clearly, making a decision as to whether something's appropriate for pre-inquiry closure or termination still requires active involvement of the team, so it's not done in a peremptory way, but it does provide an opportunity for an earlier closure of a matter.

Senator HUME: Thank you, Professor.

CHAIR: Who else? Senator McKim?

Senator McKIM: Thanks, Professor Croucher, and good afternoon to you and your team. I wanted to ask you a couple of questions about your role on the religious freedom panel.

Prof. Croucher: Certainly—to the extent that I'm able.

Senator McKIM: Of course, and I understand that you are not here to speak on behalf of the chair; I acknowledge that. I wanted to start by asking whether you've personally been to all of the hearings that the panel has held?

Prof. Croucher: I have personally attended a considerable number of them. For some of them, I have attended on the telephone. For instance, yesterday, I attended most of the Brisbane consultations on the phone from my Sydney office. Last week, I was in Geneva, so I was unable to attend any. The approach that we've taken is to require that as many of the panel as is possible do attend, so that there is the chair and at least two other people in attendance if at all possible.

Senator McKIM: Thank you. That is clear and I appreciate that. Is there any mechanism whereby, if any of the panel members are unable to attend—and there is no criticism inherent in this question with regard to people's capacity to attend—there is a transcript available or the hearings are recorded? Is there a mechanism to catch up on what you may have missed if you weren't able to attend?

Prof. Croucher: That's a very good question. They're not hearings as such. It is a consultative process that is very like the one that I was familiar with at the Law Reform Commission. In fact, to a large extent that was used as a model. So they're consultations, not parliamentary hearings. The panellists make their own notes. The secretariat does make some notes that are available to the panellists, but they are not minutes.

Senator McKIM: I understand that, and they are certainly not verbatim.

Prof. Croucher: No, and that is explained at the commencement of each of the consultations. I'm answering that as a participant on the panel and not in the context of the Human Rights Commission's work.

Senator McKIM: I do understand that but—

Prof. Croucher: But I'm very happy to take those specific questions.

Senator McKIM: Thank you. Just for clarity, though, you're on the panel as a result of your position at the commission?

Prof. Croucher: No. I think I was selected—I could just give you a couple of illustrations as to the—

Senator McKIM: I'm aware of your broad experience in the area of rights, Professor. That's not in question.

Prof. Croucher: There are two, if I may. If it's a question as to the appointment of people on the panel, that's best directed to—

Senator McKIM: PM&C.

Prof. Croucher: PM&C. I was a co-author, co-editor, of a book on law and religion, and I also chaired the ALRC's inquiry on freedoms, and we did do a specific chapter on religious freedoms, so there is some relevant experience quite independent of whatever role I hold now.

Senator McKIM: There most certainly is, and I have read the relevant chapter of the law reform report. Has the matter of the chair's recent elevation to President of the New South Wales Liberal Party been discussed by the panel, and any potential for conflict of interest?

Prof. Croucher: No. I only noticed that in some news today, I think. No, that's not come out at all.

Senator McKIM: Do you have concerns that there may be at least a potential for conflict of interest, or at least the perception of a conflict here, given that the religious freedom panel was commissioned by a Liberal Prime Minister, and Mr Ruddock has now been elevated to the President of the New South Wales Liberal Party?

CHAIR: I'm not sure—

Prof. Croucher: I don't know that that's fair for me to—

Senator Seselja: You realise he's been a member of the Liberal Party and parliament for over 40 years?

Senator McKIM: I'm aware of that, thanks. If you don't want to answer that, that's fine.

CHAIR: One moment, President. I'm not sure that that question doesn't offend against the rule against asking for opinions, which is there for very, very obvious reasons, and those reasons are that we don't want public servants or, in your case, people at independent agencies in a very senior position, being asked to give opinions on matters involving the political sphere.

Senator McKIM: Chair, the president has indicated that she doesn't wish to answer it, and I've accepted that, so—

CHAIR: I am sorry; I hadn't realised. I wouldn't have allowed the question had I been a bit quicker, but okay; all is resolved.

Senator McKIM: Professor, thank you for that. Did you attend a two-day conference with the panel, a religious conference called Freedom of Religion or Belief: Creating the Constitutional Space for Fundamental Freedoms which was put on by the International Center for Law and Religion Studies and the University of Notre Dame?

Prof. Croucher: The panel attended a consultation in conjunction with that. As was the practice at the Law Reform Commission, if there happens to be a handy conference, whether it's about elder abuse or, in this case, it happened to be a conference of a range of people who are interested in the area—that was an opportunity to add on and steal an hour and a half, I think we allowed in that case. It was opportunistic and convenient.

Senator McKIM: Has the panel, to your knowledge, attended any other conferences in an opportunistic way, as you—

Prof. Croucher: I couldn't say. I'm not aware.

Senator McKIM: But you haven't?

Prof. Croucher: It's been a very intense period, Senator, as you would imagine.

Senator McKIM: I appreciate that.

Prof. Croucher: It might be worth noting, just for your information, given your interest, that there have been over 16,000 submissions.

Senator McKIM: Yes, I'm aware of that, and originally not to be made public.

Prof. Croucher: If I may, if there's a question about the procedure I would direct it to the secretariat, but it has been put on record that the procedure to be adopted was like the ALRC procedure. The fact that there has been a delay is merely a matter of numbers.

Senator McKIM: That's okay. My comment was just that, a comment, not a question. I'll park that there. Would it be fair for me to observe that churches already have broad exemptions in antidiscrimination law in Australia?

Prof. Croucher: I think perhaps, if you wouldn't mind, it would be more appropriate to let that inquiry run its course. The Human Rights Commission has put in a submission to inquiry, and I think it would be best to let that process run its course.

Senator McKIM: When are the next hearings scheduled?

Prof. Croucher: The consultations?

Senator McKIM: Yes.

Prof. Croucher: There's a consultation date today in Adelaide, which I'm not attending; there are consultations next week in Darwin, which I will attend; and there's a schedule that's blocking out almost every single day over the next week or two.

Senator McKIM: Last question, Professor—thanks for your tolerance. We have heard already from some of your commissioners about the need to balance rights. I think it was put that there are no absolute rights—maybe there are a couple of absolute rights. We could probably have a discussion about that.

Prof. Croucher: There are some non-derogable rights.

Senator McKIM: I think there are some non-derogable rights, and perhaps absolute is another way of putting that. Leaving that aside, given that, I think, we have just agreed that most rights are a balance and often you need to balance them with other rights, do you think that the terms of reference are such that the panel can consider the range of other rights which may be impinged on if rights that are currently described as rights of religious freedoms were expanded in Australia?

Prof. Croucher: The terms of reference, again—

CHAIR: Again, Senator, 'do you think' is really a matter of opinion.

Senator Seselja: To be fair, the terms of reference are not for this portfolio. They're to be asked in another portfolio—PM&C.

CHAIR: That was going to be my question. Professor, are you on that panel? I'm not quite sure what panel we're talking about.

Prof. Croucher: It's the religious freedom panel that the Prime Minister established just before Christmas.

CHAIR: Okay, now I understand the reference to Phillip Ruddock. Are you on that because you are the President of the Human Rights Commission?

Prof. Croucher: No. I was asked to be on the panel. The particular qualifications and eligibility were not a matter for me, but I suggested, when Senator McKim asked me a similar question that I had certain credibility in the area by virtue of the fact that I had co-edited a book on law and religion and I led the ALRC inquiry, a whole section of which was devoted to encroachments on religious freedom. I understand the interest in the area. It is a most

interesting subject and pertinent for the day, but I do need to confine my responses quite carefully.

Senator PRATT: Professor Croucher, in that context, you did kind of distinguish yourself in two hats. I want to ask whether your public remarks around these issues will conform to the position taken by the Human Rights Commission in its submission or whether they will conform to the other hat that you're wearing?

Prof. Croucher: The panel will produce a report to the Prime Minister, which is the terms of reference for that panel.

Senator PRATT: So you're not expecting to make any public remarks in the context of that panel. Any public remarks you make will be in the context of your role as president of the commission.

Prof. Croucher: I think that's a fair observation. I will not be making any remarks from the position of being on the panel. The panel's report will speak for itself, and then I will resume my role as President of the Human Rights Commission.

Senator PRATT: And reflect the position taken by the commission in its submission?

Prof. Croucher: The commission operates in a way that determines objectives. I am the president and in that area I will speak as the commission.

Senator PRATT: Representing their views.

Prof. Croucher: Representing the commission's views.

Senator PRATT: The commission's views—which therefore, I assume, are as submitted to that panel inquiry.

Prof. Croucher: The commission has made that submission, yes.

Senator PRATT: Therefore officially—I'm not saying privately—their view is your view.

Prof. Croucher: I'd rather not unpack that at the moment. As I said, can we let the other process run its course? Then I'd be very happy to answer questions.

Senator PRATT: Okay.

CHAIR: It doesn't suit the agendas of some people to do that.

Senator WATT: My questions relate to the current processes around sexual harassment complaints. Can you remind me briefly what jurisdiction the commission has over sexual harassment complaints?

Prof. Croucher: The jurisdiction we have is under the Sex Discrimination Act, which is a Commonwealth act. That concerns sexual discrimination issues, which includes sexual harassment, in employment and public life.

Senator WATT: If someone has a complaint about sexual harassment they would file that with the Human Rights Commission?

Prof. Croucher: They can seek assistance by inquiring; or they may make a complaint, which then would invoke the pre-inquiry assessment and then possibly the complaint-handling procedure through the conciliatory processes the commission offers.

Senator WATT: What powers or processes do you have in place to ensure that the identity of complainants is kept secret?

Prof. Croucher: There is a non-disclosure provision in our act, which is a secrecy provision. It requires extreme confidentiality of all details regarding complaints.

Senator WATT: Why is it so important that the identity of complainants in sexual harassment matters is kept confidential?

Prof. Croucher: It's not only complainants; it's those who are complained against. Part of maintaining the integrity and the confidence in our processes is that commitment, backed up by a non-disclosure provision, to extreme confidentiality.

Senator WATT: What do you see as the harm to either a complainant or someone who is alleged to have committed sexual harassment? What do you see as the harm that can come to them if details of a complaint are made public?

Prof. Croucher: There is much published discussion on this. Indeed, the Sex Discrimination Commissioner this morning made comments in a radio interview that I heard driving to the airport which reflect much the same concern: that a person may wish to make a complaint but not wish that matter to be made public. Similarly, with respect to those who are complained against, the fact of a complaint itself does not necessarily equate with guilt or innocence in a court of law. Sometimes much damage can come through allegations. But the integrity of the process offered through extreme confidentiality ensures a certain confidence that the conciliation process might effect a result.

Senator WATT: Is there any limitation period, for want of a better term, that exists for someone to make a complaint of sexual harassment?

Prof. Croucher: I believe that it's around 12 months—

Senator WATT: That's what I think too but I haven't looked at the legislation.

Prof. Croucher: but I would need to check. It's within the legislation and I know there's been some change to it, so can I confirm that with the office?

Senator WATT: Sure. I understand—and I don't know whether this is correct—that currently the commission has the power to terminate a sexual harassment complaint if it's made more than six months after the harassment allegedly occurred. Do you know whether that's correct?

Prof. Croucher: I would have to confirm that precise detail. We have a number of discrimination acts that we work with, and the complaints are handled by a discrete group of staff within the commission.

Senator WATT: The concern that's been raised with me—there are a couple of things. For starters, if it is a six- or 12-month limitation period, that's a lot shorter than the limitation period that applies for a range of other courses of action, especially for things that happen in the workplace. For instance, for a breach of an employment contract, it's six years to bring an action; for a breach of an enterprise agreement it's six years. So six to 12 months, whichever it is, is a lot shorter. Has any consideration been given to changing the period of time that someone has to bring that kind of complaint?

Prof. Croucher: There are a number of elements in your question and observations. If I may, it's not a limitation period. Limitation period is more strictly a term that applies to litigation. It's not a limitation of that kind. There is a time frame within which complaints

should be brought. It's not an absolute bar, but if I may provide a little more clarification around that, I'd be happy to do that following this meeting.

Senator WATT: Okay. Do you recognise that if the time period within which people can make these complaints is limited it may disadvantage people who, for whatever reason, only feel confident to bring a complaint, maybe, after they've left a job or sometime after the harassment has occurred?

Prof. Croucher: I think that's a fair observation and there is discretion within the legislation.

Senator WATT: If I could get you to have a bit of look at that, that would be great.

Prof. Croucher: We'll provide you with more specifics on it.

Senator WATT: Thank you.

CHAIR: The confidentiality provision you're talking about, is that mandated in your act?

Prof. Croucher: Yes, it is.

CHAIR: So if this committee, as it's often prone to do, seeks to obtain names and information from the police and other people like that—if we tried to do that from you—which is your overriding obligation?

Prof. Croucher: We would resist that and claim public interest, in relation to that disclosure.

CHAIR: Because of the specific provision in the act?

Prof. Croucher: Yes, and our commitment to the necessity of that confidentiality as the bulwark of the integrity of our processes.

Dr Patterson: The commissioners do not get that information. We get a summary at the end of the complaints but we don't get—it's a total Chinese wall between the complaints process and the commissioners, although we get a summary—

CHAIR: So you don't get names, you're saying?

Dr Patterson: No.

Prof. Croucher: That is a matter of control within the commission. The staff of the commission are bound under the act by that secrecy provision.

CHAIR: All right. Does that limitation period, which you say is not strictly so-called, apply in the race discrimination area the same as it does in the sex discrimination area?

Prof. Croucher: Yes, it applies with respect to all of the complaints under the discrimination legislation.

CHAIR: I don't want to rehash old discussions about QUT students, but there's something about that limitation that we'd need to look into.

If nobody else has any more questions, thank you very much, Professor, and your team, commissioners, for being with us today and assisting us. Keep up the good work and the work you do not as a commissioner. Don't, in any way, be hesitated from discharging your duties by anything you might hear at this committee.

Prof. Croucher: Thank you, and thanks, senators, very much for your questions, once again.

Attorney-General's Department

[16:19]

CHAIR: We're dealing with cross-portfolio matters, corporate and general. Following that we go on to specific areas of the department. Towards the end of the evening we'll deal with the High Court, National Archives and ASIO. We should try to confine ourselves in this section to absolutely cross-portfolio corporate matters, general matters, budget matters.

Senator WONG: Mr Moraitis, I have some questions about the handling of the investigations and pending decision in relation to Mr Roman Quaedvlieg. This has been put in the papers and questions were asked at this committee, by a different portfolio and by me in the PM&C last night. Can we start by understanding what role the departments had, in relation to these matters and, in particular, the two inquiries about which evidence is now being given?

Mr Moraitis: The general proposition is we've really played no role. There's been some reference to the role of AGS, which I'll put aside for the moment as a specific legal-advice issue. ACLEI is part of the portfolio but, as you could imagine, ACLEI engages and undertakes its work rather independently and doesn't, as a matter of practice, engage with the department on these matters of decisions or operational investigations. It would be fair to say my engagement with ACLEI is issues of budget and cross-portfolio type concerns.

In that sense, we have not been, in any way as a department, involved in this investigation. Obviously, we're aware of it from the public domain, like many other people, but I can't say that we have any specific role in this space. Having said that, earlier this year I was made aware that there was a process involving the Prime Minister's department secretary undertaking a report. Probably in late January or early February, I'm not sure when—it's recent weeks—I was informed by Dr Parkinson that he had been involved in preparing a report. I don't know what stage it was, and I have no visibility on the processes. As a courtesy, I was informed that the Attorney had been asked to be a decision-maker, as it were.

That's all I knew. So, in that respect, I was aware that the Attorney was playing a role, which is not something I was aware of beforehand. I was also made aware, at that stage, that the Australian Government Solicitor was providing legal advice, which is quite normal in this context, and I understand advice was provided by AGS. That is the extent of our engagement.

Senator WONG: Thank you; that's helpful. There are a few things in there I'd just like to unpack.

Mr Moraitis: Sure.

Senator WONG: The first is in relation to ACLEI. They have the power to act of their own motion, correct? Is that how this investigation came about?

Mr Moraitis: I can't honestly say how this investigation was undertaken by ACLEI. All I know is that—

Senator WONG: I'm not asking about the content, I'm just asking how it commenced. Was it a referral by anybody or a complaint?

Mr Moraitis: I would assume it was because of ACLEI's remit over certain agencies. In recent years the remit of ACLEI included the Department of Immigration and Border

Protection, which includes Customs. On that basis they would have been referred to by that department. That's my assumption.

Senator WONG: There's no quarrel as to their capacity to do it; I'm just interested in the process by which they became seized of it. Ms Chidgey, do you know?

Ms Chidgey: I'm aware that Mr Pezzullo, the secretary of the Department of Home Affairs, had indicated that a complaint was referred to ACLEI, but we're not aware of—

Senator WONG: By whom?

Ms Chidgey: We don't have any further information.

Mr Moraitis: I can take that on notice, if you'd like.

Senator WONG: Yes, because I did read that transcript and everything was in the passive and nobody was there to say a complaint was made to whom and referred by whom to ACLEI.

Mr Moraitis: As I said at the beginning, we don't engage with ACLEI at all, so I'll take that on notice and provide you with information as best I can. If ACLEI says they can't provide that, I'll let you know.

Senator WONG: And when did you become aware of the ACLEI investigation?

Mr Moraitis: I became aware of the investigation when I saw references in the media.

Senator WONG: You also said you were advised by Dr Parkinson of his investigation.

Mr Moraitis: He was playing a role, which in normal events wouldn't be something I would be aware of. He was working on a report for the Attorney, and he obviously as a matter of courtesy wanted to let me know that my portfolio minister was engaged in this process. In the normal course of events it would not even occur to me that that would be the case, because it's not a portfolio that he's involved in. Secondly, the Australian Government Solicitor, as you know, is a group in the department—somewhat distinct, but nevertheless a group of the department, and I don't want to mislead that they're not the department. They are part of the department. But as per their normal procedures as lawyers—and it's a matter of record, and I can say this—they advised the Attorney on his role.

Senator WONG: So, your discussion with Dr Parkinson was, I think you said, earlier this year?

Mr Moraitis: It would have been in the second half of January, if not late January or early February. It was literally a reference to the fact that he was conducting an investigation, and just to be aware, and that AGS was engaged.

Senator WONG: Am I correct that that was the first occasion that you became aware (1) that the Attorney had been asked to be decision-maker and (2) that AGS was providing legal advice?

Mr Moraitis: Correct.

Senator WONG: Who was AGS providing legal advice to? To Dr Parkinson? Or to another—

Mr Moraitis: My understanding is that it was to AGS. I'd have to take on notice from the government solicitor as to whether—

Senator WONG: Sorry: AGS providing advice to themselves?

Mr Moraitis: No, AGS providing advice to the Attorney. My understanding is that it is on the public record whether he had standing, as it were, to make a decision—the process. And I think that was one process. As for whether AGS has provided advice to Dr Parkinson, I'd ask for confirmation from Mr Kingston.

Mr Kingston: I see from the paper today that the Attorney has confirmed that we've given some advice to him or his office on an issue related to this. Beyond that, in terms of whatever role we might have had—not just as departmental people but as lawyers advising parts of government—

Senator WONG: Don't make a claim until I've asked the question, okay? I was just going to ask—

CHAIR: Could you let a witness finish his answer, please.

Mr Kingston: No, I might be going to something—

Senator WONG: Yes, I'm not going to ask you for the content; I actually just want to ask who. That's all.

Mr Kingston: But I was going to relate to that, which is that in terms of any other work we'd have done, and for people in the Commonwealth, in a matter that is not all in the public domain, we generally would not seek to disclose that a particular part of the Commonwealth has approached us for advice on a particular topic without first speaking to them. As far as we're concerned, as lawyers we have an obligation of confidentiality about the fact that they've sought the advice.

Senator WONG: And you're a lawyer, so I'm sure you understand the role that the legal professional privilege plays before Senate estimates, which is that it is not a blanket bar. But I haven't asked you who else. So, you have provided advice to the attorney. Can I ask when that was?

CHAIR: Sorry—perhaps I could just clarify: you're saying that now because the Attorney disclosed it publicly. Normally you wouldn't disclose that yourself.

Mr Kingston: Not unless it had been disclosed by a client or had come into the public domain in another way, as a rule. We would not seek to do that because of the obligation of confidentiality.

CHAIR: Okay; back to Senator Wong's question.

Mr Kingston: Relatively recently—I can't be more precise than that at the moment. I can take it on notice, but—

Senator WONG: Well, are we talking last year or this year?

Mr Kingston: This year, I think.

Senator WONG: Thank you. So I will ask you this. Have you provided advice in relation to this matter to anybody else in the Commonwealth?

Mr Kingston: And I'd seek to deal with that question in the way I foreshadowed by saying that I'd like to consult with others who we may have provided that advice to and seek their permission to answer it or to suggest that they put forward a reason that we shouldn't.

Senator WONG: So you're essentially taking it on notice.

Mr Kingston: Yes. Certainly.

Senator WONG: I want to come back to this point. Mr Moraitis, you said that Dr Parkinson had disclosed to you that your portfolio minister was the decision-maker. Who read the decision that he would be the decision-maker?

Mr Moraitis: I don't know.

Senator WONG: Was that a government decision? Was that a cabinet decision?

Mr Moraitis: I don't know. As I said, this is all I know about the process.

Senator WONG: Well, he's a decision-maker in respect of someone in a different portfolio.

Mr Moraitis: Correct.

Senator WONG: Can anyone at the table explain to me, first, who determined that he would be the decision-maker? Can anyone cast any light on that?

Mr Moraitis: I can't provide any light, and no-one in the department can. I'm not sure whether AGS can either.

Senator PRATT: Who would normally be the decision-maker?

Mr Moraitis: As a matter of principle, it would be someone in the portfolio.

Senator PRATT: Well, if he's at a secretary level—

Mr Moraitis: He's a statutory officer under the Border Force Act. I'd have to check the details. But that would be the sort of normal course of events—well, what's normal? I don't know.

Senator WONG: Is anyone at the table able to cast any light on who made the decision that the Attorney would become the decision-maker?

Mr Kingston: I doubt that I can. I'm just racking my brain. But to the extent that I could offer anything—and I wouldn't suggest that it is reliable, in any event—I would know it only because of the communications that not me personally but our lawyers have had with people that would be the subject of the type of confidentiality I've spoken about—

Senator PRATT: Mr Kingston, who's the decision-maker in relation to this question of ultimate responsibility to act on the ACLEI report?

Mr Kingston: I don't know.

Senator WONG: Can I just ask this question: can anyone at the table tell me the legal basis for the Attorney making such a decision? I am prejudging it, so I'll try to be as neutral as possible. But what is the legal basis for the Attorney making a decision in relation to the continuation of a statutory officer in another portfolio?

Mr Moraitis: I can't give you that answer.

Senator WONG: Is there an act that we should refer to? Is there something—

Mr Moraitis: You'd start with the primary legislation, I assume. That's the Border Force Act, and there'd be some provision there, I understand. But I'm not privy to any legal advice on this. And as the Attorney said on record, I think that was the question that was sought from AGS.

CHAIR: We might go to Senator McKim.

Senator WONG: We'll have more questions, Chair.

CHAIR: Well, we always come back.

Senator McKIM: These questions are to the minister because they relate to policy, not the operations of the department. I want to ask whether the government's ever considered making Nazi material unlawful in Australia.

Senator Seselja: Well, not to my knowledge, but perhaps one of the officials might assist.

Senator McKIM: The question was whether any consideration has been given to making Nazi propaganda or material unlawful in Australia as it is in a number of other countries around the world?

Mr Moraitis: There have been recent laws about genocide, but I can't recall anything on Nazi propaganda per se.

Senator Seselja: We might take that question on notice.

Senator McKIM: That's fine.

Mr Anderson: Historically there might have been.

Senator McKIM: I'm not asking you to go trawling back through the decades here; I'm talking about in recent times. I mean, we've had situations where members of parliament have appeared on neo-Nazi podcasts—one called The Dingoes last year; that was Mr Christensen—

CHAIR: Is there a question?

Senator McKIM: Yes, I do have a question. He also addressed a Reclaim Australia rally, a group that's had at least one member arrested on suspicion of terrorist activities. We've had Senator Molan sharing Facebook videos from the hate group Britain First and not make an apology.

CHAIR: Is there a question? This is not an opportunity to make a political speech.

Senator McKIM: The question is: don't you think, Minister, that it's time that we took a stand against this kind of thing in this country? And do you see that the government's failure to do that is a result of a reluctance to take on the extreme lunatic Right within its own ranks?

CHAIR: Or the extreme lunatic Left, you might add to that, for balance.

Senator Seselja: There's a fair bit in that, but, in terms of apologies, I note that your leader still hasn't apologised to Senator Molan for his disgraceful comments in the Senate.

Senator McKIM: Senator Di Natale has no cause to apologise.

Senator CAMERON: I don't expect you'll get one, either.

Senator Seselja: Yes, just because he can't be sued, I suspect.

Senator McKIM: I'm not sure what relevance that has to the question.

Senator Seselja: You mentioned Senator Molan in your question.

Senator McKIM: I'm talking about extreme neo-Nazi material—

Senator Seselja: And you mentioned Senator Molan and you mentioned apologies.

Senator McKIM: and the association of people in your political party with groups like Reclaim Australia and Britain First.

CHAIR: Senator McKim, you've asked the question and, every time the minister has tried to answer it, you've shouted him down. Could you show a little bit of courtesy and manners and at least allow the minister to answer your question.

Senator McKIM: You're the one doing the shouting.

Senator Seselja: When it comes to extremist material, the government takes these issues very seriously. As you'd be aware, when it comes to the banning of certain language, we have laws in place around inciting violence, terrorist offences and other offences, and there's always a lively debate about where the line is drawn. We've seen extremist groups, such as Hizb ut-Tahrir—in other countries, they've been banned; at this stage, they haven't in Australia—and there's been an active debate as to where we draw the line on extremist speech and when the law comes in, as you would be well aware. When it comes to the banning of any hate speech, we've looked at it from a number of perspectives. The government's on record as condemning it. As to exactly where we draw the line on that, though, fundamentally, in the end, that becomes a matter for the parliament as to where we draw the line on extremist speech. My view is that, in most cases, the answer is not always to ban things that we don't like, but there is a line beyond which we should, and the government always balances those realities.

Senator McKIM: I accept what you're saying about it being up to the parliament in the context of legislation. That's clearly self-evident. But wouldn't you agree that there's been a fair old lack of leadership here from senior members in your party given what I've just spoken about—

CHAIR: Do you have a question?

Senator McKIM: in regard to Mr Christensen and Senator Molan? That was a question, Chair, if you were listening.

Senator Seselja: No.

CHAIR: I'm surprised this question hasn't been asked yet. We usually have some comment at the beginning of this section on questions on notice that are outstanding. Do you know how many from the previous portfolio are outstanding at the present time, Mr Moraitis?

Mr Moraitis: None.

CHAIR: They've all been answered?

Mr Moraitis: Yes.

CHAIR: Within your department, what have the changes of administered arrangements meant for staffing, finance and other associated matters?

Mr Moraitis: That's a big question. Essentially, there have been, obviously, consequences for staffing numbers. There has been a transfer of staff under the machinery-of-government process to the Home Affairs portfolio. Portfolio agencies that were in this portfolio have moved to Home Affairs. There's a second phase involving the transfer of ASIO in due course, subject to legislation being passed. That will involve some further refinements in numbers going to Home Affairs. Also, there's a parallel process involving cyberactivities which involves the creation of the Australian Signals Directorate as a statutory authority. That will involve some movement of staff in our computer emergency response team, which is a cyberfunction in our department.

In terms of financial implications, obviously, with any machinery-of-government change, there are movements of financial resources, both administered and departmental administration. That leads to consequential changes around accrued liabilities and leave entitlements. That's all reconciled by a process which is a well-worn process in government. Also, there are things that are consequential. Every department has a thing called an ASL cap involving how many staff you can have, and that's pro-rataed and transferred accordingly. The provisions involving enterprise agreement type things are fine-tuned, and that's all happened as well. That's taken the best part of three or four months. There has been a process that has been going on. There has also been transfer of responsibilities, and the administrative arrangement orders reflect that. To give an example, money laundering or criminal justice issues have been transferred to home affairs and the concomitant staffing in that area moves to the home affairs portfolio. That, in a nutshell, explains the general processes of a MoG. As I said, there's a second phase involved in the transfer of ASIO as a portfolio agency to the home affairs portfolio. I should also add for the sake of completeness that there will also be a movement of agencies from other portfolios to the Attorney's portfolio in that phase, including the IGIS and INSLM, the Independent National Security Legislation Monitor, both of whom are currently with the prime minister department's portfolio as well as the Commonwealth Ombudsman, whose function will also move to this portfolio—not in the department, but as a portfolio agency. That's also part of the process.

CHAIR: When we've asked you in past estimates for numbers of staff in the department, do you normally include those in ASIO as part of your portfolio staff?

Mr Moraitis: No.

CHAIR: They're separate and have always been.

Mr Moraitis: When I talk about figures in AGs, we're talking about 1,500 to 1,600 staff. ASIO's numbers are higher than that. I only refer to departmental staff.

CHAIR: The Attorney still retains some involvement with ASIO. Can you explain that?

Mr Moraitis: As I said, for the moment ASIO is still part of this portfolio, and the responsibility of the Attorney continues. As part of the second phase of the MoG, the operations of ASIO will transfer, to a large extent, to the home affairs minister. But, as the Prime Minister said last July when he announced this MoG change, the Attorney will continue to have a role overseeing warrants and special operations of ASIO, which balances that operational versus rule-of-law function that we're working on.

CHAIR: So you will still have staff within your portfolio dealing with ASIO matters.

Mr Moraitis: Yes. There'll be some staff who remain and have a role in that space advising the Attorney on the issue of authorising warrants. Because of the MoG, it won't be as large or as all encompassing as the role it's been to date, but there will be a role continuing in that space and is not, as I said, as large.

CHAIR: I think you're saying that you're unable to answer my question about the differences in bodies and dollars that this will make until the whole administrative arrangements have been put into effect.

Mr Moraitis: I can tell you that as of now, part of the first phase, a significant amount of people have moved from this department to the home affairs portfolio. For example, Emergency Management Australia—you will recall Mr Crosweller, who regularly appears

with us talking about emergency management, disaster mitigation and disaster recovery arrangements—has moved to the home affairs portfolio. The areas of criminal justice that deal with—for example, AUSTRAC, the Criminal Intelligence Commission and things like that—have moved. Countering violent extremism, which has been an issue that many senators have asked about in the past, is also an area that has moved to the home affairs department with the staff. We established the Critical Infrastructure Centre well over a year ago now. That's up and running. It was based in this department, but it was a whole-of-government centre. That's moved as well to home affairs. The net result at the moment is that it would be about 450 or 460 staff who have moved to the home affairs department from the Attorney-General's Department.

In the next phase, as I said, there are two distinct areas. One is the CERT, which is the Computer Emergency Response Team, which is the cybersecurity interface with industry and the public rather than the more closed interface. That will move to the new ASD arrangement, the Australian Cyber Security Centre. The ASD creation is a separate statutory authority. As I said, some staff engaged with the traditional ASIO operational function will also move. A couple of branches of that area will move. I can't tell you the exact numbers. Mr Anderson might know what they are, but we're still working on those. That's part of the second phase. You're looking at least 460 to date and maybe up to 500 staff out of 1,500. So we're looking at just over a thousand at the end of this process, which will be post-July.

CHAIR: You mentioned the Signals Directorate, but that's always been answerable to the Department of Defence.

Mr Moraitis: Yes. That's not moving. That's been created as a separate statutory authority in the Defence portfolio. That was a decision contemporaneous with the announcements about the machinery of government and home affairs. It was on a parallel track, and there are obviously overlaps. In the cyberspace, you can imagine home affairs has an interest involving cybercrime and engagement with industry. Obviously, when that process is finalised and the Cyber Security Centre is colocated or created within the ASD, the staff in the Attorney-General's Department who work on cyber issues will move into the Australian Cyber Security Centre/ASD, which is part of the Defence portfolio. But there'll be some staff moving as well to the home affairs department to assist on cyber issues. Cyber is all encompassing. As you know, it involves cybercrime, cyber issues involving bullying and cyberintrusions, which are a massive problem.

CHAIR: Mr Moraitis, it might be a good opportunity to let the committee that know you have to leave at 6.30.

Mr Moraitis: Yes, between 6.30 and 8.30 for a committee meeting.

CHAIR: It is for the National Security Committee. Mr Anderson will be in charge. Thank you for letting us know that. That raises my next question. I was aware that Senator Brandis was a member of that committee—and clearly you were too. Was that in his role as Leader of the Government in the Senate or was it in his role as Attorney-General? Will the current Attorney still be a member of that group?

Mr Moraitis: My understanding was it was in his role as Attorney-General, responsible for several agencies in the intelligence space, but also the former Attorney and the current Attorney have a primary role in legal issues, in particular international law issues and a

variety of issues which are canvassed in that space. As a matter of fact—given that I'll be attending—the Attorney continues to be a member of the National Security Committee, which is quite fitting because issues of national and international security, international law, use of force and a variety of issues like that continue to be an area where the department's Office of International Law plays a big role. It is obviously closely engaged with Defence Legal, for example, in military operations or in the legal division of foreign affairs and trade, which has been the longstanding practice.

CHAIR: Alright. That's all I had for the moment. Senator Wong.

Senator WONG: Mr Moraitis, we were discussing the legal basis of the Attorney making the decision. I'm not actually asking for legal advice. I'm asking which act I would look at to work that out.

Mr Moraitis: My understanding is that it's under the Border Force Act. That's an act of another department.

Senator WONG: We just had a look at that, and the minister that is referenced in that I thought was the home affairs minister, not the AG. Is that correct?

Mr Moraitis: Again, this is an act that pertains to another portfolio, so I shouldn't be commenting on it.

Senator WONG: Sure, but it is your minister who has the power now. I appreciate you being put in a position where you can't answer it, but the government said the Attorney-General is the decision-maker. I'm asking a question about which piece of legislation or cabinet decision or some other decision gives your portfolio minister the legal power to make the decision that the government has said he is going to make?

Mr Moraitis: I can't answer that. I'd ask you to refer to either the Department of the Prime Minister and Cabinet or the home affairs department.

Senator WONG: Can't you assist, Mr Kingston?

Mr Kingston: To the extent that I could, it would involve—and I really would need to go back to the office and check in any event—essentially disclosing the content of the advice the Attorney's referred to.

Senator WONG: No-one is aware of a government decision—as in a cabinet decision—to determine that the Attorney is the decision-maker.

Mr Moraitis: As I said, the knowledge I have is all the knowledge I just conveyed to you half an hour ago. Details like that, refer to PM&C.

Senator WONG: I'm not actually critical—well, I'm critical of the—

CHAIR: Can you please let Mr Moraitis finish.

Mr Moraitis: I've not been privy to this, so I don't know.

Senator WONG: Have you finished?

Mr Moraitis: I'd ask you to refer the question to PM&C or Prime Minister's—

Senator WONG: I will. But I make the point he is your portfolio minister. I appreciate you can't answer the question, but it is an extraordinary thing that the government asserts a minister can make this decision—

CHAIR: Is there a question?

Senator WONG: I am putting a proposition to the witness—and his department can't tell us the legal basis on which the minister is going to be relying for making that decision?

CHAIR: I'm not sure that is a question that requires an answer.

Senator WONG: Okay. Can I go back to the ACLEI report? You couldn't tell me who initiated it, but can you tell me who received it?

CHAIR: 'Did you receive it?' I guess is all you can ask?

Mr Moraitis: Can you repeat the question?

Senator WONG: To your knowledge, who received the ACLEI report?

Ms Chidgey: I am aware that Mr Pezzullo said he received a report from ACLEI.

Senator WONG: Right. Has the department received it?

Mr Moraitis: No.

Senator WONG: To your knowledge, has Dr Parkinson received it?

Mr Moraitis: I don't know.

Senator WONG: The extent of your knowledge about that report is based on what you said was public information?

Mr Moraitis: Yes.

Senator WONG: Have you had any conversations with Mr Pezzullo about it?

Mr Moraitis: No, not that I can recall.

Senator WONG: I assume that if the department—and this follows—hasn't received the report you haven't been asked to advise on it?

Mr Moraitis: That's correct.

Senator WONG: The evidence we have from Prime Minister and Cabinet is that the Attorney has had Dr Parkinson's report since, I think, 5 February. Correct?

Mr Moraitis: That's my understanding from the media report, yes.

Senator WONG: Has the department at any point been asked to provide advice to the minister in relation to Dr Parkinson's report?

Mr Moraitis: Not that I'm aware of.

Senator WONG: Has the department provided advice in relation to that report?

Ms Chidgey: With the possible exception of AGS.

Mr Moraitis: Leaving AGS aside—

Senator WONG: Leaving AGS aside—I appreciate that. Like a departmental brief from you?

Mr Moraitis: Not that I'm aware of.

Senator WONG: I assume that the department, given our previous conversation, has never provided advice to the minister in relation to his decision-making capacity insofar as it applies to the Border Force Commissioner?

Mr Moraitis: [inaudible] in any way whatsoever.

Senator WONG: Okay. Who made the decision, after the ACLEI report was received, to ask the secretary of the Department of Prime Minister and Cabinet to conduct another inquiry?

Mr Moraitis: No, I can't.

Senator WONG: Were you asked for advice on this?

Mr Moraitis: No.

Senator WONG: Was this discussed with you?

Mr Moraitis: No.

Senator WONG: Has the department had any involvement in relation to the Parkinson inquiry?

Mr Moraitis: Not that I'm aware of, no.

Senator WONG: Have you received a copy of Dr Parkinson's report?

Mr Moraitis: No.

Senator WONG: AGS?

Mr Kingston: I personally don't know the answers to those questions, and even if I did, I'd be making the comments I made previously about confidentiality.

Senator WONG: Can you take them on notice in the same vein?

Mr Kingston: Yes, certainly.

Senator WONG: Thank you. I was told at Finance and Public Administration last night that Mr Quaedvlieg had provided a response to Dr Parkinson's report. Have you seen that report, Secretary? Sorry, have you seen that response?

Mr Moraitis: No, I haven't seen anything associated with any of that.

Senator WONG: Has anyone from that department seen that response?

Mr Moraitis: I'm pretty confident not.

Senator WONG: I think I've asked you this, but just out of an abundance of caution: to your knowledge, when did the Attorney-General become the decision-maker in this matter?

Mr Moraitis: I'd have to take that on notice and seek clarification.

Senator WONG: When did you become aware of that?

Mr Moraitis: When, as I said, Dr Parkinson mentioned it to me, either late January or early February.

Senator WONG: His discussion with you didn't indicate how that had been determined?

Mr Moraitis: No. It was a very quick conversation.

Senator WONG: Did his discussion indicate to you why the Attorney had become the decision-maker?

Mr Moraitis: No.

Senator WONG: Do you know who requested that the Attorney become the decision-maker?

Mr Moraitis: No.

Senator WONG: *The Australian* reports that the responsibility for this decision had 'shuffled through several sets of hands due to potential conflicts of interest'. Can you cast any light as to what conflicts of interest are being referred to?

Mr Moraitis: No, I can't. I don't want to speculate. You know, I really can't, because I have no visibility at all.

Senator WONG: At all?

Mr Moraitis: At all. I can speculate on general principles of administrative law. In my experience in employment matters, you have issues of natural justice and things like that, but I don't want to speculate—

CHAIR: Speculating is akin to an opinion.

Senator WONG: Do you know if Mr Quaadvlieg's legal fees are being paid and, if so, by whom?

Mr Moraitis: I don't know.

Senator WONG: Mr AGS?

Mr Kingston: I don't know.

Mr Moraitis: That's probably a question you'd wish to refer to the home affairs department.

Senator WONG: If you're not advising the Attorney-General in the decision-making role he's got, who is?

Mr Moraitis: I don't understand whether it is a decision-making role—a *qua* decision-making role.

Senator WONG: I beg your pardon?

Mr Moraitis: I'm not sure of the exact role and how you're describing it. Let's use the term 'decision-making role'. I don't know—

Senator WONG: Sorry. This is the evidence that is reported in *The Australian*, and it is consistent with the evidence from PM&C:

Mike Pezzullo revealed that attempts to end the saga surrounding Border Force head Roman Quaadvlieg, who earns \$619,905 a year, had shuffled through several sets of hands due to potential conflicts of interest. Attorney-General Christian Porter now has final responsibility for deciding whether Mr Quaadvlieg keeps his job.

Mr Moraitis: Let's use the term 'final responsibility for decision-making.' I don't know. All I know is, as a matter of record—and the Attorney has confirmed this in the media—AGS has provided advice to him about his powers.

Senator WONG: His powers?

Mr Moraitis: That's how it was described. That's all I know.

Senator WONG: This is the Attorney's public statement:

As a result of this request, and before receiving Dr Parkinson's report, I sought legal advice from the Australian Government Solicitor to satisfy myself that I can consider and determine this matter. The AGS has confirmed that I am able to procedurally undertake this task.

Mr Moraitis: That's what I was referring to. That's what I've seen in today's media.

Senator WONG: But no-one at the table is able to tell us where that legal power comes from?

Mr Moraitis: I can't, no.

Senator WONG: And AGS is declining to do so, correct?

Mr Kingston: We've said we'll take that on notice.

Senator WONG: Sure. Does anybody know how long it will take before the Attorney makes a decision?

Mr Moraitis: I don't. I can take that on notice if you wish.

Senator WONG: This matter, I think, dates back to May 2017. It's gone through two inquiries and now is with another minister.

Mr Moraitis: Yes.

Senator WONG: Has the other party or the other individual—who has been publicly named, and who, I think it's agreed, is Mr Quaedvlieg's alleged partner—been on similar terms, on paid leave?

Mr Moraitis: Again, I don't know, Senator. You'd have to ask the home affairs department about that.

Senator WONG: I might have a couple of matters to come back to, but I'm happy to cede to someone else. I think the alarm went off.

CHAIR: Senator Hinch has a couple of questions.

Senator HINCH: Just following up on Senator Wong's question, if the Attorney-General, Mr Porter, is now getting advice about whether Mr Quaedvlieg should be sacked or reinstated, if he is not getting advice from anybody at this table, who is he getting advice from?

Mr Moraitis: I will just repeat what Mr Kingston and I have said. I can say that the department has not provided or given any advice in that respect. Mr Kingston has mentioned he will take that on notice.

Senator HINCH: Obviously the home affairs department just dropped it in the lap of the Attorney-General's Department. It was referred to you to take over. I don't think—

Mr Moraitis: It wasn't referred to us.

Senator HINCH: Mr Porter didn't request to take it over from the home affairs department, did he?

Mr Moraitis: I don't know the process, as I've said.

Senator HINCH: Mr Pezzullo, in evidence yesterday, eventually told us that he had requested that Dr Parkinson make his own investigations because he felt 'compromised'. I may have used the wrong word there. He felt a conflict of interest of some sort, which you don't know. He then said they received the report at least three months ago, but he spoke to Dr Parkinson only last week, with estimates coming up. Was that the time when he referred it to the Attorney-General's Department, or before or after?

Mr Moraitis: I don't know, Senator. There was nothing referred to the Attorney-General's Department. I really can't answer any of these details because we haven't been privy to any of this.

Senator HINCH: How do we find out who and when and why? Why should the Attorney-General be involved in the sacking or reinstatement of a public servant?

Mr Moraitis: I would refer you to either the Department of Home Affairs or the Department of the Prime Minister and Cabinet.

Senator HINCH: Can you confirm that Minister Dutton and Mr Quaedvlieg graduated from the police academy in Queensland at the same time?

Mr Moraitis: I have no idea.

Senator HINCH: I think you said to Senator Wong that you don't know what the conflict of interest was that Mr Pezzullo had?

Mr Moraitis: I have no idea.

Senator HINCH: Will the Attorney-General, in making his decisions, be examining the financial aspects of this? There was evidence given yesterday that the Border Force chief has been paid more than \$500,000 not to work. Will that be referred?

Mr Moraitis: I can't answer that question. I don't know, Senator. I haven't been privy to this.

Senator HINCH: You don't know when there will be a time frame? Every week, thousands of dollars of taxpayers' money is going out to this man who is not allowed to work.

Mr Moraitis: That's a matter of public record, yes.

CHAIR: Thanks, Senator Hinch. Senator Wong?

Senator WONG: I think Senator Hinch just asked the questions I was going to ask, actually.

Senator CAMERON: Could I just go to the issue of the Legal Services Directions and the criteria for assistance to Commonwealth employees.

Mr Moraitis: I'll just get the relevant area to the table. It's in one of the programs. We're happy to answer it in cross-portfolio.

Senator CAMERON: I'd appreciate you taking one now. Section 5 provides that expenditure should normally be approved to assist an employee who is a defendant in a civil or criminal proceeding if the employee acted reasonably and responsibly. What are the matters that the decision-maker should take into account in coming to an assessment on whether an employee acted reasonably and responsibly?

Mr Gifford: Sorry, Senator, we're just conferring quickly. It's actually quite difficult to answer that in the broad; it will depend on the circumstances of the particular case. We'll have a look at the factual circumstances and the particular conduct which is in question in a particular matter, and we'll make a judgement according to those facts and circumstances.

Senator CAMERON: But if an employee states that they intend to plead not guilty or to defend a litigation, is that a sufficient basis for the decision-maker to be satisfied that the employee acted reasonably and responsibly?

Mr Gifford: It's certainly a relevant factor, but I don't think it's necessarily the determinative factor.

Senator CAMERON: Where would that sit in the hierarchy of factors?

Mr Gifford: Sorry, I'm trying to be of assistance, but without actually being able to ground that in a factual scenario it's actually quite difficult to answer that.

Senator CAMERON: If you had some facts it would make it easier for you, would it?

Mr Gifford: Potentially. To sort of get ahead to where you might be going with that line of questioning, we also can't comment on a particular case or circumstance.

Senator CAMERON: Alright. Well, that's a pre-emptive position, isn't it?

Mr Gifford: Sorry, Senator.

Senator CAMERON: You don't even know what I'm going to ask you. You're guessing, aren't you? Is that right?

Mr Gifford: I'll try not to guess, Senator. I'll await your questions.

Senator CAMERON: In assessing whether a legal indemnity should be provided to an employee, is the decision-maker required to obtain an understanding of the facts underpinning the litigation?

Ms Samios: That is a decision made by the relevant agency in any given particular circumstance based on the information that is available to them.

Senator CAMERON: So it's the agency?

Ms Samios: Yes, that's correct.

Senator CAMERON: You don't provide any oversight in relation to the conduct of the employee; you don't make any assessment at all? It's the department, is it?

Ms Samios: So to the extent that the issue may raise sensitive legal, political or policy issues agencies are required to consult with the Office of Legal Services Coordination, but Office of Legal Services Coordination is not a decision-maker.

Senator WONG: What was that last sentence?

Ms Samios: We are not the decision-maker; the decision-maker is the accountable authority of the relevant entity.

Senator CAMERON: So how then would the decision-maker be able to make an assessment of whether the employee acted reasonably and responsibly?

Ms Samios: By reviewing the information to hand. I should also note, Senator, in connection with that there is also—it may also not be clear in the recent reference in paragraph 7 'should the possibility of deferring a decision if it's not clear', but, again, agencies need to make those decisions based on the information they have at the time of the decision.

Senator CAMERON: So what responsibility do the agencies have then to assess the information that's available to them?

Ms Samios: I'm not sure I understand the question.

Mr Gifford: Sorry, we're trying to assist—

Senator CAMERON: What responsibility do the agencies have to assess the information that may be available to them before they refer to Attorney-General?

Mr Gifford: If I can describe it this way: as the decision-maker in relation to this particular request, they need to satisfy themselves about the particular case and the circumstances that it would be justified for assistance to be provided. Where any further

guidance is necessary in terms of engaging the Office of Legal Services Coordination, and they of course can do so, as the holders of the relevant information about particular facts in a given case they are actually best placed to inform their judgement about whether or not assistance should be provided.

Senator CAMERON: So if a Commonwealth employee deliberately caused a regulatory agency to distribute information and materials that misstated the law, is that acting 'reasonably and responsibly'?

Mr Gifford: It's a hypothetical situation, so I'm loath to answer it without more understanding about what is around it. The thing that I would point out is that they would need to be satisfied that that was indeed the right characterisation of that conduct.

Senator WONG: 'They' meaning the decision-makers?

Mr Gifford: The decision-maker.

Senator CAMERON: Which would be the department or the minister.

Mr Gifford: That's correct.

Senator CAMERON: What about if the employee was the head of the regulatory agency?

Ms Samios: In circumstances where the accountable authority is the person who is the defendant in the proceedings, which I understand is what you're implying, the matter can be referred to the minister for decision.

Senator CAMERON: And what about if a senior executive in that agency had raised with the employee concerns that he was:

... running something of a political and industrial risk by withholding info on the law as it currently stands.

So the head of the agency's been told by another employee in the agency that this is a risk.

Mr Gifford: Senator, there's a mixture there of a hypothetical scenario and a quote about a particular instance with which I'm not familiar so as to be able to answer that question I'm afraid.

Senator CAMERON: I might come back to that then. Section 503 of the act provides:

A person must not take action:

- (a) with the intention of giving the impression; or
- (b) reckless as to whether the impression is given;

that the doing of a thing is authorised by this Part if it is not so authorised.

If a person admits to a breach of section 503(1)(b) of the Fair Work Act, then it follows, does it not, that the person has not reasonably believed that the doing of the thing was authorised?

Mr Gifford: Sorry, I'm not sufficiently familiar with the Fair Work Act to be able to provide an answer to that question.

Senator CAMERON: But it's the principle—not the Fair Work Act—that a person should not behave in that manner.

Mr Gifford: Again, unless I was actually in the circumstances of being the decision-making entity, I can't speculate on it.

Senator CAMERON: I might come back to that again.

Senator WONG: Can I come in on it?

Senator CAMERON: Sure.

Senator WONG: The scenario that we're trying to understand is this: if someone has admitted to a breach of legislation, how is it possible then for that person, who has admitted to behaving in a manner that was not consistent with the legislation, to then get the shield or the cover of the Legal Services Directions provision that references the person reasonably believing that the doing of the thing was authorised? See there is an inherent illogic. If you admitted, 'I have done something that is contrary to what the act says', how can you then take advantage of that provision in the Legal Services Directions that says you've reasonably believed that the doing of the thing was authorised?

Mr Gifford: I acknowledge the logical tension you're pointing out in that particular instance—

Senator WONG: 'Logical tension': is it more than tension, or is it actually inconsistency?

Mr Gifford: to finish my answer—but without knowing the factual scenario or the ins and outs of the decision of the particular entity, I can't speculate on that matter.

Senator CAMERON: We might come back to that again too. Is it correct to say that the Commonwealth Legal Services Directions are to be interpreted as requiring that 'absent pretty much egregious, gross or serious negligence, all employers are expected to indemnify their employees for mistakes, even quite serious mistakes, that arise in the course of their employment'?

Ms Samios: I'm sorry, was that a quote?

Senator CAMERON: Yes.

Ms Samios: From where?

Senator CAMERON: It's an interpretation of the act.

Mr Gifford: We would not agree with that interpretation of the Legal Services Directions.

Ms Samios: No.

Senator CAMERON: Okay, so how would you then put it?

Mr Gifford: Senator, you've pointed towards the test that an entity must be satisfied about before such time as assistance is given to an employee. We believe the characterisation of the quote that you've just given would be inconsistent with a fair reading of that test.

Senator CAMERON: So that someone in the Commonwealth Legal Services Directions would see that is inconsistent?

Mr Gifford: Sorry, could you repeat that for me?

Senator CAMERON: So if the Commonwealth Legal Services Directions would be—they would have to act differently to what that says. Is that what you're saying?

Ms Samios: I don't think we're saying that so much, Senator. That's not language that we have used in connection with the directions to my knowledge, and it's not the language that I would use in describing the directions.

Senator CAMERON: So mistakes are different to deliberate actions which breach the law—is that correct?

Mr Gifford: Again, Senator, it's going to depend on a case-by-case, factual by factual scenario.

Senator CAMERON: Let's get to this then: around August 2016 Commissioner Hadgkiss of the ABCC sought an indemnity from Minister Cash for legal costs of litigation against him in the Federal Court. I note for the record that Commissioner Hadgkiss ultimately settled that litigation by admitting that for a period of more than two years he was in breach of section 503(1)(b) of the Fair Work Act by causing the ABCC to distribute materials that misrepresented the law of the right of entry. I am asking: did the department or the Solicitor receive a request from Minister Cash for advice or information in relation to Commissioner Hadgkiss's request?

CHAIR: Do you want to take it on notice?

Ms Samios: There are a number of elements to that question, so—

Senator CAMERON: Did the department or the Solicitor receive a request from Minister Cash for advice or information in relation to Commissioner Hadgkiss's request?

Mr Gifford: Just to confirm: did the Attorney-General's Department receive a request from Senator Cash?

Senator CAMERON: Yes, the department or the office?

Senator WONG: Let's do this one at a time. Firstly, was the department ever asked to provide advice in relation to that request for indemnity, and, if so, to whom?

Mr Gifford: I'm trying to be as accurate as possible. I think we might need to take that on notice. There was some engagement with the then Department of Employment. I'm not aware of any requests from Senator Cash.

Senator WONG: Okay. Were you asked to provide assistance or advice to her portfolio department in relation to this indemnity request?

Ms Samios: I believe it is a matter of record that the Department of Employment consulted with the Office of Legal Services Coordination on this matter in late 2016.

Senator CAMERON: By that, can we take it that a request for advice or information was sought?

Ms Samios: I wouldn't describe it as such. It was a consultation, as is the requirement under paragraph 24 of appendix E.

Senator CAMERON: What is a consultation?

Mr Gifford: I think Ms Samios was referring to the fact that we, ultimately, don't remain the decision-maker in this particular instance. It's a notice requirement, rather than any advice or decision made the Office of Legal Services Coordination.

Senator CAMERON: In that consultation from Minister Cash, did you deal with the issue of the breach by Mr Hadgkiss?

Ms Samios: Two things: firstly, any engagement that we had was with the department, not with the minister; secondly, I understand that Senator Cash has written to a committee claiming public interest immunity in connection with these matters.

Senator WONG: I'm sorry, I had trouble hearing you.

Ms Samios: I understand that Minister Cash has written to another committee claiming public interest immunity in terms of the content of that particular disclosure.

Senator CAMERON: She might have, but I'm asking you questions.

Senator WONG: If we set aside the PII claim, how many meetings were there in relation to this consultation, and did it continue?

Mr Gifford: Again, for accuracy, we'll take the question on notice, but I don't believe that there were any particular meetings that were conducted. I believe these were oral conversations.

Senator WONG: Over the phone, is that right? Is that what you mean?

Ms Samios: We'd need to take it on notice.

Senator WONG: What do you mean? For an oral conversation you're either on the phone or in a meeting, unless there's some other way.

Mr Anderson: I'm not sure the officials have the information as to the details of how the conversations occurred. That's what they're seeking to take on notice.

CHAIR: We might leave it there for the moment, Senator Wong, and come back to you later.

Senator WONG: Can I just make a request of the officials? If there's any possibility of dealing with this later, this is obviously a matter that's been the subject of a number of questions. Frankly, it was fairly obvious that questions would be asked about this. If you're able to get any information on that this evening, we'd appreciate it.

Mr Gifford: Absolutely.

Senator CAMERON: I'll come back to this, if I get a chance.

CHAIR: You've got all the chance in the world, as you know, but other senators in this instance may want to ask some questions too. You've had almost 20 minutes uninterrupted. Mr Moraitis, what external activities are your department involved in? Do you have officers overseas, and, if so, where?

Mr Moraitis: Yes. It's pre-MoG and post-MoG again. Before the machinery-of-government changes, we had two staff deployed in Indonesia—that's been a longstanding arrangement—working with Indonesian government on law and legal matters to strengthen the legal system there in a variety of areas. Obviously, in the last three or four years, counterterrorism laws have been a big focus of our work. It's a matter of record that there's been a bilateral dialogue with Indonesia called the law and security meeting. Our officials have been involved in assisting with that process as well, so there've been two in Indonesia.

About two or three years ago—it was a one-off—I decided to deploy an officer to Bangkok to assist in that context not just with the Thai authorities but also on a whole bunch of regional issues. That person was a resource for other embassies in that area. Because of the sustained engagement we had with the Five Eyes on a variety of issues, I decided to deploy two locally engaged staff. As it transpires they're Australian officials on leave. One is in Washington working in the embassy as a locally engaged staff assisting the embassy but really pursuing issues such as countering violent extremism, counterterrorism, and engaging with the Department of Justice on a variety of issues. In the same way we had an official working in

the Australian High Commission in London working with the Home Office, the foreign Commonwealth office, and a whole variety of areas involved in that space.

I should also add, finally, that we had several officials deployed in Papua New Guinea on a longstanding arrangement which started out to be called the ECP, the Enhanced Cooperation Program, but the name had to be changed because it was found to be unconstitutional in 2005 and involved a couple hundred police who were deployed and had to be withdrawn. We were able to continue to deploy officials from various departments including officials from the Attorney-General's Department. When I was High Commissioner in Papua New Guinea we changed that to the Strongim Gavman Program and that allowed officials to stay in various departments. Under that program we had five or six legal experts working in the PNG system, including in the state solicitor-prosecutor's officers assisting Papua New Guinea with its legal systems.

About a year-and-a-half ago, that SGP was terminated by Prime Minister O'Neill. However in that context the secretary and my counterpart in Papua New Guinea, Dr Kalinoe, asked if we could continue to have an officer based in Port Moresby, and we agreed. Thanks to DFAT, who provided us with the resources for that person, it was transformed into what they call a minister-counsellor role in the high commission, and that person is based in Port Moresby, and we have three or four prosecutors who are deployed for two or three years as experts in the fields. That person in the high commission oversees their work and works with them, but also, to be fair, supports the high commissioner in the whole law and justice rule-of-law stuff that goes on in Papua New Guinea. It's an endless discussion. So pre-MoG, as of now, the only position we have overseas is the Papua New Guinea position. The positions in London, Washington, Bangkok and Indonesia are now part of the Home Affairs department.

CHAIR: Were they officers of your department or were they engaged as lawyers or were they both?

Mr Moraitis: The two officers in Indonesia are former officers of the Attorney-General's Department. That's been going on for several years. We have an EL2 and an EL1 deployed. The EL2 has actually just finished a PhD on Australian-Indonesian legal cooperation, so he's bit of an expert and his thesis will be published. That's a bit of a plug for him but also for the Roland Wilson scholarship process which he was a recipient of. I'm on the board of that, so I just want to plug that if I could. He's there working. They're both Attorney-General's Department officers. The person in Bangkok is a former Attorney-General's officer with legal qualifications, again an EL2. The officers in Washington and London are locally engaged staff which were advertised. As it transpired the Washington person was actually a departmental officer who took leave without pay to live in the US. He had lived there as a young man when his family were there as a Defence official. He just put his hand up and said, 'I'll go as a locally engaged staffer,' which was great.

CHAIR: Is he a lawyer? Do you require someone with legal training?

Mr Moraitis: No, just the person with the right skillset and also the right personality to be able to engage in creating new relationships. I must say, with the Department of Justice in the US, he's done a great job. The person in London was someone who actually worked in the high commission in the political space but decided to put his hand up to do this job for us and we were delighted that he put up his hand. He was successful in that process and he's been working in that area for quite a while, as I said, for home affairs type issues and CVE,

countering violent extremism, type things. Both those officials are locally engaged. The one in London was not a lawyer, he was actually a person with a public affairs background, a former journalist, who writes very well and can do good reporting, which is really useful. In Papua New Guinea, as I said, the minister-counsellor is a legal officer, if I'm correct. The other people deployed in the Papua New Guinea system are actually experts in their fields like prosecutors from the DPP or various other areas. They're not necessarily departmental officers. They're people who we advertised for across the legal community and they put their hands up for a couple of years in PNG.

CHAIR: I want to refer to PNG for a moment. Did you say before that you had three prosecutors there?

Mr Moraitis: We have various permutations, or types of work, that the local Papua New Guinean department wishes to engage. They might want to have someone who can help them with prosecutorial processes, or a state solicitor in terms of how you manage case work and case management.

CHAIR: They don't actually go out and prosecute in the PNG courts; they assist PNG prosecutors?

Mr Moraitis: They would assist in capacity building and how you do things. They've done things like encouraging women to come forward in prosecutions for gender violence—violence against women—which is a big problem in Papua New Guinea. I know from my own experiences up there that it was a big priority for us to assist the police forces, the prosecutors, the magistrates and the local courts to achieve some really good outcomes in that space. It's a mix of skills that we seek, and that's what their role is.

CHAIR: When were you high commissioner there?

Mr Moraitis: A long, long time ago. It was 2006 to 2009, when I was in DFAT.

CHAIR: So you well know that area. We continue to do work helping PNG perfect its legal system; is that right?

Mr Moraitis: There are a whole range of activities. I shouldn't suggest that it's only the Attorney-General's Department and the staff deployed there. Commissioner Colvin has probably mentioned many times that he has staff deployed up there in various permutations. Recently it was supporting the APEC 2018 process but they've had a longstanding arrangement. As I said, under the first iteration of this program, called ECP, the AFP had deployed in Papua New Guinea and, as a result of a famous court case in PNG, called the Wenge case, they had to be redeployed to Australia because of immunity, and that has been a longstanding issue ever since. However, there have been partnership programs with the AFP and the Royal Papua New Guinea Constabulary for many years, certainly for the last decade, in various numbers. Also, of course, the aid program DFAT runs up there has a strong law and justice component.

CHAIR: Okay. I'll leave that there. Senator Cameron, is it?

Senator CAMERON: Could we come back to the issues of the indemnity request. I'm trying to get it clear in my mind. If a public servant, or an SES officer, seeks indemnity, what steps should the department take before they come and seek your consultation about the indemnity? What do you ask from them?

Mr Gifford: I'm trying to be helpful as I can. It depends again on the particular type of case.

Senator CAMERON: You know what the case is.

Mr Gifford: We do know what the case is. I'm not going to speculate on what was done in that particular case, because I'm not familiar with that case at that point in time. In terms of what we would expect the decision-making entity to do, it's to be familiar with the circumstances of the particular case, the conduct at the centre of the particular case and a view of the conduct.

Senator CAMERON: It's to be 'familiar with the circumstances', so would the department be required to look at the information that was put out by the commissioner, check that against the act and determine whether the commissioner had acted properly in terms of the advice? Surely that's a simple thing?

Mr Gifford: Sorry; the answer I'm providing you is in relation to what we would expect an entity to do at large. What was done in this particular case is not something I'm willing to speculate upon.

Senator CAMERON: I'm not asking you to speculate; I'm asking you as to why you're saying that the department should familiarise themselves with the facts, basically.

Mr Gifford: Sorry, that's common to all cases, that effectively they would be familiar—

Senator CAMERON: If you have a situation where the commissioner has breached the act, and if you simply look at the act and you look at what has been put up on the website you would find out clearly and unequivocally that the advice the commissioner has put out is inconsistent with the act, and by defending that the cost to the public has been over \$400,000—what can we do to make sure that that doesn't happen?

Mr Gifford: Senator, I can't speculate on—sorry, I keep coming back to the point that I'm not particularly familiar with what was done by this particular department in this actual scenario, so I don't want to accede to the point about whether or not that was or wasn't done in this particular case.

Senator CAMERON: But they can't sign off without consulting. The department can't sign off without consulting with the Office of Legal Services Coordination—that's correct, isn't it? They've got an obligation to consult.

Ms Samios: They have an obligation to consult on matters which raise sensitive legal, political or policy issues. It would depend entirely on the nature of the issue that was being raised with the Office of Legal Services Coordination.

Senator CAMERON: The issue is quite clear, that the commissioner deliberately misrepresented the legal position, the act that he has to oversight. Why wasn't that picked up? Why wasn't that picked up before you consulted and basically allowed the minister to put \$400,000 worth of debt to the public?

CHAIR: Are you saying that you don't necessarily accept the proposition that's being put for you as the facts of the matter? In which case, perhaps you should take it on—

Senator CAMERON: It would be pretty hard to say that when the facts are well known.

CHAIR: You're repeating them, Senator Cameron, and that's always when warning bells ring.

Senator CAMERON: I'm asking you what position the Office of Legal Services Coordination—why do they have to consult, if not to save the taxpayer \$400,000?

Ms Samios: The reason to consult primarily would be to consider whether or not assistance was consistent with the underlying policy objective of the directions.

Senator WONG: And was it?

Ms Samios: We can't speak to the specifics.

Mr Gifford: The difficulty we're having in terms of answering this particular question—and we averted earlier to the PII claim made by Senator Cash—

Senator WONG: It is not your claim.

Mr Gifford: No, it is not our claim but it does go to issues in relation to the level of consultation that was undertaken by the Office of Legal Services Coordination.

Senator WONG: It's for the committee tomorrow to determine the scope of that claim. I'm asking you: did it comply?

CHAIR: You're claiming public interest immunity because—

Senator PRATT: You need to state the grounds.

Senator WONG: Let him finish.

CHAIR: Take it on notice.

Senator WONG: He should finish his answer, perhaps.

Mr Gifford: I'm not claiming public interest immunity but I'm also not able to provide an answer to a question which potentially prejudices the claim of public interest immunity claimed by Senator Cash.

Senator SESELJA: Therefore you'll take the question on notice.

Senator WONG: Just to be clear, we've asked you—I'm sorry, are you OLSC?

Ms Samios: Yes.

Senator WONG: You are the body with whom the decision-making agency or department is required to consult who ensure that there is some consistency across the government in relation to the provision of legal assistance—correct?

Mr Gifford: Correct.

Senator WONG: I have asked you directly whether or not the payment to Mr Nigel Hadgkiss, or the provision of an indemnity to Mr Nigel Hadgkiss, which resulted in taxpayers paying—how much was it?

Senator CAMERON: Over \$400,000—

Senator WONG: over \$400,000 was consistent with that direction. You're declining to answer on the basis of Minister Cash—

CHAIR: They've taken it on notice.

Senator WONG: Can I finish, please? I'm putting something to them, and if you wish—

CHAIR: The fact that you've asked it four times doesn't alter the fact that they're taking it on notice.

Senator WONG: I will start again. I'm putting to you that the granting of that indemnity resulting in \$400,000 being paid by taxpayers for someone who had admitted the breach of the act was not consistent with the legal services direction, and you are declining to answer that and/or taking it on notice because of Minister Cash's refusal to answer that question—is that correct?

Senator Seselja: They're taking it on notice.

Mr Gifford: We can take that question on notice.

Senator CAMERON: So—

CHAIR: We like sitting here until 11, asking the same questions over and over again!

Senator WONG: Yes—I've asked so many questions! You really have a problem with me, don't you?

Senator CAMERON: In relation to the general policy, under appendix E—

Senator WONG: I move that Jim Molan chair the committee!

Senator CAMERON: So 4(b) talks about its general interest in supporting an employee who has acted reasonably and responsibly. Is that something you have to determine before you consult or when you consult with the department or the minister—that the person has acted reasonably and responsibly?

Ms Samios: Not necessarily.

Senator CAMERON: Why is it in the general policy if you don't do it?

Ms Samios: It depends entirely on what the question is that is asked of us.

Senator CAMERON: Well, isn't the question: should the minister provide an indemnity? Minister Cash has indicated that she did this after consulting with the department—with you guys. Did you ask the question about 'reasonable and responsible actions'? And, if not, why not?

Ms Samios: We need to take that on notice.

Senator CAMERON: So \$400,000 can be expended on an action to defend Mr Hadgkiss, when a lawyer could have looked at it and said, 'The commissioner is in the wrong.' Is that part of your consultation, to make sure that you're not defending someone who has breached the act and has responsibility to implement the act?

Senator Seselja: Sorry, Senator Cameron, can I come in there? Are you suggesting in your question that the office needs to make a finding on whether the person is guilty or innocent before they make a decision on whether to provide legal support?

Senator CAMERON: No—

Senator Seselja: That's what you seem to be suggesting.

Senator PRATT: Well, yes—

Senator CAMERON: The assistance—

Senator Seselja: That's what the process is for. That's why there is a court process.

Senator CAMERON: No, no—

Senator Seselja: Yes. That's generally why we have court processes: guilt or innocence.

Senator CAMERON: Okay. If that's the case, then a commissioner can breach their own act and cost the public \$400,000, and there are no checks and balances—no issue of assessing whether the commissioner's position is reasonable or responsible. Is that correct?

CHAIR: It's hypothetical. It's not legal opinion—

Senator PRATT: It's not hypothetical—

Senator Seselja: You seem to be suggesting—

CHAIR: Hang on, Senator Seselja. It's hypothetical. It's asking for legal advice, and the reason why we don't encourage hypothetical questions is because we could be here all night and it achieves nothing. But Senator Seselja, you—

Senator Seselja: I will just make the point that the senator seems to be suggesting that the department should be making a judgement on guilt or innocence prior to giving legal assistance. That is a determination of fact that is made by a court or a tribunal, depending on what the case may be.

Mr Anderson: If I could say something that might be of assistance, just to shed light on this? A number of years ago I was employed in the Australian Taxation Office as head of their in-house legal area. You may recall that there was a former official of the tax office, Mr Nick Petroulias, who was charged with corrupt behaviour. A question arose which I had to consider as to whether certain other ATO employees who were witnesses in those proceedings should themselves be indemnified. I had to explore questions that I didn't know all the answers to as to what their behaviour was and if it would be reasonable in the circumstances to indemnify people who may or may not have been involved with Mr Petroulias.

I contacted the OLSC and I asked them. I didn't actually run them through all the facts; I simply had a discussion with them as to what the policy intention was, and that was the advice. I did it to satisfy myself. So I suggest that that is the kind of exercise needed. As Ms Samios said earlier, OLSC gives guidance as to the general thrust of the policy, but it's for the decision-makers to actually go through the facts and make their decision.

Senator WONG: Can I just perhaps jump in here. I understand—obviously others have been dealing with this matter—that Mr Hadgkiss admitted his conduct was a reckless breach of the act in September 2017. Does that sound about right?

Ms Samios: I don't know.

Senator WONG: At the time of the consultations—and you've taken on notice, I think, how many consultations there were; this is in relation to Attorney-General's—was the department ever advised of the prospect of Mr Hadgkiss making such an admission?

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

Senator WONG: At which point did you become aware that he had admitted a reckless breach of the act?

Mr Gifford: Sorry, Senator, we'll take that on notice.

Senator WONG: Because obviously, if he's seeking an indemnity but he knows he's going to admit that he breached the act recklessly, surely that would be something you would expect were disclosed?

Mr Gifford: We would certainly expect, in terms of the engagement with OLSC about these particular questions, that all pertinent facts are brought to our attention.

Senator WONG: And it's a pertinent fact that it's likely he is going to admit a breach? That's a pertinent fact to the consideration of the indemnity?

Mr Gifford: The only thing I would say, Senator, is that also it's a good point in time—

Senator WONG: Sure, which is why I asked you a question. He may have not determined that till later, but you would agree that, of itself, it is a pertinent fact as to consideration of whether or not the direction should result in an indemnity being granted?

Ms Samios: It's a pertinent fact to the decision-maker. In terms of consultation with us, it would depend, again, on what the issue was on which they were seeking—

Senator WONG: I'd like to understand when you became aware of that possibility that he would plead guilty or admit—

Senator Seselja: We've already taken that on notice.

Senator WONG: The AGS, I think—

CHAIR: You've had 15 minutes again. There are other senators wanting to ask questions, which we'll do now. We can come back to you as long as you like. Mr Moraitis, I'm interested in the approach: what involvement does the department have in oversighting the judicial and semijudicial AAT numbers? 'Oversighting' is probably the wrong word. Do you have any influence on the number of AAT members and court judges that are appointed by the department or the Attorney or by the government?

Mr Moraitis: I'll ask Mr Anderson, who is the expert on this—the repository of knowledge.

Mr Anderson: I disclaim that. With the AAT, there is the protocol where the president of the tribunal writes to the Attorney and says what appointments or reappointments he believes are required in order to discharge the workload of the tribunal, and that will depend on both the workload and the mix of part-time and full-time members. We can get involved in that process, but it's primarily the president of the tribunal, as the head of the body responsible for delivering its functions, advising the Attorney.

With courts, it might be that from time to time a question arises as to whether there are sufficient numbers of judges. Again, the starting point is that the head of the jurisdiction, so the Chief Justice, is responsible for allocating their resources to meet the workload demands, and appointments are generally made when there's a vacancy—so a judge retires or resigns. But the department will get involved from time to time in those discussions between the court and the Attorney as to whether additional numbers of judges might be required.

CHAIR: I assume that the Family Court and perhaps the AAT, from evidence we heard earlier, would say: 'Look, we need another 100 people on the bench. Okay, Attorney or department, where are the 100? That's what I really meant. I think someone mentioned something before about there being an upper limit determined by budgets.

Mr Anderson: Budgets are a very, very relevant part of determining how many judges, for example, there should be.

CHAIR: Yes. So, if the AAT—this is hypothetical, but they sort of mentioned it earlier. There could be more people appointed, but I think the indication was that there was an upper

ceiling of what could be spent on the AAT; therefore, that determined how many members of the AAT there could be.

Mr Anderson: Yes. They have an annual appropriation and they couldn't actually have more judges or tribunal members than they could pay for under that appropriation.

CHAIR: Is the appropriation for the courts a line item in the budget, or is it part of your overall department budget which you have some influence in allocating?

Mr Anderson: It's completely separate to the departmental appropriation. It's a separate item in the budget both for the courts and the tribunal.

CHAIR: Thanks for that. I will just pass to Senator Molan for some questions.

Senator MOLAN: Secretary, the cost of keeping someone overseas is exorbitantly expensive: something like half a million dollars—this was 10, 15 years ago—to keep a family in a country like Indonesia, possibly PNG. We've now had three goes at assisting either in policing or in law—twice we've been asked to come home; and the third time now you're involved in doing it again, as you should be. Are you able to say what you see as the contribution that your officers in PNG make?

Mr Moraitis: That's a really good question. To be honest, when I talk to my staff—they come back to Canberra regularly; I go up to PNG at least once a year—the message I get is: it's sometimes two steps forward, 1½ steps back. However, the trajectory is a positive one. In my view, we have no option but to engage and to continue to build these elements bit by bit.

In my time in PNG, I thought the judiciary played a very good role overall. There were some other challenges in various other capacity-building contexts of ministries. Supporting the legal profession in its development is something the Australian bar and the judicial officers here contribute pro bono, which is great. The Australian Government Solicitor also supports that with a training process. It's an ongoing process. Like all things in PNG—Defence cooperation program; massive engagement there—it's a process of making some advances but also being prepared for some challenging times and just copping it on the chin, but continuing to engage in the mid- to long-term and getting some real changes there.

Senator MOLAN: Do they have a consular role at all?

Mr Moraitis: No. I shouldn't say this but, in all large posts, as you could imagine—and you would know—a head of mission is very strong on a whole-of-government perspective. In a consular crisis, for example, everyone who's there would be engaged. I've had that experience as well: there was a plane crash in Kokoda once, and every single person in that mission from the Defence Force, the AFP, DFAT, Immigration to you name it was involved. It's a whole-of-government effort.

Senator MOLAN: Do you still have officers in Indonesia now that the number of boats coming here has fundamentally ceased? I know the AFP certainly do.

Mr Moraitis: We have two officers in Indonesia, as I said: one's an EL2; one's an EL1. They're now working for Home Affairs. It's all about legal assistance and legal capacity building, assisting Indonesia with their CT laws, for example.

Senator MOLAN: I think from memory the bulk of the AFP were down in Central Java.

Mr Moraitis: No, our staff are located in the embassy in Jakarta, working with the law and justice ministry and supporting the mission and the ambassador, as instructed—as directed—which is the normal sort of catch-all.

Senator MOLAN: That's all I've got.

CHAIR: We're just about out of time. Senator Cameron.

Senator CAMERON: My questions are again to the OLSC. Mr Gifford, the department has advised the Senate that they had consulted with OLSC in writing and orally—you confirm that?

Mr Gifford: To be honest, I will still take that on notice just from the point of view of being accurate. I don't have a recollection of the nature of and how often the communications took place.

Senator CAMERON: You can't tell me whether there was any correspondence in writing?

Mr Gifford: Not with 100 per cent certainty, Senator, and I don't want to mislead you.

Senator CAMERON: On notice, then, can you advise me as to details of how many occasions this consultation was engaged in? Could you provide any correspondence in relation to the consultation?

Mr Gifford: I'll take that on notice, Senator. Again, we might have the issue with the PII claim but I will take the question on notice.

Senator CAMERON: You need to make the claim, then. You can't depend on another claim. You'll need to make the claim.

Mr Gifford: I'll take the question on notice, Senator.

Senator CAMERON: Can you provide details of all written correspondence, details of all telephone correspondence and details of any file notes in relation to this issue? The minister has indicated that there was no correspondence, advice or instruction from the Attorney-General about this matter. I'm not asking what the advice was, but was there any advice or instruction from the OLSC in relation to this matter?

Mr Gifford: I'll take that on notice.

Senator CAMERON: Thanks.

Senator PRATT: With respect to the recent national security legislation, we know that in December last year the Prime Minister tabled three bills: the national security, espionage and foreign interference bill, the home affairs and integrity agencies bill, and the foreign influence transparency bill. In the second reading speech for those bills, the Prime Minister made reference to advice from Duncan Lewis that the threat was unprecedented. The Prime Minister made no mention of any foreign interference in Australia's 2016 federal election but did reference Russian interference in the US presidential election and the Brexit and French elections. Can you confirm whether there was any interference in Australia's electoral processes in the May election?

Mr Moraitis: I would refer that to the Electoral Commission. We would have no visibility on that. And, again, I'd refer that question to ASIO.

Senator PRATT: In terms of the policy intent of this bill, you can't tell us whether it was at all designed to respond to covert foreign influence in any Australian elections?

Mr Moraitis: I can't recall that, no.

Ms Harmer: The legislation was developed against the broad background of potential threats of espionage and foreign interference but I would not say that it was developed against the background of a particular piece of interference. As the secretary says, in terms of any interference with any elections, those questions ought to be referred to the Electoral Commission—or, in terms of assessments and investigations, to the Australian Security Intelligence Organisation.

Senator PRATT: The Electoral Commission was or wasn't consulted with in relation to the policy behind it?

Ms Harmer: The Electoral Commission and the Department of Finance were both members of an advisory group that informed the development of the legislation.

Senator PRATT: Was interference in elections part of the advice to that advisory group?

Ms Harmer: There was no specific advice on interference in elections.

Senator PRATT: Would you think that this committee has the right to be informed by government about covert interference in elections? That's a question I might have to ask the Electoral Commission.

Ms Harmer: I think the question might ask me for an opinion. But certainly in the broad context—

Mr Moraitis: It's one for the Electoral Commissioner or for ASIO, I think, to be honest.

Senator PRATT: Submissions to the parliamentary committee on these issues demonstrated a lack of consultation with a broad range of stakeholders, let alone the political parties that made submissions to the inquiry. What were the reasons for excluding a wide array of stakeholders from consultation?

Ms Harmer: I think the answer to that question would depend on which submissions you are referring to. There were certainly a number of stakeholders who indicated they would have liked to be involved in the development of the legislation, but there were also a significant number who were involved in the development. Perhaps I could ask.

Senator PRATT: Civil Society Australia are concerned about the electoral laws but also the Foreign Influence Transparency Scheme and the integration of the two bills and the effect on civil society. They have said they weren't included.

Mr Moraitis: Is that Civil Society?

Senator PRATT: They're a very broad range—be they foreign aid organisations, religious organisations—a very broad array of organisations which have expressed concern. Do you know any reasons for the exclusion of these groups from consultation?

Ms Harmer: Perhaps I could refer to some statements that the then Attorney-General made just prior to the introduction of the legislation late last year, in which he indicated his intention to refer the bill to the Parliamentary Joint Committee on Intelligence and Security, which is currently considering both the Espionage and Foreign Interference Bill and the Foreign Influence Transparency Scheme Bill. The Attorney indicated at that time his intention

to refer the bills and to use that mechanism as a mechanism for seeking the views on the legislation put to the parliament.

Senator PRATT: Can you give any reasons the Office of the Australian Information Commissioner was given just 24 hours to comment on the legislation?

Ms Harmer: The Office of the Australian Information Commissioner was consulted by the department as part of the role it has in the review of certain provisions in the legislation. That was at the stage of the finalisation of the legislation and at a point where, typically, the review is for particular issues and is typically conducted within a reasonably short space of time. I think the OAIC in this instance was given a day and a half on one bill and on another a full business day.

Senator PRATT: Given the OAIC has a formal role in reviewing and commenting, is that really enough time to do that?

Ms Harmer: As I said, it's consistent with the standard process for the finalisation of bills. There was a range of consultation that was undertaken, both within the department and with a range of external agencies prior to the finalisation of the bills. The particular consultation that you're referring to is a final review of legislation prior to its introduction.

Senator PRATT: That's standard practice, 24 hours.

Ms Harmer: The time frame varies but it can be reasonably short.

Ms Chidgey: They were given the opportunity to indicate whether additional time was needed and they didn't take it.

Senator PRATT: They did say they would have liked more time. We did canvass that earlier. I have some questions about the establishment of the Department of Home Affairs. As we've seen, there has been some upheaval due to the changes in our longstanding security arrangements and particularly to the AGD. I'm interested to hear the effect of these new arrangements on the Attorney-General's Department.

Mr Moraitis: I would reiterate what I said to Senator Macdonald about the financial implications for our staffing numbers. There are two phases to this process: in the first phase, the portfolio agencies of AFP, Criminal Intelligence Commission, AUSTRAC and, in due course, in the second phase, ASIO would move to that portfolio. In the second phase, in parallel to ASIO moving to Home Affairs, the parts of the department which work on ASIO-related issues, or parts thereof, would move. That area is called the Communications and Intelligence Security branch. That will move around July when the legislation's passed. At the same time there'd be stuff coming into the department, like IGIS, INSLM and the Commonwealth Ombudsman as part of the Machinery of Government process. And, as I said, the cyber function—the cybersecurity role of CERT—will be moving to the third pillar, which is the ASD Australian Cyber Security Centre construct, which came out of another, parallel review. That's a work in progress.

In terms of what it means for the department, it means quite a few staff moving to home affairs. Having said that, however, we're still working very closely with a lot of the staff. As you could imagine, in some instances they're still co-located in the building, although it's technically part of the home affairs department, with separate passes et cetera.

Senator PRATT: What are the implications of making these kinds of changes, though, before the enabling legislation for the new arrangements is passed?

Mr Moraitis: I think the first phase involved AAOs and SROs, and I think people were relatively comfortable that that was a mechanism to provide a transition in the MoG. I think there's an understanding that, for belts and braces or whatever purpose you want to describe it as, having the legislation as well to reinforce that makes sense as well. That's a reasonable step to take, I think, in terms of managing a transition. It's taken from the announcement of mid-July to the MoG happening around late December, and then the second phase is contingent on some legislation being passed—the PJCIS consideration. I think it's literally being finalised, if not already finalised. That part of it is being run by the Prime Minister's department. We've been working with them, but they're the ones that have primary carriage of that legislation, not us. Mr McKinnon and others have been closely engaging with Mr Anderson and Ms Chidgey, and of course—

Senator PRATT: At which point, though, do we hit a point where people have a new hierarchy and new accountabilities that don't actually match the legislative framework within which they're working?

Mr Moraitis: It's either one or the other. As far as we're concerned, critical infrastructure is now with home affairs; they report to Minister Dutton. Issues to do with CERT—it actually works in our department but also with the cyber coordinator in a de facto way, because we have a very collaborative relationship.

Senator PRATT: But things that didn't require law reform have moved.

Mr Moraitis: Law reform?

Senator PRATT: Legislative change. How are you keeping pace with what needs to move? I understand that Mr McKinnon wrote to the secretary of the intelligence committee to correct his evidence of 9 February, which was that 17 acts needed to be amended, and that he now believes some 37 acts need to be amended.

Mr Moraitis: I'll ask Mr Anderson, who's been running the MoG process with Ms Chidgey, to answer that, in response to what Mr McKinnon said in the PJCIS.

Senator Seselja: Chair, are we still planning on breaking at six for dinner, or are you planning on extending?

CHAIR: It's surprising you should say that. I'm just having a discussion with the secretary on that.

Senator PRATT: I'm happy to break now. We do have further questions.

CHAIR: We have two different allocations: one says six and one says 6.30.

Senator Seselja: We have six, but I'm in your hands. I just wanted to confirm what the arrangements were.

CHAIR: I think I'd prefer to go on till 6.30, which is what we normally do, and see where we get to. But at this stage can I just make the point, Mr Moraitis, that a number of senators did ask for the High Court of Australia to be brought to the estimates committee. I'm now told that nobody does require the High Court of Australia, so you can let those people go. That means we'll bring ASIO forward to 9.30. Senator Pratt?

Senator PRATT: If there's confusion about how many acts need to be amended to effect the changes in the machinery of government changes, how will we confirm that the correct legal accountability is applying within the new Department of Home Affairs—if there's confusion about what law reform is required and whether a legal change from accountability with the Attorney-General's department is required to move it to home affairs?

Mr Moraitis: I'll ask Ms Chidgey to answer that.

Ms Chidgey: I don't believe there is confusion. An assessment has been made, and it is 33 acts. Many of those amendments—

Senator PRATT: Thirty-three acts?

Ms Chidgey: Thirty-three acts in addition to the four that are in the home affairs bill, and they're straightforward consequential amendments that are mostly just adjusting the references to ministers.

Senator PRATT: In terms of his statement that there were 37 acts, which four acts don't require amendments?

Ms Chidgey: Thirty-seven—it's the four in the home affairs bill plus another 33; that gives you 37.

Senator PRATT: So you're clear that it's 33. Mr McKinnon said 'about 33'. Are we clear that that is the exact number of acts? Who else has done the audit of that?

Ms Chidgey: Yes, and we—

Senator PRATT: Are you relying on him, when he said 'about 33', or has someone else done that audit?

Ms Chidgey: We've been working with the Department of the Prime Minister and Cabinet, the home affairs department and the Office of Parliamentary Counsel to identify all the acts that require amendment.

Senator PRATT: You've been working with whom? The National Security Division in the Department of the Prime Minister and Cabinet?

Ms Chidgey: The Department of the Prime Minister and Cabinet and the Department of Home Affairs.

Senator PRATT: They said it was about 37 acts, so you—in terms of your own work, in terms of surrendering your responsibilities to them—are very confident that this parliament will have before it the legislative changes for every one of those transfers of responsibility?

Ms Chidgey: Yes—that we're looking at legislative amendments to 37 acts in total.

Mr Moraitis: Including the home affairs related ones.

Ms Chidgey: Including the ones that are already in the bill.

Senator PRATT: And you've made your own judgements about the responsibilities that you've surrendered? It's all very well for PM&C to do it and for National Security to do it. But if accidentally something gets transferred to them where we didn't pass the law and it still legally sits with you, what would you do about it? Have you checked yourself?

Ms Chidgey: Yes; we are involved in that process.

Mr Moraitis: And to refer to Mr McKinnon, he was using the word 'about' in the way that, I guess, took a certain—

Senator PRATT: I understand that. I'm just seeking some clarity that—

Mr Moraitis: Rest assured—since July the Attorney-General's Department has been closely engaged, both through PM&C and the home affairs and immigration people, in various iterations of this process, and, as Ms Chidgey said, we're confident that we have coverage.

Senator PRATT: So you sign off as well on that figure of 37?

Mr Moraitis: Yes, and we consult with PM&C and home affairs.

Senator PRATT: The government spoke about two phases of implementing. Isn't it clear that in reality there are three or four phases?

Mr Moraitis: Which are the third and fourth?

Senator PRATT: Because we've got four acts now but 33 still to go.

Mr Moraitis: Phases and processes—I'd say phase 1 is where most of the transitions to home affairs happened, and other departments as well have also moved to home affairs, the transport security area, for example. From our perspective, the second phase involves the transition of ASIO to the home affairs portfolio and some consequential changes to our staff numbers, moving to home affairs. As I said, the cyber component of our department will also move to the ASD. So, you could say that's a third, and the fourth one, you could say—at the same time, there are agencies coming into the portfolio, not to the department. There are two phases involving four currents of activity in parallel. So, come July this year, ASIO will have moved out from the A-G's portfolio, for example—some staff will have moved out from the A-G's portfolio—but at the same time some bits of legislation are being passed: IGIS, INSLM and the Commonwealth Ombudsman will be part of the AGD portfolio. So there's—

Senator PRATT: Crossover.

Mr Moraitis: minus one plus three equals plus two.

Senator PRATT: Is there any concern within AGD that our national security agencies are accountable within a new mega-department that doesn't yet have legal authority to act in many respects?

Mr Moraitis: They have legal authority to act on the stuff that's been transferred; that's my understanding. The role of ASIO is subject to the Attorney-General's role until midnight of the transition.

Mr Pratt: So you haven't taken your hands off the reins on anything that hasn't been transferred yet?

Mr Moraitis: No. I need to say something for the record: when the decision was announced in July, I made it very clear to all my staff that, until midnight of the decision of the process of transition, we will continue to do business as usual, focused on all of the priorities we're working on, whether it's cybersecurity, critical infrastructure or national security, and, secondly, that we would ensure that nothing would fall between the cracks. I could be corrected, because the universe plays funny games with you, but I'm pretty confident that the transition has been pretty smooth. And of course we continue to engage in an overlapping dialogue on a variety of issues post-transition and pre-transition. We're all fully

across the passing of the baton. In a relay race, you make sure that the other person's got that relay stick in their hand before you let go.

Senator PRATT: What are you doing to manage national security concerns that arise from an extended period of uncertainty because of this massive change?

Mr Moraitis: I don't think there has been any period of uncertainty. From our perspective—

Senator PRATT: People essentially have two masters, as you try to—

Mr Moraitis: No; any one person has one master, as far as I understand, whether it's the Attorney or whether it's the home affairs minister, whether it's the secretary of A-G's or the secretary of home affairs.

Senator PRATT: But you've got to stay accountable within AGD while you're still trying to keep an ear to what's going to happen in your new environment.

Mr Moraitis: But we would be doing that anyway in our engagement on a whole variety of issues in the national security space. This area is an area where everyone—whether it's the CT coordinator or the AFP or the crime commissioner—continues to engage very closely. For example, the criminal justice space has moved to the home affairs portfolio. I've been on the board of the Crime Commission for 3½ years. I'll continue to be on that board as a non-voting member, but I'll continue to be engaged in that space.

Senator PRATT: What is different to business as usual, given these pending legislative changes that are still to happen?

Mr Moraitis: Differences in what sense—business as usual?

Senator PRATT: What is different to business as usual, noting that these functions are about to move somewhere else?

Mr Moraitis: Areas that have moved are working to the home affairs minister and the portfolio agencies in that space—

Senator PRATT: So, areas that have moved where there's legal authority for them to move?

Mr Moraitis: Yes. The ones that haven't moved are continuing in the department, and they continue to report to Ms Chidgey, to Mr Anderson in the civil space, to me as necessary and to the Attorney. And, as I said to Senator Macdonald, the Attorney will continue, post-July, to have authority vis-a-vis ASIO warrants and special investigations, and of course, as part of this process, the Attorney-General's Department continues to engage with all of the relevant security agencies in terms of what's coming over the horizon in terms of legislation. I'll be convening regular meetings of the legal advisers of all these departments to keep an eye on what's happening in this space. We won't be taking our eyes off the ball or being disengaged from those issues—far from it. We should be baked into a lot of decision-making, which makes absolute sense.

Senator PRATT: Who is receiving briefings from ASIO, given the Attorney-General is still the responsible minister under law?

Mr Moraitis: The Attorney continues to receive briefings. I'd ask you to ask that question of the Director-General; he's also consulting with whoever he wishes to consult with, and

that's the normal practice. He's not precluded from discussing any matter with any minister. It would obviously be very logical for him to consult with the home affairs minister.

CHAIR: We have been through all of these questions before.

Senator PRATT: Yes, but, as you understand, Chair, it's important to compare the evidence from different parts—

CHAIR: No; I don't understand.

Mr Moraitis: My understanding is the Attorney continues to receive briefings. I'm copied in on—for what it's worth—briefings. That hasn't changed. I also understand that Director-General Lewis continues to engage with the Attorney and with the Minister for Home Affairs in a de facto way, which is eminently sensible and consistent with past practice. The D-G is not precluded from consulting with whoever he wishes in cabinet.

Senator PRATT: I wanted to ask about the retention of the A-G's power to approve warrants for ASIO.

Mr Moraitis: Could I be excused, Senator? I have to go to the NSC as part of my ongoing role in national security, ironically.

CHAIR: Yes. We have answered this before.

Mr Moraitis: Mr Anderson and Ms Chidgey are well placed to comment on both those questions. I'll be back at 8.30.

Senator PRATT: Okay, thank you.

CHAIR: We've already answered this several times before, Senator.

Senator WATT: Chair, if you're referring to the evidence that was given yesterday—

CHAIR: No, I'm referring to the evidence that was given to me on questions I asked this afternoon, about two hours ago.

Senator WATT: I think Senator Pratt is asking more detailed questions than those that you asked, so you should let her have that opportunity.

CHAIR: Well, I should, but I'm just trying—

Senator PRATT: We shouldn't have taken up so much time with the government questions—

CHAIR: I'm trying to encourage her. Neither I, nor the committee nor the officials want to sit here having the same question asked over and over and over again just to keep them here until 11 o'clock.

Senator PRATT: I'm interested to ask you, Mr Anderson, why the retention of the warrant-issuing power isn't included in the home affairs bill before parliament?

Ms Chidgey: We're looking at further amendments for that, but we're also able to manage that through other arrangements. I think that, as Mr McKinnon gave in evidence on the bill, we're very well progressed in having amendments in relation to the retention of the warrants power.

Senator PRATT: Okay, thank you.

CHAIR: It's before the joint committee looking at those sorts of things at the moment.

Ms Chidgey: That's right.

Senator PRATT: In terms of the evidence base for these changes in governance arrangements, what evidence base does the department point to create this new megaministry under Minister Dutton? What is the policy? What evidence was drawn on to point towards the policy?

Mr Anderson: Senator, are you asking us to comment on matters of policy?

Senator PRATT: No, I'm asking you which sources informed the policy? Were there any reports, or briefings or anything about that that government drew on at the time?

Ms Chidgey: Senator, obviously, that was a decision for the Prime Minister, not for the department.

Senator PRATT: Okay. Is it correct that the Howard government considered such an arrangement and decided against it, as did other former governments?

CHAIR: Were you around in the Howard government's time? This is going—

Senator PRATT: As I understand it, it was so for Prime Minister Rudd, Prime Minister Gillard and Prime Minister Abbott. What was the evidence base that changed under Prime Minister Turnbull in relation to these arrangements?

CHAIR: That's a more relevant question. The Howard government was—what?—15 years ago.

Mr Anderson: As Ms Chidgey said, it was the decision of the Prime Minister.

Senator PRATT: A decision, yes. Okay.

Mr Anderson: It's not a matter for this department to comment on.

Senator PRATT: As I understand it, Mr Michael L'Estrange and Mr Stephen Merchant undertook an investigation and review of the Australian intelligence community at the request of Mr Turnbull. The terms of reference specifically included whether our current arrangements were structured properly, ensuring effective coordination and contestability. The authors spoke with most experienced intelligence professionals, and their report last year did not recommend the creation of a home affairs department. What other sources of information did government refer to in making this decision?

Senator Seselja: Senator Pratt, I think, again, that we're going over a bit of old ground. This was a decision for government—ultimately, for the Prime Minister—as has been pointed out by the officials. It's not really up to the officials to comment on why the Prime Minister made the decision.

Senator PRATT: Okay. What assurance can you provide that the role of ASIO will not be altered when it's eventually shifted from being an independent agency within AGD to its new place within the home affairs megaministry?

Ms Chidgey: ASIO remains an independent statutory agency, as it does at this point, and that won't change.

Senator PRATT: Okay. So you're telling us that, as far as you're aware, there's no agenda to change the longstanding protections of ASIO within the act that keep the organisation specifically under the control of its director-general and preclude a departmental secretary from giving ASIO any instructions?

Ms Chidgey: There's no intention to change that.

Mr Anderson: It would require legislation to do that, as well. So you'd actually see that if there were any intention—

Senator Seselja: You'd be the first to know.

Senator PRATT: Yesterday—it was highlighted in yesterday's estimates—we had a discussion about Mr Pezzullo's speech last year about the role of the organisation he's to head, in which he called for an end to the paradigm that's been in place for Australia and other democratic nations for generations, jettisoning that system for one in which there will be enormously increased surveillance of the Australian population. He declared:

... the state has to embed itself invisibly into global networks and supply chains, and the virtual realm, in a seamless and largely invisible fashion, intervening on the basis of intelligence and risk settings. Increasingly, at super scale and at very high volumes.

CHAIR: What is the question?

Senator PRATT: The question is: is this not a good example of what the former Attorney-General warned of in his valedictory speech when he said:

It is for the Attorney-General always to defend the rule of law, sometimes from political colleagues who fail to understand it—

Senator Seselja: Senator Pratt and Chair, it's inappropriate to ask officials to comment on a speech from a secretary of another department. It's not what—

Senator PRATT: Perhaps I will—

CHAIR: And more so, Minister, because the exact same question was actually put to the Secretary of the Department of Home Affairs yesterday and he explained it fully.

Senator PRATT: And these powers are transferring from one department to another and that is why the question needs to be put twice.

Senator Seselja: As I said, it's not appropriate for officials to be asked to be commenting on a speech from a secretary of a department.

Senator PRATT: Well, I'll frame the question differently. What are the core values and objectives of the Attorney-General's Department?

CHAIR: You've only got 10 minutes!

Senator PRATT: They're clearly part of your corporate plan.

Mr Anderson: It's about building and maintaining a just and secure society, in shorthand.

Senator PRATT: Yes. So you balance out justice and security, but the focus of the Department of Home Affairs is on security, you're left with the justice bit and there's no accountability between?

Mr Anderson: If I can go back to what the Prime Minister did say on 20 July last year when he announced the changes: he talked about the importance of the Attorney-General's role as first law officer and also referred to the Attorney-General as the minister for integrity, and said that's a very important role within government and particularly with respect to the national security arrangements. It's for that reason that, for example, the Independent National Security Legislation Monitor, the Inspector-General of Intelligence and Security and the ombudsman are all moving to this portfolio—to further strengthen and buttress that role of integrity. Really going forward, because the Attorney-General retains a great deal of

responsibility with respect to the administration of the criminal law and also retains some responsibilities with respect to ASIO functions and other national security functions, the Attorney-General and the Minister for Home Affairs and their respective departments will need to be working very closely together in ensuring that as proposals are developed, that they do, in fact, continue to comply with the rule of law. I think Mr Pezzullo actually yesterday pointed to the ongoing importance of the rule of law and compliance with the rule of law, so that the public continues to have confidence in the national security arrangements.

Senator Seselja: Chair, can I add: I think that question was pretty offensive, frankly, to suggest that the Department of Home Affairs doesn't have any regard to justice and that there's no accountability. I mean, if this is now the Labor Party's position on this portfolio, with all of the safeguards that we have in parliament, in various other agencies, like the AFP, then just say it. Because that was effectively what you were saying. If that is the Labor Party's position now, it's frankly outrageous.

Senator PRATT: No. What I was effectively saying—

Senator Seselja: It's a slur on thousands of hardworking Australians who are doing their best and will continue to do their best to keep Australia safe, and they do that within the rule of law. So for you to suggest there's no accountability and no concern for justice, I reject it and the government rejects it. If that's the Labor Party's position, well, you know, good luck to you.

Senator PRATT: It's not the Labor Party's position; it's the position contrasting Home Affairs with what is the Attorney-General's Department's corporate plan, which clearly seeks to balance security and justice—

Senator Seselja: You suggested there was no accountability.

Senator PRATT: in a way that Home Affairs has not articulated. So I want to ask you, Mr Anderson, would you agree that the different departments have differences in culture, in part arising from their different roles?

Mr Anderson: I don't think I'm qualified to comment on the culture of another department.

Senator PRATT: Yes. I think that just affirms my point, Senator Seselja.

Senator Seselja: How so?

Senator PRATT: Well, because we have not got a clear articulation from the Department of Home Affairs about the balancing of its roles in terms of justice and security.

CHAIR: Well, we've had 1½ days to question them. If that question wasn't put to—

Senator PRATT: I've just put—

CHAIR: Yes, but you've put it to the wrong department.

Senator PRATT: No. We put the same questions yesterday, as you've already reminded me, Senator Macdonald.

CHAIR: Not that question.

Senator PRATT: Can I ask, Mr Anderson, how departmental staff have reacted to being moved from AGD into the new department?

Mr Anderson: Any change creates a range of different feelings within staff, whether it's a change about moving from one part of a building to another part or moving from one branch to another branch or moving from one department to another department. We've actually gone through quite a process over the last seven or so months to talk to staff, to communicate what was actually happening in terms of implementing the government's decision, to have people who'd been through previous MOGs talk about their experiences. People from Home Affairs have come in to talk about the department that people are being transferred into. There's been a lot of communication with all the staff. Given that, for the most part, people are still sitting in the same building, doing the same work that they were doing before, I actually don't think there's been a lot of change at all. There are changes in terms of the legal accountabilities, but you actually still drive to the same building each day and you're working on the same things.

Senator PRATT: And all the legal changes haven't happened yet. Further to that, I note that Mr Pezzullo, in questioning from Mr Dreyfus in the PJCIS committee, stated under item 24 in the substituted reference order: 'The Attorney-General has authorised the Home Affairs ministers—that is plural—to exercise powers under part 5.3 of the Criminal Code.' Because this is complicated, I'll try and speak slowly. 'This provides for an amendment where an AFP officer can seek an authorisation from one of the Home Affairs ministers rather than the Attorney-General—who is currently, I think, and for good reason, the only minister authorised under the Criminal Code to do this—for authority to apply to a court to obtain an interim control order. This provides for an amendment whereby the Home Affairs ministers may appoint an issuing authority within the meaning of s 100.1 so that the issuing authority may make an initial preventative—'

CHAIR: Senator, are you going to read out all the transcript of another committee hearing?

Senator PRATT: No.

CHAIR: What's the question?

Senator PRATT: It's a technical question. I'll go straight to the question—

CHAIR: Please.

Senator PRATT: without the background. Can you confirm whether the Minister for Citizenship and Multicultural Affairs, the Hon. Alan Tudge, will possess counterterrorism authorisation powers contained in part 5.3 of the Criminal Code, which have until now only been exercisable by the Attorney-General?

Ms Chidgey: The arrangement that was made with the authorisation replicates the arrangement that would apply with any legislative amendment, whereby a reference to one minister in a portfolio authorises all ministers within the portfolio to exercise that power.

Senator PRATT: So the answer is yes?

Ms Chidgey: The authorisation is taking the standard approach that applies under the Acts Interpretation Act.

Senator WATT: Prior to this portfolio change, which junior ministers or assistant ministers held these types of powers?

Ms Chidgey: The Minister for Justice is another minister in the portfolio who would also have been able to exercise that power, alongside the Attorney.

Senator WATT: Would the Assistant Minister for Immigration, who I think was Mr Hawke—his role might have changed; I'm not sure—have had these powers?

Ms Chidgey: He didn't before.

Senator Seselja: He's now in Home Affairs, and it's switched over. He wouldn't have had the powers before, because they were in Attorney-General's.

Senator WATT: Before the MOG change, you had the Attorney-General—

Mr Anderson: Before the MOG change, Ms Chidgey is saying, it was the Attorney-General and ministers in the Attorney-General's portfolio.

Senator WATT: And that was the Minister for Justice—

Ms Chidgey: The Attorney-General and the Minister for Justice.

Senator WATT: There was no assistant minister, though?

Ms Chidgey: There was no assistant minister.

Senator WATT: Whereas what's happening now is that the Minister for Home Affairs has the power, as do any of his or her underlings, for want of a better term, and that includes assistant ministers, not fully-fledged ministers?

Ms Chidgey: As with all acts, any reference to a minister includes all ministers in the portfolio, and that's—

Senator WATT: But that's the first time this power to issue control orders has been granted to an assistant minister.

Ms Chidgey: Yes. That would be right.

CHAIR: We might leave that there.

Proceedings suspended from 18.30 to 19:32

CHAIR: Good evening, all. I'll call back to order the Legal and Constitutional Affairs Legislation Committee and its hearing on the 2017-18 additional estimates. I welcome Minister Cash. We're dealing with cross-portfolio, general and corporate.

Mr Anderson: Chair, if I might just raise one thing?

CHAIR: Yes, sure.

Mr Anderson: Just before the break, we were talking about the question of whether it was a new thing for assistant ministers to have particular powers, and Ms Chidgey wants to clarify something.

Ms Chidgey: Yes. I will make an addition to my previous evidence to clarify this. I note that there have been parliamentary secretaries in the Attorney-General's portfolio previously who have been able to exercise those part 5.3 powers. They were Shayne Neumann in 2013 and Concetta Fierravanti-Wells in 2015.

CHAIR: Okay, interesting.

Senator PRATT: And can you confirm that's the case, notwithstanding the fact that Mr Pezzullo said that the only counterterrorism minister is the Hon. Peter Dutton?

Ms Chidgey: That's right. I think by that he meant that Mr Dutton in the minister responsible for counterterrorism matters and that within the portfolio they could make the

choice, for example, that Mr Dutton was the only minister who exercised those powers in practice, if that were appropriate.

Senator PRATT: Thank you. Sorry, I'm losing my voice!

Senator PRATT: I want now to ask some questions about telecommunications, Australia's critical infrastructure and security risks attached.

CHAIR: To be certain, are you dealing with the criminal justice and national security group, which is group 3?

Senator PRATT: I had it listed for cross portfolio.

CHAIR: Can you just indicate how it is cross portfolio? I am not sure what you are going to ask but for telecommunications and national security, Mr Anderson might be able to help you with.

Senator PRATT: I want to ask why Huawei was prohibited from supplying equipment to the NBN in 2013.

Mr Anderson: That would be group 3.

Senator PRATT: Okay, that's fine.

Ms Chidgey: I might also add those matters have now moved to the Department of Home Affairs with the Critical Infrastructure Centre.

Senator PRATT: So should we have asked them yesterday?

Ms Chidgey: Yes.

Senator PRATT: So they have moved already?

Ms Chidgey: They have.

Senator WATT: Which powers exactly?

Ms Chidgey: Issues relating to security of critical infrastructure are now a matter for the Department of Home Affairs.

Senator PRATT: We have been on a learning process these past two days as to what fits where. Are you in a position to answer those or to have them answered by group 3 or should we persist with asking them now?

CHAIR: I think the indication is they cannot answer them at all because it is not in this department.

Senator Cash: My understanding is it has now been transferred to Home affairs. Perhaps if when we get to group 3, any questions you have, ask, and at the time the officials can tell you whether or not they are still in a position to answer; alternatively, if it is with Home affairs, it is with Home affairs.

Senator PRATT: Home Affairs were not particularly clear with what was with them yesterday.

CHAIR: We will now move to group 2, justice and corporate group. I think for ease of operation of the committee, we might do all of that group in one. If any senator has a question on any of the programs in group 2, we will deal with them now, and the relevant officers can come to the table as those matters are called.

Senator DODSON: I want to deal with the Indigenous legal and native title assistance matters. I am not sure who is in the position to answer questions in relation to that.

CHAIR: Why don't you start with the question.

Mr Anderson: There are two different parts of the department doing Indigenous legal assistance and doing native title but you ask your question and we will make sure that the right people are there.

Senator DODSON: The chair has asked me to ask the question and I'm happy to do so. I want to establish the process and timing regarding the amendments to the Native Title Act. That is the field I'm going into. Can you tell me if the consultation process is coming to a conclusion or not?

Mr Anderson: The consultation process is probably best described as midway. Public submissions close tomorrow. There was a discussion paper that was put out. There has been a meeting of what we call the expert technical advisory group, which is nominees from the native title representative body sector from state and territory governments, pastoralists and mining industries. There is another meeting of that group coming up later this week to talk about the possible reforms and then there will be further consultation. The aim is to produce an exposure draft bill. Obviously an exposure draft bill is a draft of the bill that is published for further discussion as well. So it is going to keep going, the consultation process.

Senator DODSON: I note that the minister took some advice from me in relation to extending the consultation period. I am very appreciative of that fact; otherwise, we would have had people in the middle of rains who would have found it very difficult to respond. I am appreciative of the fact that there is a sensitivity to that. Can you tell me how many submissions have been received.

Mr Anderson: I believe it is 15 at the moment.

Mr M Johnson: I received a further update as of about an hour and a half ago. As at that point, 17 submissions had been received.

Senator DODSON: Have you done the analysis of those compared to where the drift is going, what people are saying?

Mr M Johnson: I think the analysis is ongoing, especially in light of the fact that further submissions can come in as late as tomorrow.

Senator DODSON: Okay. You mentioned that there would be an exposure draft. Have you got a date for that?

Mr Anderson: No.

Senator DODSON: No likely date? Proposed date?

Mr Anderson: It is going to partly depend on what comes out of the submissions, so, until the submissions have actually closed and we have seen what everyone says—we have also been around the country and done a number of face-to-face consultations as well, and it is fair to say that on some of the measures there's quite a strong degree of unanimity and on some of them there is not. So we will need to give some advice to government and then government will need to decide what it wants to do and then we will need to get that drafted.

Senator DODSON: So I presume after the exposure draft there will be a further consultation period over that?

Mr Anderson: I believe so, yes.

Senator DODSON: So when might we look towards a bill?

Mr Anderson: I would like to say the middle of this year.

Senator DODSON: The middle of this year.

Mr Anderson: I would like to say that. Obviously it is going to be a matter for the government ultimately as to the timing.

Senator DODSON: You have just confirmed there will be further consultations after the exposure draft?

Mr Anderson: That's the intention, yes.

Senator DODSON: I presume there will be consultations once the bill is also enacted—or, not enacted, but brought to fruition?

Mr Anderson: Hopefully—

Senator DODSON: Do you intend to do that?

Mr Anderson: The exposure draft will enable further consultation. Once a final bill is then introduced into parliament, there might not need to be further consultations. Alternatively, it might be a question of being referred to a committee for a hearing, as is often the case with native title bills.

Senator DODSON: What I am trying to get clear is: an exposure draft and the bill are two different things sometimes.

Mr Anderson: Yes.

Senator DODSON: So just what level of consultation is there likely to be around the bill once the bill has been formulated? Is that just simply going to be tabled in the parliament, and the normal procedures happen; we get people ringing up and being disgruntled?

Mr Anderson: It is difficult to say with certainty, because, again, we haven't seen all the submissions yet. We don't know yet whether there is unanimity on the proposals or not.

Senator DODSON: Okay. I understand there is a roundtable meeting in Perth on 16 March, I think. Is that the right date?

Mr M Johnson: That's correct. Yes.

Senator DODSON: And that will be attended by the Attorney-General and Senator Scullion?

Mr M Johnson: That's correct, yes. The Attorney-General and the Minister for Indigenous Affairs are co-hosting that meeting.

Senator DODSON: And who else has been invited to that meeting? Is it just PBCs or rep bodies?

Mr M Johnson: We understand that a range of stakeholders, including PBCs and rep bodies are being invited to that meeting. I'm not clear whether those invitations have been sent out just yet. But that is the intention.

Senator DODSON: Are you aware that some PBCs are members of the national native title representative body and some aren't?

Mr M Johnson: Sorry?

Mr Anderson: We're aware that some rep bodies and certain native title service providers are members of the council and some aren't.

Senator DODSON: And PBCs?

Mr Anderson: I'm not sure as to how many PBCs are actually members of the National Native Title Council.

Senator DODSON: There are quite a number of them. Do you know the number of PBCs there are?

Mr Anderson: No, I don't. Not here.

Senator DODSON: Okay. I think it's about 150. So there is a large body of people—and I just want to know whether they are being included in this consultation or is it only those that are members of the national native title rep council.

Mr Anderson: On that, I can say that, for example, a copy of the discussion paper was sent to every PBC.

Senator DODSON: I'm not asking about the discussion paper. I'm asking about the meeting on 16 March in Perth and who is attending it or who is being invited to attend it. Potentially there is a group of people who may not get invited because they are not members of the national native title representative council.

Mr M Johnson: I can say it won't be a significantly large attendance at the meeting. But this is just one element in a much broader consultation process which has engaged native title representative bodies and peak Indigenous groups. Face-to-face meetings have been held and telephone consultations have been held by officers in my team over an extended period dating back to late November last year—native title stakeholders as well as, say, pastoralists and other stakeholders in the sector as well.

Senator DODSON: So you say it's not likely to be a large meeting. It sounds like a lot of people: pastoralists, tribal elders, miners—

Mr M Johnson: Sorry, that's the historical consultation dating back to 27 November. This has been a long series—

Senator DODSON: I'm trying to get a focus on the meeting on 16 March and who is being invited to it and who is going and who is not going.

Mr Anderson: I should point out that the PBC reforms are actually Minister Scullion's responsibility and Prime Minister and Cabinet's responsibility rather than this department. So, in terms of which PBCs are going to be invited and how the PBC is going to be consulted with, that question would be better directed to Minister Scullion and Prime Minister and Cabinet.

Senator DODSON: I might come back to that a bit later. The option paper relates to a number of pre-existing reports and documents and so forth. Can you tell me when the Australian Law Reform Commission report was tabled? Has it been tabled?

Mr M Johnson: The ALRC report was from 2015.

Senator DODSON: Yes. Was that ever tabled? You may want to take that on notice.

Mr Anderson: Yes, we will check that just to be sure.

Senator DODSON: Okay. It seems a long time ago that that was commissioned.

Mr Anderson: 2015 is when the report was.

Senator DODSON: Yes. One of the issues in the options paper, I noticed, deals with section 31 agreements following the McGlade decision. Remember last year we had the McGlade full-bench decision?

Mr Anderson: Yes.

Senator DODSON: I am just wondering: can you describe or explain to me why the section 31s are back up there?

Mr Anderson: So section 31 agreements are potentially subject to the same issue that Indigenous Land Use Agreements were subject to. The McGlade decision was just about the Indigenous Land Use Agreements. Not all members of the applicant had actually signed the Indigenous Land Use Agreement. So parliament did pass the amendment so not all members of the applicant were required to have signed an Indigenous Land Use Agreement. Potentially the same issue arises with section 31 agreements. They haven't necessarily been signed by all people who perhaps under the act should have actually signed them, whether because not all members of the applicant were asked to sign it or because some members might be deceased. It is the same issue that arose with ILUAs in McGlade.

Senator DODSON: Are you contemplating further machinery amendments to the act in relation to that authorisation process and decision-making process?

Mr Anderson: There are a couple of questions put in the discussion paper. There are options both around whether there should be validation of all current section 31 agreements. And then there's also questions as to whether there should be ways for groups to, if they wish, create new decision-making processes—to depart, if they wish to, from traditional decision-making processes.

Senator DODSON: Can you tell me whether you are dealing with existing section 31 agreements or are you also talking about future section 31 agreements?

Mr Anderson: In terms of the validation, that would be past 31 agreements; and, in terms of decision-making processes, that would be future.

Senator DODSON: Okay. You mentioned, I think, the minister for Aboriginal affairs having the responsibility for this, so, if you can't answer it, then, fine; I understand and I will be seeing him on Friday. The CATSI Act has been reviewed and I understand the review has been completed. And it was conducted by a law firm. Has that been made public yet?

Mr Anderson: That is a matter for Minister Scullion; CATSI and the Office of the Registrar of Indigenous Corporations are both in his portfolio.

Senator DODSON: Okay. Have you had any discussions with the minister's office in relation to that? Because I understand there are amendments being proposed to that act that will more than likely impact the operations of the PBC.

Mr Anderson: We've been involved in discussions around those provisions or we've been sitting in the room when Prime Minister and Cabinet have been leading consultations around those proposals, but questions would be best directed to them because they're the ones who are actually developing those proposals and are responsible for them.

Senator DODSON: Are you saying that, despite the fact that it's a matter for the Minister for Indigenous Affairs, it hasn't been released and you don't know whether it's been released

but there are discussions going on about the substance of that report impacting, potentially, the amendments to the Native Title Act? Is that what you're saying?

Mr Anderson: The discussion paper that was released does include some potential reforms with respect to PBCs.

Senator DODSON: But are they emanating from that report? That's what I'm trying to get clear.

Mr Anderson: My understanding is that they're informed by that report. But, again, the questions as to the report itself and the contents of that need to go to Minister Scullion and Prime Minister and Cabinet.

Senator DODSON: So it would be advantageous if rep bodies and PBCs had a copy of the CATSI report to make some judgement about that, wouldn't it? That's not a question for you? Okay.

Mr Anderson: It's not a matter for me to comment on. I haven't been involved in all those discussions.

Senator DODSON: Can I return briefly to the expert technical advisory body.

CHAIR: Are you going to be much longer? Your time's expired. We'll come back to you, but if you haven't got long to go—

Senator DODSON: If I could just ask one last question, Mr Chairman, because I can find out these other matters I think.

CHAIR: Sure.

Senator DODSON: In the matter of decision-making, is free, prior and informed consent a matter that's going to be upheld or inbuilt into the legislation?

Mr Anderson: There are a range of different views on what the requirements are in terms of free, prior and informed consent. At the moment I don't believe there's any proposal in the discussion paper around amendments to change the existing position on how consent is required for decisions under the legislation or in relation to the legislation.

Senator DODSON: Yes. Okay.

Mr Anderson: I can add one other thing. You asked about when the ALRC's report was tabled. It was tabled on 4 June 2015.

Senator DODSON: Thank you. There's no discussion about extinguishment I presume?

Mr Anderson: No.

Senator DODSON: That's unusual! Thank you, Mr Chairman.

CHAIR: I can come back to you if you've got more.

Senator DODSON: No thanks, Mr Chairman. I realise time's precious in this committee.

CHAIR: I have this query. I have a group of constituents, I think there are about a hundred of them, who've built beach huts—though some of them are in the style of houses—along the coast in North Queensland. That's a fairly common practice. They are squatters, actually. They've never had title. They squat on crown land and they've been there for over a hundred years. A native title application was taken over a larger section of land, of which this land was part, and a determination was made, but the first that these hundred hut owners knew

about it was when the local council convened a meeting to determine what would happen to these huts, which were now on native title land. Is it possible that this application could proceed without those hundred building owners, if I can call them that, getting any notice at all?

Mr Anderson: I don't want to speculate but I will say that there are processes where the National Native Title Tribunal is required to advertise the fact of claims. There are processes to bring to the attention of the public the fact of a native title claim. That's really all I can say about that.

CHAIR: These hut owners have been seeking to meet with the corporation that apparently has the native title vested in it, which, I might say, is different to the local Indigenous people, who are quite supportive and easygoing. They've been trying to speak with this corporation just to talk about whether they could pay some rent, what they could do. The corporation asked them originally for a million dollars, then \$2½ million, then \$5 million, then \$10 million, then \$15 million—just to talk. Does that sound appropriate? Is that how the act is intended to work?

Mr Anderson: Without knowing anything about the factual matrix, it's pretty difficult to comment on that. If the native title holders actually have exclusive possession of the land, then they don't have to talk to anyone, unless government is proposing to do something that is going to be what, under the Native Title Act, is called a future act, which is something that legally interferes with their title. If these people are squatters, they don't have any right to be on the land.

CHAIR: They've been squatters for 100 years. The state government has wanted to get them off for years. It was state government Crown land. Perhaps I'm asking questions that are a bit detailed, but I have actually written to both the Indigenous affairs minister and the Attorney-General—and nobody's seen my letter? It was a couple of weeks back.

Mr M Johnson: Yes, Senator, we have seen your letter.

CHAIR: You have? So someone is looking at that and giving the Attorney some advice on that issue?

Mr Johnson: Yes, Senator, it's under consideration.

CHAIR: Can you, with your greater knowledge—I think it was a three-page letter explaining this—say anything, or would you prefer to complete your investigations and advise the Attorney, who will then no doubt respond to me?

Mr M Johnson: I think, Senator, there's probably nothing further I can add to Mr Anderson's comments. I think his comments regarding the nature of the native title rights and the operation of the regime under the act stand.

CHAIR: The fact that over 100 people have had buildings—some of them are houses, some of them are corrugated iron lean-tos, some have air-conditioning, double-storey, bathrooms, all mod cons. They didn't have to be advised? They now want to make some arrangements but can't even get to see the group, the corporation, that apparently has vested title in it without paying \$15 million.

Mr M Johnson: I'm not sure, Senator, if there's a question that we're able to answer there. All we can simply say is that the Native Title Act provides the regime by which native title

holders hold their native title and authorise or otherwise action by other people on that land, and that's the legal regime that will dictate what happens. Private entities acting in that space would operate under legal advice that they obtain as to what they can and can't do.

CHAIR: The difficulty of entering into any legal action is a lot of money which they'd have to raise themselves. They don't want to have a fight; they want to come to some arrangement where they can pay the native title holders a rental for the use of the land. I'm told that the land is in a floodplain, and so the local council have indicated that, if these current buildings are knocked down, which have been there pre-town planning, they won't allow any other buildings there because it's in a floodplain. So it becomes absolutely useless to anyone except the existing building owners. Does that make any difference to the—

Mr Anderson: I can comment on that. If exclusive native title has been determined over this area then, of course, it's of tremendous use and value to the native title holders. I think we need to keep clear that there's one group that apparently have a legally-determined right to this area as opposed to a group of squatters.

CHAIR: A group of squatters who've been there for 100 years—they and their forebears. This is a very small part of a huge tract of land between, effectively, Bowen and Townsville, hundreds of thousands of square kilometres—well, I'm not sure if it's 100,000-square kilometres, but big pieces of land. I think I'll wait until I receive some further written advice when you've been able to consider the matter further.

Senator DODSON: My question is in relation to the National Partnership Agreement on Legal Assistance Services 2015-20. The review is intended to assess the degree to which the objectives, outcomes and so forth—and regarding informed decisions for when this expires, which is June next year. The sector's made some submissions to that terms of reference, I think, and they've provided additional feedback, but it's not clear how much the Commonwealth will be putting in to fund this particular review. Can you tell me how much is going into it?

Ms Denley: The review you're referring to is of the national partnership agreement. We're concurrently doing a review of the Indigenous Legal Assistance Program. The review is to assess the effectiveness, efficiency and appropriateness of the agreement and the ILAP as mechanisms for achieving its respective objectives and outcomes. In terms of an actual reviewer, the details have not yet been settled. That also goes to the amount that will go towards a reviewer.

Senator DODSON: Are you looking for a reviewer that has some competence in the sector?

Ms Denley: Yes, that would form part of it.

Senator DODSON: How long before that reviewer might be appointed?

Ms Denley: The process is currently underway. We're consulting with all the relevant parties, as you've mentioned. It would be within the coming months.

Senator DODSON: Within the coming month?

Ms Denley: Month or two, yes.

Senator DODSON: The review is meant to end in December.

Ms Denley: That's right.

Senator DODSON: Is the reviewer going to have sufficient time to conduct the necessary consultations?

Ms Denley: We've worked with the relevant parties, in terms of the time frames we have in place, and we're looking to progress it as quickly as possible.

Senator DODSON: Will those particular sectors have some resources provided to them in order to respond to this review?

Ms Denley: By resources provided, do you mean in—

Senator DODSON: They're heavily strapped now as a service, trying to keep up with their demands, in most of those fields.

Ms Denley: There are not additional resources that are going to be provided to individual organisations to respond to the review.

Mr Gifford: If I can, Senator, in terms of trying to make the least impact on the sector itself, the consultant will engage directly with the sector and travel to the sector for the purposes of the consultations and, where possible, will try and align those between the review of the national partnership agreement and the review of the ILAP, together, so that we can keep this as efficient an exercise as possible.

Senator DODSON: That's a good idea. So you'll be coming to Broome to look at the Kimberley legal services, will you?

Mr Gifford: I haven't got the details yet, in terms of—

Senator DODSON: I'll be looking forward to that now that you've told me you're going to come and consult! And I'm sure that legal service will be wanting to know you're coming to their doorstep. Can you tell me how much the Commonwealth is spending on that second review—what did you call it?—the Indigenous Legal Assistance Program review?

Ms Denley: We haven't tested that in the market yet.

Senator DODSON: You haven't divided it. You're just putting it into one lump sum.

Ms Denley: We haven't got a figure yet for how much—

Senator DODSON: You doing a review without a figure.

Ms Denley: We haven't approached the market yet and we don't have a figure yet about how much will be spent on the review.

Mr Anderson: We've got to go out to tender, to get bids from people to be the independent reviewer.

Senator DODSON: That's a novel way of doing business.

Mr Anderson: We wouldn't announce publicly how much money we're willing to pay before we get the bids from people.

Senator DODSON: You must know what you're going to pay, surely?

Mr Anderson: We wouldn't announce that, publicly, ahead of a procurement process.

Senator DODSON: No, you may not, but you must have some idea. I'd be very concerned if it was an open chequebook.

Ms Denley: We certainly have a ballpark idea, based on previous reviews of a similar nature.

Senator DODSON: Again, the reviewer, I presume, will do both things.

Ms Denley: No, the reviews are going to be—

Senator DODSON: It'll be a separate reviewer for the program.

Ms Denley: It may be. It depends. The reviews are going to be conducted concurrently. It may be that the same reviewer is chosen for both, but that may not necessarily be the case.

Senator DODSON: If you're running the reviews concurrently and if you've got two reviewers, will they both turn up in the Kimberley to visit Kimberley Community Legal Services?

Ms Denley: We haven't reached that point in the process yet, but if there were two reviewers then, yes, they would be attending at the same—

Senator DODSON: They would operate concurrently at locations?

Ms Denley: Yes. It depends on the timing of the individual meetings. There'd be two separate processes, but wherever we can we'll ensure there are efficiencies. We're very aware that we don't want there to be review fatigue in the organisations, so we'll work with the organisations to ensure that we take that into account.

Senator DODSON: That was underlying my concern. Again, do you still believe it is possible for both reviews to be completed within the time frame?

Ms Denley: Yes.

Senator DODSON: Before December?

Ms Denley: Yes.

Senator DODSON: But you can't tell me when you're going to make a decision on the reviewers?

Ms Denley: We expect it to be shortly.

Senator DODSON: In the next couple of months?

Ms Denley: Things are underway but we don't have a specific date at this stage.

Senator DODSON: Thank you.

Senator PRATT: I have some questions about the royal commission into child sex abuse. I'm going to begin by asking if it's correct that the draft legislation, which we've seen, has been circulated to all states and territories and that no state has yet agreed to what it proposes.

Mr Gifford: Are you referring to the draft legislation in relation to the national redress scheme?

Senator PRATT: Yes, that's right.

Mr Gifford: I can't answer that question, unfortunately. The national redress scheme remains the responsibility of the Department of Social Services.

Senator PRATT: That department is the one liaising with the states on that legislation—is that right?

Mr Gifford: That's correct, yes.

Senator PRATT: In response to a question I asked at the supplementary budget estimates in October last year, the department advised that a task force would be established to coordinate implementation of the recommendations of the Royal Commission into

Institutional Responses to Child Sexual Abuse, and the AGD advised that the task force would operate from January this year. Has that task force commenced work?

Mr Gifford: Yes, that's correct. The task force has been established within the Civil Justice Policy and Programs Division. At present, we're in the process of recruiting for that task force. At the moment we have somewhere in the vicinity of seven officers dedicated to that task force, with further recruitment to be undertaken.

Senator PRATT: Who are the seven officers you've currently recruited and from which agencies?

Mr Gifford: We're doing an external recruitment exercise, so they're either new staff coming in from other areas of the AGD or external to the Attorney-General's Department. We're not seeking for secondments from other agencies or departments at this point in time. The way we envisage the task force working is to work across the departments and agencies across the Commonwealth to coordinate the exercise of making sure the recommendations are considered and responded to. Departments, such as Social Services, with the redress, will continue to take responsibility for their recommendations and work through their existing fora. The task force will make sure that we have visibility and are able to report to government in terms of progress of the particular recommendations.

Senator PRATT: Some of those recommendations pertain to health, education and regulation of charities and not-for-profits. Are you recruiting anyone from those agencies? Are you including officials from other departments in a task force arrangement to work on this?

Mr Gifford: At this stage, no, we haven't brought in anybody else from those particular departments and agencies. What we have done is we had our first interdepartmental committee meeting in March, to meet across the Commonwealth to look at the recommendations and to get an update about the progress against the recommendations to date.

Senator PRATT: In addition to a task force, there is an interdepartmental committee specific to this work?

Mr Gifford: The task force supports an interdepartmental committee. Our first meeting was chaired by the secretary.

Mr Moraitis: The first meeting, which I chaired, was two weeks ago.

Senator PRATT: Who's on that interdepartmental committee?

Mr Moraitis: A series of departments. I'll ask Mr Gifford or Ms O'Keefe to mention who they were.

Mr Gifford: Perhaps if I could take on notice to give you a full list, but, to give you an example, for instance is Department of Social Services, Department of the Prime Minister and Cabinet, Department of Health, Department of Education and Defence. Part of the work of the task force is to look at the 409 recommendations of the royal commission, identify the relevant and responsible department and agency and bring them around the table to make sure that we can understand what action is being taken in relation to those recommendations.

Mr Moraitis: The task force's role is not to actually implement every single recommendation; it is to oversee the distribution of responsibilities for those

recommendations, and that there has been all action by relevant departments and agencies. I should also add that the task force has the mandate to prepare for an apology later this year, so that's work that the task force is engaged in as well as part of their mandate.

Senator PRATT: I was aware of the task force but not aware of the interagency committee. What of those arrangements have been announced publicly?

Mr Moraitis: The first IDC meeting was, as I said, two weeks ago. There might be some draft terms of reference being prepared and a list of participants. We are happy to provide those.

Senator PRATT: So that's the terms of reference for the interagency committee supported by the task force?

Mr Moraitis: Correct.

Senator PRATT: Have you announced all of those arrangements publicly?

Mr Moraitis: Publicly, I don't think so. I think the task force is envisaging setting up a website which allows the public to track the 400-plus recommendations to see where they're at. Perhaps there might be a process where you could talk about the IDC there as well?

Mr Gifford: The most recent public announcement was in relation to COAG, where there was acknowledgement of the final report of the royal commission, and first ministers and the Prime Minister then committed, I believe, to reporting formally in terms of a government response on 15 June this year. So, at this stage, the initial task of the task force is to work towards a formal government response within that time frame.

Senator PRATT: Does the task force have a responsibility for tracking the implementation of redress, or is that parked separately?

Mr Gifford: It will encompass tracking progress against the redress recommendations and report.

Senator HUME: I have questions about the Australian Law Reform Commission review of the family law system. We asked some questions earlier today about funding of courts and also the Federal Circuit Court, but this is more about the review. Ms Saint, thank you for appearing. I want to ask you a little bit about the ALRC review. Can you talk me through how broad it is and what it is going to cover?

Ms Saint: The ALRC review of the family law system is a broad comprehensive review of the whole system which includes the Family Law Act, but also the broader operation of the system.

The terms of reference direct the commission to look at how the system is operating as a whole, and to make recommendations for reform that are focused on equipping the system to respond to the contemporary needs of Australian families into the future. And it asks the commission to have particular regard to the need to support families with complex needs, the need to deal with issues such as family violence and child abuse in particular, and the need to provide for a family law system that is the most efficient functioning system that provides quick and expedient outcomes for families, while minimising the financial burden.

Senator HUME: So when was the last review of the family law system?

Ms Saint: There hasn't been an ALRC review of the family law system previously. However, there have been numerous reports and parliamentary inquiries into aspects of the

family law system or particular discreet issues associated with the family law system since the inception of the act.

Senator HUME: Obviously there is a lot of people that have very personal experiences of this. Are you taking submissions from the public for this review?

Ms Saint: I should point out that the Australian Law Reform Commission is an independent organisation which is separate to the Attorney-General's Department.

Senator HUME: Yes.

Ms Saint: So particular questions about the conduct of that review should be directed to that agency, but I can comment generally about the process to the extent that the department's aware of it. Professor Helen Rhodes is leading the review process for the Law Reform Commission. They have established a website which sets out the process by which they're running their review. I understand that an issues paper will be released in mid-March which will be followed by a public consultation process where they will also call for written submissions. They've also indicated they will do a subsequent discussion paper reflecting back on those consultations towards the end of this year, and their reporting date is 31 March next year, 2019.

Senator HUME: So there is an opportunity for public submissions from general members of the public, as well as, I assume, key stakeholders, whether they be practitioners or women's groups or whoever they might be?

Ms Saint: Yes, that's my understanding, according to the website, that they will call for written submissions. I'm also aware on their website, at the moment, that they have an opportunity for individuals to, what they call, 'tell their story' which provides individuals with an opportunity to communicate directly to the commission.

Senator HUME: That's terrific. Can I ask you about, as part of this, I suppose, the parent management hearings. This is obviously a relatively new initiative, it's one of the legacies of the previous Attorney-General and that will be included, I assume, under the review umbrella, but it is a reasonably new process. Can you give us an update potentially on those parent management hearings and where we are in getting that process under way?

Ms Saint: Yes, of course. Just to turn to the Law Reform Commission, the terms of reference for that review do include a particular direction to the Law Reform Commission to have regard to opportunities for a less adversarial approach to the resolution of family law matters. That's actually pointed out in the terms of reference for that review. In terms of the parenting management hearings pilot, legislation to establish that pilot, which was announced in the budget last year, was introduced in the Senate on 6 December last year, and is actually before this committee for review and, I understand, report by 26 March. In terms of the preparations, the bill sets out the framework for how that pilot would operate. We anticipate, subject to the passage of the legislation, that the pilot would be able to commence in two locations before the end of this year.

Senator HUME: Where will those pilot sites be?

Ms Saint: One pilot site has been announced as Parramatta. The second pilot site is yet to be announced.

Senator HUME: I should know this but how much funding has been allocated to the parent management hearings pilot?

Ms Saint: In last year's budget, \$12.7 million has been allocated over four years.

Senator HUME: Who is doing the evaluation of the pilot and how will that be done?

Ms Saint: The pilot will be subject to an independent evaluation. Some funding to support that evaluation was included in the budget funding. An independent evaluator will be selected through an ordinary external procurement process following the passage of the legislation. The department is already working internally on scoping how that evaluation might run and the types of things that it would need to look at. Our intention is that the evaluation would run across the life of the pilot, so it would commence—

Senator HUME: What is the life of the pilot?

Ms Saint: Out to four years. So we would start gathering data quite early in the process. Depending on the timing of when the pilot commences, we would expect that at least initial observations could be made available to the ALRC for the purposes of its review.

Senator HUME: Terrific; that's exactly what I wanted to know. Thank you, Ms Saint. Thank you, Chair.

CHAIR: Senator Watt?

Senator WATT: Sorry, I'm waiting for my fearless leader.

Senator PRATT: I was asking some questions about the royal commission. When will these arrangements be formally announced? You've announced the task force, as I understand it, but I wasn't aware of the interagency coordination.

Mr Moraitis: It's been announced amongst the bureaucracy, so they're well aware of that. I don't know whether it's normal practice to publicly announce what's going on in that process. I guess Mr Gifford might—

Senator PRATT: There's enormous public interest in ensuring that these recommendations penetrate the whole of the Public Service.

Mr Moraitis: As I said in my previous comment, the task force will set up its website, which could be a very useful vehicle for that purpose. When that will happen—they're working on the website now, as far as I know.

Mr Gifford: In addition to the idea of whether a website has been established, the other thing to keep in mind on top of the formal government response for midyear this year is one of the other recommendations of the royal commissions is for annual reports to parliament. That is, obviously, still subject to a decision of government but, if that was undertaken, that would be a regular basis on which progress would be reported.

Senator PRATT: That was one of the recommendations. What will the role of the assistant minister for children be, and who they'll report to? Do they have a formal relationship with the task force or anything like that?

Mr Gifford: At this point, no, there is no formal relationship between the task force and the assistant minister for children. I believe the assistant minister for children is within the social services portfolio, and so, beyond that, I can't give you an indication as to what level of responsibility he will have for some of the recommendations going forward.

Senator PRATT: I just assumed that, because the royal commission had asked for one, they were looking for some political coordination of the issues within the task force, and there seems to be a mismatch within the portfolios. Has there been any discussion of that?

Mr Moraitis: There has been a discussion, if I may, at the first IDC about the role of key agencies, such as PM&C and DSS, and I think that's been discussed intersessionally as well. I don't have the latest decision on that.

Mr Gifford: The thing to note in relation to the assistant minister for children is that that allocation of ministerial responsibility predated the formulation of the task force. The task force is working its way through the recommendations, including the recommendation in relation to the establishment of a minister for children and again the office of children's safety. So both of those recommendations are still under consideration and subject to government decision.

Senator PRATT: So the office of children's safety and the minister for children—I just need to make sure that there's not a mismatch in terms of where the drivers for this are going.

Mr Moraitis: Of course, COAG will have an ongoing role in this context, so the states, territories and the Commonwealth will have a political engagement.

Senator PRATT: In that context, the minister for children might have a coordinating role with some of the state ministers. Can you give me an outline of the immediate priorities of the task force.

Mr Gifford: I can give you an idea of the activities of the task force, which is the best way to answer that question. Since our first meeting with departments and agencies, which was only a couple of weeks ago, we've circulated to those departments and agencies draft terms of reference for the IDC going forward. We'll meet on a monthly basis. Our first and primary task with the IDS is to go through each of the 409 recommendations and ensure that there is responsibility allocated within those departments and agencies so that there can't be anything that can slip between the cracks for who is responsible for taking those forward. Working towards a formal government response for 15 June of this year means that we need to be in a position to give advice to government about the nature of the implementation of those recommendations and formulate the formal government response.

Senator PRATT: So you've advised that there'll be a website. When will that be established and up and running?

Mr Gifford: The idea of a website, I should say, is still subject to government decision. At this stage our primary focus is on working towards the formal government response for the middle of this year.

Senator PRATT: So you've proposed the website?

Mr Gifford: It is a proposal, yes.

Senator PRATT: When do you expect the government to respond as to whether they'll do that?

Mr Gifford: At this stage we'll be working through a process whereby we will take a range of the recommendations to cabinet for endorsement, prior to a formal government response for 15 June.

Senator PRATT: It seems rather a long time to wait.

Mr Gifford: It is a long time but, by the same token, it is a very comprehensive body of work and it is very important that we make sure we give due consideration to all of those recommendations. In fairness, there is probably a body of work of five to 10 years of potential implementation.

Senator PRATT: I appreciate that, which is why I would think some of those recommendations are staging recommendations. With things like a commitment from government to report to parliament on progress, which the royal commission has asked for, it would seem silly for the government not to make a decision about reporting until June this year.

Mr Gifford: I should say that we're not coming from a zero base. As you would be aware, some of the reports were released much earlier than the final report, so obviously there's been significant progress in terms of implementing working with children checks and the redress scheme, as you referred to earlier.

Senator PRATT: I want to ask about some of the recommendations from previous reports that have not yet been implemented—and there has been no response from the government on whether they will be implemented. Has the government given prior consideration to the older recommendations, or is deliberation on those issues only starting now?

Mr Gifford: I can point to redress as a key example. Clearly there has been a decision made in relation to implementing a national redress scheme, so it is fair to say that some considerations have been considered much earlier than the more recent final report recommendations.

Senator PRATT: What about some of the other reports—other than recommendations? How are you addressing those?

Mr Anderson: Senator, the responsibility for progressing the response to the working with children checks has gone to Home Affairs.

Senator PRATT: We are aware of that. That is within—

Mr Anderson: It is the same with the criminal justice report.

Senator PRATT: ACIC or something like that, yes. We have some questions on notice for them and tracked that at the last estimates. I understand that with working with children checks there has been some progress, and on redress. I notice that the royal commission raised other issues, including prevention and causes, which had well-documented research papers prior to the recommendations. What consideration has been given to those elements?

Mr Gifford: I would have to take that on notice to be able to give you a detailed response about where those particular recommendations are up to.

Senator PRATT: Okay. I can give you an example. One of the reports of the royal commission included the need for support services for children with harmful sexual behaviours, and also the need for prevention services for adults with inappropriate thoughts that they may not yet have acted on that might require early intervention support and services. The royal commission identified issues that needed to be addressed. Are you considering those issue alongside the recommendations?

Mr Gifford: I'm not particularly familiar with the two examples you've given. So, rather than give you a misleading response as to where they're up to in terms of the particular agency or department that's responsible for those, I'll take those on notice, if you don't mind.

Senator PRATT: I'm happy for you to take them on notice, but it sounds to me like there isn't currently any action within government on those. I did ask the Department of Social Services at the last estimates, and they pointed the finger back at you guys to say that that was your responsibility.

Mr Gifford: One thing that has happened since our last estimates—because I recall the questions that we also received in terms of who was going to be responsible for the recommendations going forward, and at that point there hadn't been a decision made—is that, since that point in time, the task force has been established. Now it is clearer in terms of the lines of responsibility. But we are just kicking off after January of this year and so we're still getting across where each of the recommendations is up to. We're happy to pursue that for you.

Senator PRATT: Was there a reason why these arrangements weren't put in place prior to the royal commission concluding, given they had a whole range of interim recommendations?

Mr Gifford: At that point in time, there wasn't actually an understanding of what the final shape of the report and the recommendations was going to be. Decisions were informed by the nature of the final report.

Senator PRATT: Notwithstanding the fact that the whole range of interim recommendations meant that clearly you knew a long time ago that this interagency coordination would be required?

Mr Gifford: I don't think anyone was ever disputing the need for a mechanism such as this. It was just a question of which department or agency would be responsible for it.

Senator PRATT: Okay. The reports that have been announced also include sentencing. Have you given any consideration to the issues of sentencing in your interagency coordination yet?

Mr Bouwhuis: Yes, we've been looking at sentencing for child sex offenders. There's a draft bill currently before the Senate which deals with the issue. So it is something we have been looking into for some time.

Senator PRATT: That was in the context of the reports from the royal commission?

Mr Bouwhuis: It's consistent with the recommendations of the reports of the royal commission. As indicated, we've been aware that this issue has been running for some time, so we have been looking at work across the department which is consistent with the recommendations and the work of the commission.

Senator PRATT: What about restorative justice and the issues raised by the royal commission? Where do they currently sit? I've nearly finished these questions. I want to ask also about the papers that also raised questions around policy context for sharing information relating to child sex abuse and who's managing those issues.

Mr Gifford: The questions you're asking go to exactly the task before the task force at the moment, which is working with departments and agencies to allocate responsibility for each of these recommendations.

Senator PRATT: I would have thought the context for sharing information would be within the Attorney-General's portfolio.

Mr Gifford: I'm not quite sure about that. At the moment, with the machinery-of-government changes, there have been some changes to the nature of our responsibility in relation to criminal justice, and there is a split of responsibility between the Attorney-General's Department and the Department of Home Affairs. We have had conversations in the last week with the Department of Home Affairs about the recommendations from the royal commission report, so we are just trying to get the detail of who is responsible for those recommendations.

Mr Moraitis: Are you asking about who keeps the information and the records from the royal commission?

Senator PRATT: No. One of the papers done by the royal commission was on policy context for sharing information relating to child sex abuse and the need for national frameworks and sharing information between departments and community organisations, not to mention comparable data and a whole range of other issues.

Mr Anderson: Because the data is held in so many different sectors, as Mr Gifford has said, we are trying to work out what's the best place within the Commonwealth to take forward the Commonwealth's part. We are happy to take this on notice and come back to you, but we're still assigning some of the responsibilities.

Senator PRATT: I guess what I'm trying to highlight to you is that papers like that were available a long time before the royal commission reported, yet questions like information sharing in these contexts don't seem to have been addressed yet by the government as these issues arose during the course of the royal commission.

Mr Bouwhuis: Perhaps I could add that there is information sharing about child sex offenders between the AFP and other agencies, for example. I guess it's a question of looking at that and seeing what mechanisms are in place currently and how to build on that. Because, as Mr Anderson has indicated, a range of agencies are involved, it's a little complicated to give you a simple answer, and I don't think there is one, but I will just say there is a lot of information-sharing going on. It is a question of how to build on those, but the question isn't an easy one to answer, as there are a number of agencies involved in that process.

Senator PRATT: I don't discount any of that. I guess that just raises the question, for me, of why, when some of these papers on topics like information sharing are now a year old, the questions are now only just coming before the task force to deal with those issues arising from the royal commission.

I'll just ask now, in the context of redress and the role of the task force in ensuring that things happen: you're aware that the royal commission said in its interim recommendations—well, they were complete recommendations, but they were early recommendations—that the scheme should be up and running by 1 July last year?

Mr Gifford: Yes.

Senator PRATT: What have you done to hold the Department of Social Services to account in meeting that timetable?

Mr Gifford: Each of the agencies and departments that are responsible for the recommendations will be working towards implementation of the recommendations in accordance with the royal commission report. That said, it's for each department and agency to work through the practicalities of implementation, and some of that will actually also be whether or not it's achievable within the time frame that the royal commission has referred to. As for the task force itself, while we'll be very vigilant to make sure we are tracking progress about the recommendations, our task is not necessarily to hold other departments or agencies to account but to make sure that where they have assumed responsibility for the recommendations they are working towards resolution of those as efficiently as possible.

Senator PRATT: In terms of the role of AGD in oversight of this, are you just introducing oversight and coordination with DSS on these questions only now?

Mr Gifford: AGD's actually had a longer and deeper involvement with the redress. Originally the task force was established within the Department of the Prime Minister and Cabinet, and some AGD officers were involved with that at that point in time. Indeed, we support the redress scheme to the extent that there's any exercise in terms of referral of powers from the states and territories. So, we've had a long and ongoing involvement with the development of the redress scheme. The task force is a new initiative and has been established only over the course of the past month. Part of that exercise will be to track progress and perhaps something along the lines of a traffic light to make sure that we are then able to track recommendations against timing for implementation.

Senator PRATT: Do you have any explanation as to why it has taken so long to get to this point in time where we've got legislation but still no scheme and still no states signed up to it?

Mr Gifford: I think that's a—

Mr Anderson: I think you should direct that question to Social Services.

Senator PRATT: I think that's what Mr Gifford was about to say.

Mr Gifford: Took the words right out of my mouth!

Senator PRATT: Why has the government not allocated any money to redress in this year's budget? Surely that's also a question for AGD to be advocating around? If you can tell me what your understanding of the state of the budget is, that would be terrific, in relation to funding for redress.

Mr Gifford: In terms of the redress budget, the only component of the budget that the Attorney-General's Department received is in relation to our support for the work in terms of the referral of powers from states and territories. Questions more broadly about the scope of the budget provided for the establishment of the redress scheme should be directed to the Department of Social Services.

Senator PRATT: Notwithstanding the fact that it's in essence a compensation scheme for criminal acts? If it's a decision of government to put it there, then so be it.

Mr Moraitis: It's a focus on the victims, and I guess that's the prism in which the government's decided that DSS should be the appropriate agency to manage the scheme. And obviously the Commonwealth is committed vis-a-vis its own obligations as former territory agencies.

Senator PRATT: Finally, I want to confirm with you that in relation to some of the recommendations you're still unclear whether AGD or Home Affairs are responsible for some of those recommendations.

Mr Gifford: As I said, we met with DHA in the last week to have the conversation about relevant recommendations. I think officers at that meeting may have a clearer understanding than I do. I wasn't party to that conversation. I believe it's relatively clear for our respective teams.

Senator PRATT: Which recommendations are unclear?

Mr Gifford: Sorry—perhaps you could indicate which recommendations you're referring to.

Senator PRATT: I don't have them all in front of me, but you're saying there's a bracket of recommendations where you don't know who has jurisdiction of them?

Mr Gifford: No. Perhaps I could clarify. This is the process the task force is going through, not just with Home Affairs but with every department and agency, to make sure that we have a very clear understanding of who is responsible. For many recommendations there is overlapping responsibility. Some of the recommendations actually touch on many agencies across the Commonwealth, states, territories and non-government institutions. So it's perhaps not fair to say there's a lack of clarity about AGD and Home Affairs so much as it's an extensive exercise to make sure we exhaustively identify anybody who has lead or secondary responsibility.

Senator PRATT: Sorry, Mr Gifford: it was you who said it was unclear.

Mr Gifford: I acknowledge that.

Senator PRATT: When will that be resolved?

Mr Gifford: That is an exercise that we're trying to complete by the time we meet for the second IDC, which I believe is scheduled for two weeks time.

Senator PRATT: So as yet you don't know which recommendations formally fit in with which departments but that will be resolved by—when, June, you're saying?

Mr Gifford: June will be the formal government response—by 15 June. In advance of that we will have settled which is the lead department, who are the contributing departments and agencies and which is the forum by which recommendations can be progressed.

Senator PRATT: I'm still unclear, but I'll give the call to someone else.

Senator MOLAN: I'd like to get a feel for the moneys that are being spent and the service that the government's providing to family violence. I think that goes to group 2, 1.5—family relationships. And Senator Hanson asked a number of questions earlier, and Senator Hume has touched on this as well. It goes to the overall effort that the government is making in relation to improving family law. It seems to me that I can find about \$150 million in the budget since about 2015 in relation to the programs that you guys are running to prevent family violence. That's a commitment that I think we would all applaud. But can you give us some kind of outline of the initiatives and the programs that you are looking at in relation to that?

Ms Bogaart: You are right: since 2015 there has been quite a large investment from the government in packages to support families experiencing domestic violence. In 2015 there

was \$100 million in the women's safety package, of which this department received \$15 million. In 2016 there was some funding attached to the third action plan of the National Plan to Reduce Violence against Women and their Children. That was, again, \$100 million, of which this department received \$30 million. Then there was a further 2017 budget measure for family law and legal assistance services related to domestic violence, of \$82.5 million.

Senator MOLAN: It was 82.5? Can you break that down a bit? I had \$30 million, but perhaps that's just for you?

Ms Bogaart: There was some for family law services and there was some for legal assistance services.

Senator MOLAN: As a rule of thumb, that takes us close to at least \$300 million, or in the area of \$300 million, since 2015.

Ms Bogaart: Close to.

Senator MOLAN: Can you go back or at least give me an impression, or I'll put it on notice, for the years prior to that, going back to, say, 2009 how we allocated moneys for family violence in those periods? All I'm after is a total to show a comparison over time.

Ms Bogaart: I would have to take that on notice. The figures I've given you are across the Australian government, not necessarily for our portfolio.

Senator MOLAN: Is it from the third National Plan To Reduce Violence Against Women And Children that the domestic violence units have come?

Ms Bogaart: That's correct. The domestic violence units were funded through the third action plan. They were originally funded through the Women's Safety Package. There was \$15 million in the Women's Safety Package in 2015, which funded 12 domestic violence units and five health justice partnerships.

Senator MOLAN: What would one of those units consist of?

Ms Bogaart: What do they do? Or a dollar figure?

Senator MOLAN: Is it a unit or an office in somewhere in government locally situated?

Ms Bogaart: They are situated nationally in Community Legal Centres and Legal Aid Commissions.

Senator MOLAN: I assume they have a staff of a couple of people.

Ms Bogaart: It varies across the different units but they are generally staffed by legal practitioners as well as social workers who provide integrated services to women and children affected by domestic violence. So their legal issues are taken care of by the lawyers and other support services they need are managed by social workers and other case workers.

Senator MOLAN: There are 12 of those?

Ms Bogaart: There were 12 originally from the Women's Safety Package funding. In the third action plan, those 12 were expanded by a further year and, in the 2017 budget, there was funding provided for six additional units and the expansion of one existing unit. There are now 18.

Senator MOLAN: That's good. We heard about one of the parental management units going into Parramatta, I think. Do these units exist yet?

Ms Bogaart: The units do exist. It depends. The units are located in different places. They're not necessarily located with the parenting management location in Parramatta but there is one in south-west Sydney that assists that region.

Senator MOLAN: But you haven't decided on the other five?

Ms Bogaart: I can give you the locations.

Senator MOLAN: Sorry, can I put that on notice and can you give it to me on notice?

Ms Bogaart: I'll clarify that the south-west Sydney one was an original one, not one of the new ones. I'm happy to take on notice the locations of the 18.

Senator RICE: My question is about the government's sex and gender guidelines, following up my questions from last estimates. In October, I was told that a variety of government departments were being consulted about the rollout of the new sex and gender guidelines and responses were due by 2 October. I'm presuming, it now being February, that consultation has been completed and the response has been received. I will start with what the outcome of the consultation with government departments has been.

Mr M Johnson: You are correct: there's been an ongoing series of consultations and evaluation of the sex and gender guidelines. That did include consultations with agencies in September and October 2017, but the evaluation is still ongoing. There are several limbs to it, including further consultations with departments and agencies in January of this year following on from the original consultations and so the evaluation is not yet complete. I do have some high-level insights from the consultation with agencies so far. I will preface that by saying what I'm about to say probably won't be particularly insightful or detailed in terms of what you might be after but it is what we have at hand thus far. Departments and agencies are creating a baseline for information to assess the implementation of the guidelines, which is the purpose of the evaluation that we're undertaking. All agencies have processes to attempt internal resolution of conflicts; however, the complexity of some issues may require a case-by-case approach.

Diversity training, including with respect to gender, is widespread across government departments and agencies. The department—that's the Attorney-General's Department—has shared examples of best practice with other departments and agencies learnt from the surveys. For example, the department has circulated gender affirmation plans developed by the Department of Human Services.

On the basis of the responses received, implementation of the guidelines by departments and agencies is an iterative process with progressive change taking place. All agencies have reported reviewing their legislation, regulations and policies for consistency with the guidelines. All agencies reported they collect and record female, male and X data in sex and/or gender fields in forms, templates and systems. Agencies report they collect gender information predominantly for identity, statistical purposes and eligibility for services and benefits. Security of personal records is assured using a range of factors, including identity authentication and verification, record access, audit logs and relevant training.

They are a broadbrush range of insights we've gathered from the surveys and inputs so far. We're still in the process of pulling all that together, which will, ultimately, quite likely lead to some changes to the sex and gender guidelines.

Senator RICE: Have all departments been surveyed so far?

Mr M Johnson: I'll have to take that on notice. I won't be able to commit right now to saying each and every agency; what I can say is a very large number of agencies were included in the surveys.

Senator RICE: At last estimates, responses were due by 2 October. Then you said you did consultation in January. Was that going back to the same departments and agencies, or was it following up with the ones that you hadn't received responses from?

Mr M Johnson: It was a different tranche of consultation. The input was received in September and October. That fed into further evaluation happening in-house within our department, which led to a range of other questions to put and seek views on from the agencies in the January tranche.

Senator RICE: Following that consultation, are you able to say what the level of compliance with the guidelines is across departments?

Mr M Johnson: I think the best characterisation—and the point I made—is that compliance is an iterative process. I think it might be useful to return to the purpose of the sex and gender guidelines, which is to create that change and have agencies move in a positive direction, because we all want agencies to move in a positive direction as quickly as possible. I don't want to say it's about compliance; it's less about using a stick to point out those who haven't complied and being more facilitative to provide the advice and assistance to agencies to help them improve their compliance.

Senator RICE: Not that I want to be using a stick rather than a carrot, but these guidelines were developed in July 2013. Agencies were meant to have been compliant by July 2016. We're now two years on from July 2016. At what stage is there going to be more definitive direction to agencies that they've got to get their house in order if they're not compliant?

Mr M Johnson: The role of the department in devising and promulgating the guidelines is to facilitate. The evaluation we're undertaking is geared towards moving that forward as far as we can and to have a bit of a checkpoint as to the compliance. But, ultimately, it's a matter for the agencies and for government to press any buttons in that respect but, when our evaluation is complete, we will have a better picture—more than I've been able to share with you this evening—of the level of compliance thus far.

Senator RICE: When is it expected that your evaluation will be complete?

Mr M Johnson: We haven't set a precise time frame on it, but I could expect it to be in the first half of this year.

Senator RICE: So that then will lead to recommendations for government, potentially with modifications to the guidelines?

Mr M Johnson: That's a likely outcome, yes.

Senator RICE: Can you share as to what areas are being considered at the moment? Which areas of the guidelines are you looking at modifying?

Mr M Johnson: I'd probably err against that. To the extent that you'd like some details, I'm happy to take that on notice. I don't have the precise details in front of me.

Senator RICE: All right. It seems like it's a very, very slow process. Meanwhile, we've got people still having to engage with government departments and not having their gender

identity appropriately recognised, or the appropriate listings in terms of data collection still not being appropriate for them.

I may as well continue in a similar vein, with information about the new marriage forms—the updated forms of marriage, now that we've got marriage equality, which is a wonderful achievement. I've had some issues raised with me about the new marriage forms. The two people getting married now have the option of a non-gendered partner box—

Ms Saint: That's correct.

Senator RICE: following marriage equality legislation. But the form still requires them to give their mother and their father. Has the department considered that this isn't suitable for all families in Australia, and that there are other parental configurations in Australia other than just a mother and a father? What options are available to a person whose parents don't 'match' being a mother and a father?

Ms Saint: Yes, those issues have been raised with the department. As you rightly pointed out, we made some changes to the forms very quickly and launched them to coincide with the commencement of marriage equality on 9 December last year. We are undertaking a broader review of the marriage forms. Those issues have been raised with us and we're considering those as part of that broader review.

Senator RICE: So, looking at the ability to have parents listed on the forms other than just mother or father?

Ms Saint: Yes: for example, the use of the term 'parent' rather than 'mother' or 'father'. That is one thing that is being considered.

Senator RICE: What's the timing of that review of the marriage forms?

Ms Saint: That's a broader, more wholesale review of all the marriage forms. That review is underway. We don't have an express time frame set around when we would finalise it, but it's fairly well advanced. It was part of the preparatory work that we were doing in any case.

Senator RICE: Right.

Ms Saint: So our process will be consultation with celebrant associations and then advice to government about potential changes to the forms.

Senator RICE: So, sometime this year?

Ms Saint: Yes, that would be my expectation.

Senator RICE: Perhaps the middle of the year!

The other item that's been raised with me is that item 4 on the form requires the marrying people to identify their sex. Have the implications for transgender people been taken into consideration in looking at gender rather than at sex?

Ms Saint: Yes, that issue has also been raised with us. That item was retained because the Australian Bureau of Statistics collects data based on the sex and age of the parties to every marriage in Australia. But we in the department are having continuing discussions with the ABS about the collection of data more generally, and that is feeding into the review of the forms as well.

Senator RICE: Okay. You said you were going to talk with celebrants about the forms. What other organisations are you talking with about the forms?

Ms Saint: Obviously, we're having regard to things like the guidelines in the development of the forms. So we're talking internally as part of that process. We've also been talking, obviously, to the ABS as it collects data around the number of marriages. But we would propose to use our celebrant associations network. We have a regular twice-yearly meeting with those associations as the primary forum for consultation on those forms.

Senator RICE: Have you consulted with, or would you consider consulting with, the various LGBTI peak organisations?

Ms Saint: I have had representations from at least one of those organisations already. That has been fed into the review, so, obviously, we're willing to receive that feedback on an ongoing basis as part of this review as well. In terms of consultation in a more meaningful sense, that would require a decision of government about the actual consultation and who we could consult with.

Senator RICE: So if an organisation wants to have input, to give you their views about these forms, now would be a good time to do it?

Ms Saint: Yes, and some of them already are.

Senator RICE: Right, okay.

Senator RICE: If an organisation wanted to have input—to give you their views about these forms—would now be a good time to do it?

Ms Saint: Yes, and some of them already are.

Senator PRATT: I want to return to some questions in relation to the royal commission. I want to clear up the confusion that seems apparent within government about who is responsible for key recommendations of the royal commission. In terms of institutional oversight, who will oversee the Child Safe Standards?

Mr Gifford: The Department of Social Services will be the lead department in relation to that recommendation.

Senator PRATT: What involvement will the ACNC have in that? Because not all organisations will have an involvement with the Department of Social Services.

Mr Gifford: That's part of the exercise we're going through in trying to identify who would be a lead department, so to speak, and who would be the contributing agencies as well. So if I can take a step back and give you a sense of where the taskforce is at with that exercise. Having met for the first time less than two weeks ago, part of the exercise we went through was to circulate a table which included all 409 recommendations and an initial assessment of where we thought the lead agency would be. That's currently with each of those departments and agencies for their consideration, and we are awaiting their feedback on that, so that we have confirmation of where those responsibilities lie.

Senator PRATT: In that table, how many agencies are there where it's not clear whether the responsibility will sit with AGD or with the Department of Home Affairs?

Mr Gifford: I couldn't tell you exactly how many recommendations sit currently against AGD or DHA, but certainly there is an indication against each of the recommendations about an initial assessment of who the lead agency would be.

Senator PRATT: So you've made an initial assessment of that? And that is clear in terms of the movement of those responsibilities and powers, and in terms of the legislative responsibility for those things?

Mr Gifford: Can you elaborate in terms of the movement of the powers and the responsibilities?

Senator PRATT: Things like ACIC which have moved from AGD to Home Affairs?

Mr Gifford: I see. Our initial assessment is clear about who the lead department and agency is, and we're just seeking confirmation in feedback from those departments and agencies that they agree that they're the responsible agencies. We're also checking that we haven't also overlooked another department or agency who has shared responsibility in that space.

Senator PRATT: Is it regional development that does local government? Are they on the taskforce? Are they on the interagency group?

Mr Gifford: I will have to take that question on notice, Senator.

Senator PRATT: Which agency will be responsible for ensuring that all institutions, including the Australian government, that engage in child-related work, meet the Child Safe Standards.

Mr Gifford: That's an excellent example about one of the recommendations where effectively there are responsibilities which we need to allocate within the Commonwealth, but it's not a Commonwealth sole responsibility. We will also need to work with the states and territories as well in relation to a recommendation like that. So for those particular recommendations where there are so many owners, so to speak, we need to work out the most efficient forum to take those recommendations forward. In some instances we will be working across the jurisdictions within the working groups, for instance, the Council of Attorneys-General and others. There will be interjurisdictional forums as well. That's a very good example of one of those recommendations where, effectively, the Commonwealth will need to take its share of the responsibility, but also work in partnership with the states, territories and non-government institutions.

Senator PRATT: Yes, of course, but is AGD or DSS that will take ultimate responsibility for ensuring that outcomes on the implementation of Child Safe Standards stay on track?

Mr Gifford: For Child Safe Standards, I think the lead department will be Department of Social Services.

Senator PRATT: So they will be responsible for upholding those standards within all Commonwealth agencies? Or will it be AGD?

Mr Gifford: No; again, that gets to a question of how that particular recommendation will be implemented. While it's talking about a responsibility that all departments and agencies have, we don't see a particular department or agency be accountable for all departments' and agencies' implementation of that recommendation. For those particular recommendations, each department and agency will need to undertake their own health check, so to speak, in terms of making sure they're implementing against that recommendation.

Senator PRATT: With respect to whether the government will commit to any of these recommendations prior to June, I'm very concerned that for victims of sexual abuse—and in

terms of the prevention of future sexual abuse—it appears we'll be waiting until June for a formal government response to all of the recommendations.

Mr Gifford: Again, the way the task force proposes to work through each of the recommendations is not to disrupt work that is already underway. If there is work already underway, for instance, and a particular minister wishes to take forward a recommendation in advance of June, the task force won't seek to slow that down or inhibit that in any way, shape or form. What the task force will try and do is make sure we can maintain visibility of how and when it's being implemented. So government can and will make decisions in advance of 15 June if it wishes to implement those recommendations.

Mr Anderson: If I could just add to that by way of example, there were some of the recommendations in a redress report, which went to civil litigation. They were ones that this department was responsible for, and some of those were actioned going back as far as May 2016. For example, in taking action to remove limitation periods, the Commonwealth acted on 4 May 2016. The then Attorney-General made a legal services direction, directing Commonwealth agencies not to plead a defence based on an expired limitation period.

Similarly, in terms of the model litigant approaches, which were also recommended in that report, this department has developed guiding principles for Commonwealth entities when responding to civil claims concerning allegations of institutional child sexual abuse. So a number of recommendations have already been acted on, and that's publicly been stated by the government as well.

Senator PRATT: Okay. I am concerned that we're being told to wait until June, essentially, on key issues like filling gaps in specialist sexual assault services—they go to some of the issues I raised before around the need for prevention. We haven't yet seen even in-principle acknowledgement from government about the intention to implement such critical recommendations.

Mr Gifford: If I could reiterate, then, and perhaps rephrase it, in terms of 15 June, that is a recommendation about a formal government response. That will be the point at which an indication is given on the acceptance or otherwise of each of those 409 recommendations. There is nothing to prevent—and, indeed, we will be encouraging—departments and agencies to seek government endorsement of any recommendations ahead of that, if they are able to do so.

Senator PRATT: I don't think that's urgent enough, but I can accept that you're just giving the evidence on what the arrangements currently are. I'm quite disturbed that we won't know the government's intention on many of these key recommendations until then.

Mr Gifford: If I can make the point—I think it came from last estimates, and I'm taking your point this time around as well—there was a concern, after the royal commission ended, about what happened. That is why this department has volunteered to take on this leadership role, to make sure that there is progress made against this significant body of work. But it will take quite some time to implement all of those recommendations.

Senator PRATT: Yes. Is ACIC represented on your interagency committee separately to the Department of Home Affairs? I'm just trying to clear up the considerable confusion as to where the Department of Home Affairs or AGD has responsibility.

Ms O'Keeffe: As part of the work we'll be doing at the next IDC meeting, we'll be having a discussion about whether there should be other agencies or statutory office holders who are co-opted into the IDC to come to talk about particular issues or as permanent members. Some other options that have been raised are around the eSafety Commissioner. The ACIC was not represented independently at the last meeting, but that is certainly a matter that can be discussed at the next one.

Senator PRATT: Who will represent ACIC and officers like the eSafety Commissioner, in terms of the departmental heads?

Ms O'Keeffe: In terms of the eSafety Commissioner, last time it was represented by Mike Mrdak, the secretary of communications, but there has not yet been a formal decision about whether ACIC would be on the committee, so I couldn't give you that advice.

Senator PRATT: We have some questions about funding to the community legal services and on women's safety. I will start with funding certainty for the Community Legal Centre. As I understand it, the National Partnership Agreement on Legal Assistance Services review report is to be completed in December this year, which doesn't include much time for funding commitments for the budget in 2019-20. If no funding commitment is made in 2019 it will be left until May 2020, with only one month's notice provided to the sector. What is the government doing about this? Are you prepared to leave organisations in that state, or will you make a quick decision about funding when that decision report comes down in December this year?

Mrs Hermann: The National Partnership Agreement on Legal Assistance Services expires on 30 June 2020. The review you mentioned of the National Partnership Agreement is due to be completed by approximately December of this year and the intention is that future funding arrangements will be re-negotiated prior to the expiry of that NPA.

Mr Anderson: That is 18 months from the completion of review to negotiate—

Senator PRATT: Yes. I thought there was a three-month gap between the budget and the new funding arrangements, but you're telling me it is 18 months, based on that? So your expectation is that the existing funding arrangements, including the top-up funding that was given, will remain in place until then?

Mrs Hermann: Until the expiry of the current NPA.

Senator PRATT: On the Women's Safety Package and the legal assistance evaluation, I'm seeking an update on the evaluation of the Women's Safety Package funding provided to community legal centres and the legal aid commissions.

Ms Bogaart: The evaluation of the domestic violence units under the Women's Safety Package is due to be completed by August this year. We have engaged an external consultant to conduct those evaluations and we expect that by August, in order to have a picture of them before the expiry of the agreements on 30 June next year.

Senator PRATT: As I understand it, the sector has not been provided with any information yet about how evaluations will be conducted, and that the funding was a pilot. Is there further discussion about, or commitment to, funding for a broader rollout, if the evaluation is successful?

Ms Bogaart: The funding was a pilot. That is correct. The evaluation will assist government to make decisions about whether funding is continued or rolled out further. The sector has had some initial information about the evaluation. There was a community of practice meeting, I believe last week or the week before, where the consultant that has been engaged met via telephone with all of the service providers to discuss how the evaluation will take place.

Senator PRATT: What you are telling me is that the sector is now receiving information about how the evaluation will be conducted?

Ms Bogaart: That is correct, and they will be involved throughout the evaluation.

Senator PRATT: Will that include discussion about commitment or funding for a broad rollout, or will it only include discussion about evaluation?

Ms Bogaart: Discussions about further funding or rollout will be a matter for government, once the evaluation is finalised.

Senator PRATT: I think we are able to move onto National Archives, Chair.

CHAIR: What about group 3, National Security and Criminal Justice Group? Does anyone have questions on that?

Senator PRATT: I think we were going to do these ones there?

Senator WATT: We have some questions that probably cross over between there and ASIO, so I don't know how you want to handle that. What I was thinking is that perhaps if ASIO is around, we could—

Senator PRATT: We could do the National Archives and then—

Senator WATT: Combine them.

Senator PRATT: We don't have many for National Archives and our Group 3 questions are both for ASIO and Group 3.

Senator WATT: The most efficient way to deal with it would be just to get National Archives—

CHAIR: There are other senators who want National Archives and they will be expecting us to deal with Group 3 first.

Senator PRATT: It essentially means we will be asking the same questions twice, half an hour apart.

Senator Cash: Should we bring ASIO up?

CHAIR: If we do Group 3 and ASIO together, because the only ones who want ASIO are the Labor Party and I think Senator McKim. So, we'll contact Senator McKim and deal with Group 3 and ASIO together, and then finish with National Archives later. So, we'll deal with Group 3 and ASIO, if they can come to the table. And we'll try to get Senator McKim for ASIO.

Senator Cash: Would it be better to bring National Archives on after 9.30, dismiss them and then spend the rest of the time on ASIO and the department and that way as many questions as—

CHAIR: Strangely, I have three—Labor, Greens and I think Xenophon—wanting to question the National Archives. We will take a 15-minute break. It may be that we'll deal with

the National Archives, if we can get the senators who wanted them, and we need to get the other senator who wanted ASIO, so we will leave it in abeyance until we resume after a tea break.

Proceedings suspended from 21:18 to 21:36
Australian Security Intelligence Organisation

CHAIR: I call back to order the Legal and Constitutional Affairs Legislation Committee dealing with additional estimates for the 2017-18 budget. We are now dealing with Group 3—Criminal Justice and National Security Group and ASIO together, who will take questions in relation to any of those matters. It's my melancholy duty to tell the National Archives that they are, at this stage, still required—if we get to them. My apologies for that.

Senator PRATT: I'm hoping we will.

CHAIR: I've been hoping we would all day, Senator Pratt, but I'm not terribly confident. All I can tell them is that I won't be delaying them at all.

Senator PRATT: I'm going to begin by asking both AGD and ASIO why Huawei was prohibited from supplying equipment to NBN in 2013.

Mr Moraitis: That was a decision of a previous government. I can't comment on that.

Senator PRATT: I note that Prime Minister Turnbull was opposed to the prohibition at that time, so I'm interested to know has the threat of foreign espionage receded in recent years?

CHAIR: Sorry, are they related? Huawei was the Labor government, which this government is not going to answer for.

Senator PRATT: This government may well have to answer to it given there are newspaper reports of the Prime Minister's trip to the US last week saying he was briefed on US concerns about the involvement of certain companies in 5G networks. This was at a meeting with heads of the National Security Agency and the Department of Homeland Security.

CHAIR: I'm just trying to make it clear. Is the question: are they worried about foreign involvement in the 5G?

Senator PRATT: Yes. I'll be more specific in my question.

CHAIR: Thank you.

Senator PRATT: Given the concerns of our primary security partner on the dangers of Chinese government involvement in critical telecommunications infrastructure, do you see any risk in the decision by the Turnbull government to involve Huawei in its working group to rollout Australia's 5G network?

Mr Moraitis: Speaking on behalf of the department, that is a matter for the Department of Home Affairs. It's to do with critical infrastructure, and the TSSR, which is the related legislation, has transferred to home affairs. There was a Critical Infrastructure Centre transfer as part of that process. I'll defer to Mr Lewis on the issue of foreign interference.

Mr Duncan Lewis: We made plain the issue of foreign interference in Australia, I hope, in our annual report to the parliament. You'll recall that we said that foreign interference was

being conducted at an 'unprecedented' level—that was the word we used. I stand by those remarks.

I would not comment on individual companies or individual countries, because these matters are country and company agnostic. We take each case on its merits and, of course, as Secretary Moraitis has said, we're not in a position to—and I certainly would not—comment on a decision that was taken some time ago by a former government.

Senator PRATT: Okay. I'm going to ask you about a decision that's been taken by this government and the current Minister for Communications. I don't want to single anyone out, but we've had certain security risks highlighted about it. The Minister for Communications has invited a range of companies to participate in a 5G working group. Was ASIO or AGD consulted about who was invited to participate in that?

Mr Duncan Lewis: Any discussion that I have with a minister, obviously, is something that I wouldn't cover here. What the minister decides to do in terms of his consultation is really a matter for him and for his department.

Senator PRATT: You've talked about an unprecedented risk. I'm not characterising any particular country here. It could be America, it could be China, it could be Japan or it could be Timbuktu—I'm not casting aspersions on anyone. But one of the risks that has been associated with this is commercial espionage, not just risks to national security. What do you do if there are telecommunications providers that have to use or seek to use equipment within a 5G rollout that could have potential security risks attached to it? Whose responsibility is it to advise the public and companies about whether there are unacceptable risks with that?

Mr Moraitis: First of all, I preface that by reminding the committee that the telecom sector security reforms that were brought in come into effect in September. They provide a mechanism to engage with telcos on issues of national security risk involving that sector, so it's sector specific. They are in parallel with the creation of the Critical Infrastructure Centre, which—I think it's a matter of public record—focuses on telcos and the electricity sector and a few others. Both of those, the centre and the regime, under the TSSR, are now part of the Department of Home Affairs, so they'd be the department you should ask those questions of. I'll just remind the committee that there is an act called the TSSR, which provides mechanisms for engaging with companies on the issues of purchasing, offshoring, outsourcing and a whole variety of mechanisms, including mitigation suggestions.

Senator PRATT: I don't recall us being clearly told how to break down each of those previous responsibilities to work through them in these estimates. Are you unable to answer those questions for me? Normally, you would.

Mr Moraitis: Which ones? How would you deal with managing risk?

Senator PRATT: Yes.

Mr Moraitis: I can say from my knowledge of TSSR, which this department was involved in for a couple of years to get it up and running—that legislation comes into effect in September—that there are various provisions under that regime to engage with the telecommunication sector about some decisions they take in this space about purchases, acquisitions, offshoring, outsourcing, methodologies, practices and suggestions for how to mitigate risk by making certain decisions or not making certain decisions, that's the first one.

The second one, of course, is the creation of the Critical Infrastructure Centre, which is all about dealing with risks to critical infrastructure through foreign involvement. They are the two main regimes, mechanisms and measures to advance those interests.

Senator PRATT: That could be anything from ports, to railways, to airports to telecommunications infrastructure?

Ms Chidgey: Yes. There are the telecommunications sector security reforms that have been enacted and will commence in September and the Security of Critical Infrastructure Bill 2017, which, I think, is going through parliamentary processes as we speak. It covers other sectors, and both of those are Department of Home Affairs responsibilities.

Senator PRATT: You're unable to tell us if there are any providers. It's a question for that telecommunications group and not for ASIO, as to whether there are any providers that are currently using equipment in the 5G rollout that might present a security concern?

Mr Duncan Lewis: I should just speak to ASIO's role. The Critical Infrastructure Centre that you've just heard about is a fused whole-of-government approach so that we get the widest understanding of what the challenges might be to a particular company coming into an Australian critical infrastructure sector. ASIO's responsibility is to input into that process in our area of responsibility, which is the security dimension of it. The requirement is for me, as the Director-General of Security, to provide advice on these matters into a whole-of-government process.

Senator PRATT: And have you provided advice as to the security risks within the 5G rollout?

Mr Duncan Lewis: Yes, I have provided advice. The organisation has provided advice into the Critical Infrastructure Centre.

Senator PRATT: In the decisions that government has made, such as who they've invited on their 5G network working group et cetera, have they mitigated against all of those risks?

Mr Duncan Lewis: I'm not able to comment on that. I'm not able to comment on it at all. If you are asking with regard to the advice—

Senator PRATT: Because you don't know or because you're unable to because of your security role?

Mr Duncan Lewis: A combination of both. When I give advice to government, that's not something I typically share with this committee. That's a longstanding practice, as you'd understand.

Senator PRATT: I do understand that, but it's our job, through the political process, to do, at times, what others can't, which is work out whether government is properly responding to issues that are raised with it. Clearly you can't tell me whether you've got cause for concern regarding the appointment to that 5G working group.

Mr Duncan Lewis: No, that's right. If I had concerns, I would be sharing those with the government and they would not be something I would share with this committee.

Senator PRATT: Do you currently hold any concerns for the kind of technology that's being used in the 5G rollout?

Mr Duncan Lewis: I think it's something that's coming to light as time proceeds. We're paying a lot of attention, obviously, to what technology is becoming available. Quite clearly

the country will need to consider how it is going to proceed, and I know that those deliberations are under way.

Senator PRATT: I want to ask ASIO about a different topic. We had some discussion about this earlier today, which couldn't be answered, and I think we need to ask the Australian Electoral Commission. We've got legislation before parliament that seeks to mitigate against foreign influence and one of the influences is foreign influence on elections with examples being drawn from Russia influencing America and France and Brexit. In ASIO's view, is there any evidence to show that foreign powers are trying to influence Australian elections?

Mr Duncan Lewis: I don't have any evidence that it has occurred to date.

Senator PRATT: You don't. At this point, should Australia be taking any actions to counter any potential threat in this regard?

Mr Duncan Lewis: I think, as a matter of principle, Australia should be taking every precaution to ensure that its electoral system is not impacted by inappropriate foreign influences.

Senator PRATT: But that shouldn't include smashing civil society as an overreaction to a threat that you've just characterised as 'not real yet' or 'not having shown its face in Australia'?

Mr Duncan Lewis: I'll take that as a comment.

Senator PRATT: Well, you can take it as a comment but it's your job, surely, to balance—

Mr Duncan Lewis: What's the question?

Senator PRATT: freedoms and rights versus the kind of surveillance and interference that's required to uphold security in this nation, surely?

Mr Duncan Lewis: My role, Senator, is to identify threats to the community, to investigate those and then provide advice to the government on what might be done about it.

Senator PRATT: So you've not, to this point, needed to investigate any foreign influence on elections and you've not called, at this point, for any legislation to cover any existing threats?

Mr Duncan Lewis: As I said, Senator, I won't comment on any investigations that we do. I've said to you that I have no evidence to suggest that, in any historical sense, there has been this kind of influence in our elections.

Senator PATRICK: Mr Lewis, just a question as to the role of ASIO in that particular circumstance. Relating to your role in the circumstances where we may be committing ADF personnel or other security services to a conflict or a conflict zone. In those circumstances, as part of the protocols of informing cabinet, do you provide an assessment to government on the effect of entering into a conflict on the potential risk that might have in respect of terrorism here in Australia?

Mr Duncan Lewis: That's quite common, Senator. Through history when we have had troops deployed internationally—that doesn't have to be the only trigger, of course—or when there has been some sort of international event which has involved Australia, if there is any consequent threat back here in Australia, then the provision of advice around that would be within our remit.

Senator PATRICK: You would continue to update that advice as circumstances changed?

Mr Duncan Lewis: Yes.

Senator PATRICK: Back in May 2017, you had an exchange with Senator Hanson and you made a very clear statement that:

I have absolutely no evidence to suggest there is a connection between refugees and terrorism.

I absolutely accept that on face value. Are you in a position to indicate whether or not—this will be the extent of my question—our participation in conflict with ISIS increases the level of risk to Australia in respect of terrorism?

Mr Duncan Lewis: I don't believe it has for a couple of reasons. The first one is historic. As you know—I'm sure you've been following this for some years—but the threat to Australia from international terrorism predates ISIL, it predates a whole range of allegedly causal issues. We are a target for international terrorism because of who we are, not necessarily what we're doing from one moment to the next, but because of who we are. There is an underlying threat to us in that respect. I think when you have a look at the issue of domestic radicalisation and so forth, that message has been coming back from the Middle East. As you know, there is a message there that's getting traction with young people here in Australia. I think that that is happening irrespective of whether Australian troops were committed or whether Australia was committed or otherwise. Now, there will be individuals, I'm sure, and there have been, who have said, 'Well, I'm doing this because of deployments to the Middle East.' But I think the underlying reasons, as I say, predate ISIL and, secondly, the message coming from the Middle East is really the driver. That is what is driving our young folks to be radicalised. The other point I would make is that, of course, there are other countries that don't have troops deployed in the Middle East that have also been the subject of ISIL attacks. So we're not alone or unique or, in some way, made a particular case because of our deployment.

Senator McKIM: I want to ask whether you received a letter from Mr Pezzullo, the secretary of the immigration department, back in 2013 asking ASIO to slow down security checks of people who had sought permanent protection visas in Australia?

Mr Duncan Lewis: No, I didn't receive a letter from Mr Pezzullo.

Senator McKIM: Did you receive a letter from anyone asking you to align ASIO's processing of security checks closely with a direction under section 499 of the Migration Act?

Mr Duncan Lewis: We did receive a letter from the then secretary of the department asking us to consider the prioritisation of the case load that was in front of us. That's not uncommon, as you are probably aware. We responded to what was then Immigration and Border Protection's priorities. That is so they can work through these very large caseloads. I should give you some numbers by way of context. In the year before we received that letter, in the financial year leading up to that letter, for example, there were 23,400—I think it was—cases that were referred to ASIO.

Senator McKIM: Would that be the 2012-13 year?

Mr Duncan Lewis: Yes it would have been the 2012-13 year.

Senator McKIM: What was that total number?

Mr Duncan Lewis: In the financial year 2013-14, the number that were referred to ASIO was 27,149.

Senator McKIM: Were they referred specifically by Border Protection for assessments associated with visas?

Mr Duncan Lewis: Yes. And of those 27,149, 877 were in relation to illegal maritime arrival cases. The year before the letter, 29,449 cases were referred to us so nearly 30,000 of which 3,394 were IMAs. The year after the letter, I think we had 17,628 of which 282 were IMAs. The fact that these figures are moving up and down reflects that ASIO works through the case load based on the priority that is given by the Department of Immigration and Border Protection but—and this is the big but that is critical to where your question is going—all of those cases, all the 20 whatever thousand cases per year coming before ASIO are triaged based on our priority, which is: what is the security risk in that case load to the community?

Senator McKIM: So they are triaged by ASIO?

Mr Duncan Lewis: By ASIO, yes. So having done our triaging and identified those cases that do present as threats to the community—and I am not prepared to discuss the precise numbers of those unfortunately in this environment—we then default to the settings of the former ministry DIBP to their priorities. That is in order for the government to fulfil its immigration quotas, policies and so forth. You can see by the numbers, it is a significant number, a significant case load. That is essentially how the program works. But the critical point is that in the letter which you have probably seen—I have it here—the then secretary of the department recognises that he was not able to direct ASIO. And while I was not the director-general at that time, I can guarantee you that ASIO would not and would not now or ever has been influenced in terms of our core function, which is around the security threat to Australia. That comes as No. 1 and then we are happy to go to the administrative triaging according to the immigration department's requirements.

Senator McKIM: Thanks, Mr Lewis. I appreciate you taking me through that. That is clear to me. Sorry, did you say you weren't Director-General at the time?

Mr Duncan Lewis: No, I wasn't. It was in September 2013 that the letter was sent and received. I had the distinction of coming into this job on the ides of September 2014, two days after the national security terrorism alert was raised.

Senator McKIM: Welcome to the role! I wanted to ask you, though, given that you weren't Director-General at the time—

Mr Duncan Lewis: I'm sorry to interrupt; I don't wish to diminish the issue because I was not the D-G.

Senator McKIM: I'm not suggesting you were.

Mr Duncan Lewis: I can vouch for the fact that the policy then was the same as the policy now.

Senator McKIM: I'll ask the question. If you think it's an unfair question to ask because you weren't Director-General at the time, you'll say so. Would you regard the accession to that request—because, as you've pointed out, it was simply a request from the former secretary of the DIBP—as denying natural justice to the people whose security checks were put on the backburner or slowed down or deprioritised—I'm not sure what language you use—with the

specific intent of denying them the permanent protection visa that the minister was required to issue them at the time in order that the government could ram legislation through the parliament and change the rules?

Mr Duncan Lewis: No, I don't think so, for the simple reason that the relationship between the then Department of Immigration and Border Protection and ourselves is one of client and provider. They are actually a client of ours. We provide the service of the security check. If the immigration and border protection department are satisfied within their processes, they will then send this prioritisation to us to request us to follow it. Unless we have some countering reason to do with security, then we will follow that process. So, no, I don't really accept the premise.

Senator McKIM: You don't think it's a denial of natural justice to engage in a bureaucratic or administrative tactic of slowing down particular security assessments with the express purpose of denying them a permanent protection visa—which the minister, under the law at that time, was required to issue them—as long as their security checks were okay?

CHAIR: Senator McKim, that is your assertion. You're asking for an opinion on whether it was a denial of natural justice. We don't ask opinions of officers here, for very good reasons, so I—

Senator McKIM: I'm happy. Mr Lewis has responded and he's actually rejected my assertion, which is fine, so I'm happy to move on, Chair.

CHAIR: Did you reject it?

Mr Duncan Lewis: Yes. I don't think the assertion is right.

Senator McKIM: That's all right; we can agree to disagree. That's fine. We've been there before, Chair, and we'll probably be there again! Mr Lewis, are you able to inform the committee how many people had their claims for permanent protection status affected as a result of ASIO's slowdown on their security assessments?

Mr Duncan Lewis: Again, I don't accept the premise of a slowdown. We were asked to follow a priority and we did that as a service provider to the department, so I don't accept that. That's something that you'd have to talk to—

Senator McKIM: Well, I've got the cabinet minute, Mr Lewis, which was astoundingly found in a filing cabinet in Canberra late last year and published on the ABC website. It's clear the request was made, which you've acknowledged, and it's clear in the cabinet minute why the request was made: with the express intent to slow down—

CHAIR: Do you have a question?

Senator McKIM: I do have a question for Mr Lewis, yes. I'm just seeking some context here, Chair—thanks for your assistance. The request was made with the express intent of slowing down ASIO's processes to ensure that the minister did not have to, and it was a must in the act at the time, issue—

CHAIR: What's the question?

Senator McKIM: permanent protection visas. I want to know—perhaps I'll ask in the context of ASIO's work—how many people had their claims processed more slowly than they otherwise would have as a result of ASIO acceding to the DIBP's request?

Mr Duncan Lewis: I'm not sure I could statistically answer that, Senator. We're working on priorities that we were requested to follow. We, as a general proposition, follow those priorities, with the exception, as I say, of our own business. So I'm not really in a position to describe—you're asserting they've been slowed down. I'm saying that they were at a lower priority.

Senator McKIM: When you say 'lower priority', Mr Lewis, does that mean, when they are at a lower priority, their security assessments would take longer than they would have otherwise, if they were a higher priority?

Mr Duncan Lewis: It depends on what sort of resource we're throwing at the problem and what the case load size is, but I think you can see from the size of the case load that it's significant.

Senator McKIM: I do understand. Did ASIO accede in toto, to the requests made of it by the then Secretary of DIBP?

Mr Duncan Lewis: I don't know. Of the 27,000 cases, Senator, I know I don't know. What I can say is that we do follow that prioritisation in order to assist the administrative processes that are there.

Senator McKIM: Last question, Mr Lewis: on how many other occasions to your knowledge, Mr Lewis, has DIBP made a request like this of ASIO?

Mr Duncan Lewis: It's a constant process. I've had something to do with this. It is a constant interaction between the department and us. Sometimes I think it's been in a written form; other times it is daily, or weekly, contact between our staff in order to adjust the priorities to get the case load processed as efficiently as we can.

Senator McKIM: I'll come back, Chair. Unless you want me to tie it up in a short—

CHAIR: Well, if you—

Senator McKIM: Mr Lewis's answer triggered another I question in my mind—that's all.

CHAIR: And then you're finished?

Senator McKIM: I believe so—unless a subsequent answer triggers a further question.

CHAIR: Well, go for it, and we'll take our chances.

Senator McKIM: I will ask the question again in a slightly different way. I understand, as you've given evidence, that there is reasonably regular communication between DIBP and ASIO with regard to the prioritisation of security assessments—is that a fair comment?

Mr Duncan Lewis: Yes.

Senator McKIM: In the context of that regular communication, does it relate at times to an individual person, where they might ask you to speed it up or slow it down for whatever reason; or do the majority of those requests, like this one, relate to large cohorts of people? There are 700 people, according to this cabinet minute, that were potentially impacted by the request that was made to ASIO. Is it a normal occurrence that the department would ask you to deprioritise, as I think you've described it, many hundreds of security assessments?

Mr Duncan Lewis: I think the answer is probably yes to both. In the main, they are classes of people. There'll be a large group that will come through that will sit in one priority or another. I don't know for sure, but I'm sure there would've been individuals, but that could

well have been on the basis of compassionate issues or some other reason why that might've been done. As a general proposition, they're classes of groups, but I don't discount that individuals may have been adjusted from time to time.

Senator McKIM: Thank you.

CHAIR: Thanks, Senator McKim. Senator Molan

Senator MOLAN: Director-General, I certainly remember back in 2012-13, when the Abbott government came to power, there was something like 28,000 people who had arrived in Australia who hadn't been processed in any way, shape or form. Are these the same group that you were dealing with in 2013-14, do you think?

Mr Duncan Lewis: Senator, congratulations on your—

Senator MOLAN: Promotion?

Mr Duncan Lewis: appointment to the Senate.

Senator MOLAN: Thank you.

Mr Duncan Lewis: I'm not sure I have a clear answer on whether the groups, and that large group that you mentioned, appear as the numbers here. It's suffice to say, I think—and this might go to the nub of your question—that the numbers have now been very much reduced as a result of the backlogs being worked through, but it is a fairly dynamic situation.

Senator MOLAN: If we put that to one side and take the 20,000 and something that you were faced with at a certain stage, I assume the different ways of handling that, the different priorities of managing it from your point of view, might be to say, 'Let's do them on the time in which they were lodged, the time in which they arrived in Australia.' But, regardless of how you would do it, there would always be one part of that that would be done today and another part of it that would be done sometime later. Is it not the case that you could say that, in a general mass of people, some were done faster than others because you will do them in accordance with the resources you apply to it? I'm going towards Senator McKim's view of the denial of natural justice. If you set any priority, even by time, are you denying natural justice to those people who came later?

Mr Duncan Lewis: We're not setting the priorities, remember—

Senator MOLAN: No. Exactly.

Mr Duncan Lewis: that's coming in from the departments. I just don't accept the issue of the denial of natural justice, although it's really not my call. The department will ask for a priority setting. So long as that doesn't impact on my statutory responsibilities then we will follow that priority setting. I don't know that I can add anything further to that.

Senator MOLAN: No. And that's good.

CHAIR: Thank you, Senator Molan. Senator Pratt, do you have any other questions here?

Senator PRATT: Yes, thank you. Senator Watt and I have a last line of questioning for ASIO, and it's probably helpful that the department is still appearing. Can you provide an overview of the progress of the move of ASIO into the new Home Affairs portfolio, including an update on the legislation that's currently being considered by the PJCIS and whether that completes the transfer or whether more legislation will be required.

Mr Duncan Lewis: I think you heard yesterday a very full description about how the move of ASIO into the home affairs department is proceeding. It is a two-phase process. Back on 20 December last year the overwhelming majority of agencies moved. We now have a second phase, which is dependent on the passage of the legislative amendments. Assuming—and I don't wish to presume what the parliament might decide—that legislation were to go successfully through the parliament, we would transfer very quickly across to the home affairs department. I can say that in anticipation of that move we are already in discussion with the home affairs department in order to make sure that, if the legislation is passed, the move is swift and efficient.

Senator PRATT: What's the expected time frame? You've said it will be swift and efficient. What do you mean by that?

Mr Duncan Lewis: It would depend, of course, on when the legislation is passed. I would anticipate that by the middle of the year, the end of the winter sitting, the legislative package would be done, but that really is up to the parliament. I obviously can't set the pace on that. As soon as the legislation is passed we will be ready to move.

Senator PRATT: Can you outline for me how responsibility for existing ASIO powers will be divided up between Home Affairs, the minister responsible for that and the Attorney-General.

Mr Duncan Lewis: No powers of ASIO will be divided with anybody else. The question that I think is better—sorry to presume your question—is: what responsibilities will the two ministers, the Minister for Home Affairs and the Attorney-General, assume with regard to ASIO and its statutory responsibilities? You're aware that provision has been, and is continuing to be, made for the Attorney-General to continue as the minister authorising ASIO warrants—

Senator PRATT: We need to amend the proposed legislation—

Mr Duncan Lewis: That's right.

Senator PRATT: that's before us. So you're confirming that those amendments are being drafted?

Mr Duncan Lewis: I am just saying that that is in process. We are heading in that direction.

Ms Chidgey: Yes. And I think, as I mentioned before, Mr McKinnon had given evidence to the Parliamentary Joint Committee on Intelligence and Security—those amendments were very well advanced.

CHAIR: We have had evidence about this ad infinitum yesterday and today.

Mr Duncan Lewis: And the legislation will also include—

Senator PRATT: No. It's important to hear from the agency affected. These are major changes.

CHAIR: He's not going to have anything different to what the two secretaries told us yesterday and today.

Senator WATT: We don't know that. Why don't we find out?

Senator PRATT: They're an independent agency and they are entitled to express their own view.

CHAIR: It's an absolute waste of time. Mr Lewis, you've been asked the question. I don't know if you can add anything to what the secretaries have said. But give it a go.

Mr Duncan Lewis: The second thing the Attorney will authorise is ministerial authorisations which he does currently and he will continue to do into the future. And the third thing is authorising our special intelligence operations, which again is something he has been doing and will continue to do into the future. With regard to the Minister for Home Affairs, the Minister for Home Affairs will become the minister responsible for ASIO. He will, I expect, issue ministerial guidelines, which are part of the oversight framework that we operate under. And, as I said, he will take ministerial responsibility for ASIO.

Senator PRATT: Okay. So what's the current relationship interaction between the Department of Home Affairs and ASIO?

Mr Duncan Lewis: One of preparation for the transfer. We are spending a lot of time working on those things that need to be adjusted and I can report very favourably about it. It's going well.

Senator PRATT: I note minister Dutton has been quite active in his commentary regarding ASIO. He doesn't as yet have any formal responsibility or authority for them, does he?

Mr Duncan Lewis: Well, the law hasn't been adjusted yet. And we have not transferred.

CHAIR: Until the act changes, you are still where you've always been.

Mr Duncan Lewis: That's right.

Senator PRATT: Yes. Is not the minister getting a bit ahead of its brief in this regard?

CHAIR: That's not for the director-general to indicate. It's an opinion.

Senator WATT: He was about to say something.

CHAIR: Well, I don't allow it.

Senator WATT: No—

CHAIR: I don't allow the question because it is asking an opinion of—

Senator WATT: No. You should allow—

CHAIR: I am telling. I am not allowing the question.

Senator WATT: Chair—

Senator PRATT: Well, in effect—

Senator WATT: You should allow witnesses to answer. If the witness doesn't—

Senator PRATT: the government is behaving—

Senator WATT: feel it's appropriate to answer, he can say so.

CHAIR: Well, I'm not allowing the question, so next question.

Senator PRATT: The government is behaving therefore as if there are two ministers.

CHAIR: Mr Lewis has just told you as both secretaries have told you—

Senator WATT: No, you won't let him tell anything.

CHAIR: as at today, ASIO is as it has always been; under the Attorney-General, under whatever acts are there. When the act changes—

Senator PRATT: Okay. Mr Lewis, you're—

CHAIR: when you pass it through the parliament, it will change. But until then it is all supposition. Now if you've got a serious question—

Senator PRATT: Mr Lewis, you're an independent agency. Do you have any views or concerns regarding the current commentary where essentially we've got commentary coming from two ministers purporting responsibility?

Mr Duncan Lewis: Senator, let me make a couple of points. It is not for me to comment on what ministers do or don't say. That's the first point. The second issue is that the transfer of ASIO, after a very long association with one particular minister and department—it has been a very complicated history, as you know—across into a new ministry is something that one doesn't undertake lightly. Therefore, we are fully engaged with the Home Affairs ministry and we are very keen to ensure that, if and when the legislation is passed, we are able to transfer quickly, expeditiously and completely.

Senator PRATT: Thank you. Can I ask you whether the issuing of guidelines to ASIO by the responsible minister has been common practice up until now?

Mr Duncan Lewis: Yes.

Senator PRATT: Does the Attorney-General still maintain full authority and oversight for ASIO—

CHAIR: It hasn't changed.

Senator PRATT: currently? Yes, okay. So you can confirm that.

Mr Duncan Lewis: Well—

Senator PRATT: However, it appears that minister Dutton appears to have become the government's spokesperson on ASIO.

CHAIR: So the question is?

Senator PRATT: Who is currently providing oversight to the agency in relation to its work and activities?

CHAIR: The Attorney-General.

Senator WATT: Can we let the witness answer the questions, please?

CHAIR: interjecting—

Senator WATT: It has not been answered by this witness. It has been answered by other people.

CHAIR: By the two secretaries of the department and every other witness before you.

Senator WATT: It is about the activities of—

CHAIR: Why do you persist in wasting time? Do you like keeping Public Servants out at midnight?

Senator WATT: No, I like getting answers from them. And you are preventing them from doing so. It is entirely appropriate to ask the agency—

CHAIR: Mr Lewis has told you he remains under the department of the Attorney-General with the Attorney-General giving the orders.

Senator WATT: That's not the question. Oh my god. Two whole days of this.

Senator PRATT: I know it's a simple question—

CHAIR: It's very simple.

Senator PRATT: that will probably have a simple answer. But I'm entitled to—

CHAIR: It's been asked and answered 100 times. How can you be so simple?

Senator PRATT: ask it, and Mr Lewis, I'm sure, will answer it for me.

Mr Duncan Lewis: Let me give two parts to the answer. The first part is: ASIO remains where it has been for the last 70 years, as a statutory authority, where the Attorney-General exercises ministerial oversight of us. So there is no change in that regard. But there's more. You asked about what our oversight mechanisms are.

Senator PRATT: Yes.

Mr Duncan Lewis: And I think it is important to place on record that we have at any one time a large number of laminated oversights.

Senator PRATT: Yes.

Mr Duncan Lewis: And I am pleased to say that those oversights are in prospect of remaining as they have been when we transfer across to the new department. As you know they go to the IGIS, to the INSLM, to this committee, to the PJCIS, to the parliament more broadly, to the minister and, of course, ultimately to the public.

Senator PRATT: Okay. Is the department of Home Affairs as yet providing any administrative assistance to ASIO—administrative, pay and conditions, IT systems or any other arrangements?

Mr Duncan Lewis: No.

Senator PRATT: Okay. There have been some issues, as far as we can tell, with other agencies moving into the portfolio, particularly over pay and allowances. Have any of your staff expressed concerns over potential administrative problems in changing?

Mr Duncan Lewis: I can't comment on what other agencies have or haven't been doing, but, with regard to our own staff, as you know, as a statutory authority, I am the employer.

Senator PRATT: And you run your own pay systems.

Mr Duncan Lewis: That's right.

Mr Moraitis: And that's the same with the current arrangements.

Senator PRATT: Okay. So I'm just seeking assurance that none of that—

Mr Moraitis: We don't engage in that space.

Mr Duncan Lewis: No change.

CHAIR: For a third time, fourth time, fifth time.

Senator PRATT: Okay. Have any ASIO staff raised any concerns over the integration of the Home Affairs portfolio more broadly? Are you aware of any concerns? What kinds of issues have been raised with you?

Mr Duncan Lewis: The discussions I have with my staff are a very private thing. But it is not surprising that, when you have a change of this nature, a workforce the size of the one we have requires very careful attention from me as the CEO to ensure that everybody is kept informed about what is going on, that their anxieties, to the extent there always are anxieties when there is change, are properly catered for and managed. I don't think there is anything in particular to remark on with regard to your question.

Senator PRATT: What are you doing to manage those integration requirements within your organisation balanced against your high operational tempo?

Mr Duncan Lewis: I'm sorry. I don't understand.

CHAIR: The witness has already answered that three or four times. This will be your last question.

Senator PRATT: No. You did in part answer it, because I asked about concerns. But I am interested to know what special arrangements you have put in place, how you are managing the process of integration at the same time as your usual responsibilities?

Mr Duncan Lewis: We are a large and multidisciplined organisation, as you know, and it is quite within our ability to establish cells within the staff that are doing a number of things. They can be doing things at once. They can be doing them separately. My deputy director-general is sitting next to me, as the senior officer that's spearheading the issues with regard to transition to the new Home Affairs department. So it really is unremarkable. It's just another administrative measure that the organisation is addressing.

CHAIR: Thanks, Senator Pratt.

Senator PRATT: I've only got about three more questions if—

CHAIR: No. I have a couple of questions I want to ask.

Senator PRATT: Okay. Thank you.

CHAIR: Mr Moraitis, program 1.2, Attorney-General's Department operating expenses. What does that mean as a program for the department? What does it do?

Mr Moraitis: I will get Mr Anderson to point me in the direction of that. Where are you moving to, Senator?

CHAIR: The program shows that as well as ASIO we're now dealing with group 3, Criminal Justice and National Security Group, and program 1.2 is shown as Attorney-General's Department Operating Expenses—National Security and Criminal Justice. What's that actually mean? What is program 1.2?

Mr Moraitis: It's the funding for the group that's remained in the department and continues to remain in the department, and it's the funding for those two groups. National Security and Criminal Justice were two large groups in the department. The National Security Group, to a large extent, has moved, as has parts of the Criminal Justice. As I explained, there are still parts that will move in phase 2—particularly the cyber work and the work that engages with ASIO in the policy space. For the purpose of these estimates, that funding is to that remaining area of the department.

CHAIR: Where would I find reference to program 1.2? It's in your PBS, is it?

Mr Moraitis: I'll ask Mr Anderson to point me to where that is.

CHAIR: What does it say? I suppose I should have had a look at the—

Mr Anderson: If I was to grab my copy of the PBS, it should be in there, the outline of 1.1, 1.2 et cetera. In the PBS, when it works through a funding line by line, there's a column for which program it relates to and it'll say program 1.2 or 1.1, depending upon which program it aligns to. The references there in the program are to the PBS.

CHAIR: What questions would we ask you about? I'm not sure whether this is our committee's doing or your department's doing, but between seven o'clock and 8.45 pm, supposedly, we were to deal with program 1.2.

Mr Anderson: The simple way of putting that is: you are dealing, then, with the Criminal Justice and National Security Group. Program 1.2 is the same thing.

CHAIR: So it's the whole group.

Mr Anderson: Correct.

CHAIR: It says, 'Attorney-General's Department operating expenses'.

Mr Anderson: Yes, that's the departmental budget set aside for the Criminal Justice and National Security Group.

CHAIR: Apart from providing funding, what does the Criminal Justice and National Security Group do?

Mr Anderson: No, that funding is for the operations of the Criminal Justice and National Security Group.

CHAIR: What does the group do?

Ms Chidgey: In terms of the group and its responsibilities that remain in the Attorney-General's Department—international crime cooperation, for example; extradition and mutual assistance in criminal matters, international transfer of prisoners; dealing with criminal justice processes from the point of charge, so prosecution issues; and sentencing and management of federal offenders remains. Protective security policy remains the responsibility of the Attorney-General—fraud and anticorruption and responsibility for administration of offences in the Criminal Code.

CHAIR: Mr Moraitis, do you have a flow chart of the set-up of your department?

Mr Moraitis: An org chart? Yes, of course.

CHAIR: An organisational chart.

Mr Moraitis: We absolutely do. It's an interim one; it'll be changed again, but I can give you a snapshot of how it looks at the moment.

CHAIR: On notice, could you give us a copy of that, and on further notice, as things progress, could you give us another chart?

Mr Moraitis: Yes, we can do that; we can give you as many charts as you like.

CHAIR: I'm just talking to the secretariat. Between now and the next estimates I really think we need to try to get these estimates' agendas in a way that everybody understands, rather than talking about program 1.2 and nobody knowing what it is. We were talking yesterday, with the new Home Affairs department, that one thing we could look at was doing

it in your organisational chart streams so that we will deal with all of your courts systems in one go.

Mr Moraitis: Sure. What I would propose is to give you an org chart with some references that have asterisks to the parts of that org chart that would, presumably, be moved in phase 2. This is so that, come the next estimates—it'll probably be May—you'll know which areas will be moving. In an ideal world, you can compare the two org charts and move from one to the other with nothing falling between the cracks, hopefully—

CHAIR: I'm not really worried about the difference between—

Mr Moraitis: and you could work out which questions to ask which groups.

CHAIR: What I really want to do is try and get an agenda that means something to everyone.

Mr Moraitis: We're onboard for that.

CHAIR: I'll get the secretariat to talk more between the two departments to see if there is a better way we can do that for the next estimates.

Mr Moraitis: We'll do that and pass it through the secretariat.

Senator PRATT: Has the government provided you with any additional staff or resources to support integration into the new department?

Mr Duncan Lewis: Sorry, who is that directed to?

Senator PRATT: To you, Mr Lewis; I'm sorry. Has ASIO received any additional staff or resources to support the change from AGD to Home Affairs so as not to interfere with your priorities?

Mr Duncan Lewis: I understand. No.

Senator PRATT: Did you as Director-General of Security of ASIO provide the government with any recommendations in relation to the establishment of the Home Affairs portfolio?

Mr Duncan Lewis: I've had a number of discussions over a number of years around this subject. I think the first time the issue of a Home Affairs department crossed my consciousness would have been 16 years ago. With regard to this current evolution, I had a number of conversations with the Prime Minister and others, so, yes.

Senator PRATT: Did that include written advice?

Mr Duncan Lewis: No, they were conversations.

Senator PRATT: We've had this massive transformation of Home Affairs without anything coming from ASIO other than conversations.

Mr Duncan Lewis: That's a slightly different characterisation you've put there. You were asking whether I had personally provided written advice. No, I'd had a number of conversations. There has, of course, been lots of correspondence about the arrangements and issues of warrants and how that's going to be managed and so on.

Senator PRATT: What about the process of deliberation on whether it was a good idea or not to start with? Did you have any input in the last 12 months, in that regard?

Mr Duncan Lewis: As I said, I had a number of conversations. Quite frankly, at the end of the day, as you well know, the issue of machinery of government is a matter for the government. The government will decide, and it's quite proper that it decides, on what the structure should be. It's our job, then, to get on with it. I had a number of conversations along that journey and I've got nothing further to add.

Senator PRATT: Did you recommend that ASIO should be included in the Home Affairs portfolio?

Mr Duncan Lewis: The nature of those conversations is something I'm not prepared to share. It's not proper. I don't discuss in a committee like this the conversations I might have with the Prime Minister or, indeed, any minister. It's not appropriate.

Senator PRATT: You are an independent agency. If you think it's in the best interests, whether this is a good decision or not, you could tell us if you chose to.

CHAIR: No, that's a matter of opinion. If you embarrass public servants into giving opinions on government policy—

Senator PRATT: I'm not embarrassing him. He's been very clear in rejecting the question.

CHAIR: It is not allowable under the rules of these Senate committees and shouldn't be asked. Mr Lewis may want to answer. There is a reason we don't ask officials for their opinions on government policy: it embarrasses them. If he thinks it's awful, do you want him to say, 'This is an awful thing the government's done'? You put public servants in a very difficult position. That's why we don't allow questions on opinions. Have you got another question?

Senator PRATT: Mr Lewis was going to proffer me a brief answer, which may well have been that he wasn't going to answer my question.

CHAIR: Can you ask another one?

Mr Duncan Lewis: I don't think it's appropriate to answer your question directly, Senator Pratt, but I will say that I'm very positive about this arrangement that we're going into. There are very clearly benefits to be had out of this. That is why we've been talking about it for a decade and a half.

Senator PRATT: Thank you. You've talked about the efforts going into the arrangements and said that it's large and complex, but can you identify any of the particular challenges related to integration?

Mr Duncan Lewis: I think there will be a number of challenges that will become apparent as the integration goes on. I mean, it's one of those things with any integration of this size. When you've got this number of people and this number of agencies moving about, things will become apparent and they'll be addressed by senior staff and more junior people at the coalface. I can't say there's a list of 10, 20 or 300 issues. I think they will become apparent as we go through the process. Nobody is trying to say that this is without difficulty. It's a great challenge. But I must say it's going particularly well from my point of view at present. I think Secretary Pezzullo made the comment, when he was asked yesterday, 'So far, so good'. I would absolutely endorse that: I think we're making good progress.

Senator PRATT: What measures have you put in place to mitigate those challenges?

Mr Duncan Lewis: I couldn't answer that question. There are myriad things in the interstices of the organisation that I can't tell you.

Senator PRATT: Are there reasons you are unable to be specific to me? Is it because they pertain to things you can't discuss?

Mr Duncan Lewis: No.

Senator PRATT: You're being very, very general in the answers you're giving.

Mr Duncan Lewis: That's all I can be, because the challenges will occur down within the organisations, and they need to be addressed. My job, as the CEO of the organisation, as a statutory authority, is to make sure that people are kept well informed; that we try, to the extent we're able, to minimise surprises around what's going on; that we lay all the groundwork necessary; and that we give people the time and space to organise whatever the new arrangements are. These are just principles of management, but I can't be specific and tell you about what this officer or that officer might be confronted with.

Senator PRATT: Thank you, Mr Lewis and Dr Southern. That concludes our questions.

CHAIR: Thanks very much, Senator Pratt. Thank you, Mr Lewis and Dr Southern. We very much appreciate your assistance, and we're particularly grateful for the work ASIO does, although, appropriately, we never really know exactly what you do. That's how it should be, but the results speak for themselves, I think. Thank you very much.

Mr Duncan Lewis: Thanks, Chair.

National Archives of Australia

[10:37]

CHAIR: We now call the National Archives of Australia. Thank you for your patience. I'm not sure we've ever had the privilege of hearing from you in estimates. You're not often called.

Mr Fricker: Once.

CHAIR: I hope you are feeling elated and gratified that you've been called this time at 20 to 11! You didn't want to make any sort of an opening statement?

Mr Fricker: No, thank you.

Senator PATRICK: Mr Fricker, are you aware of any applications to the Archives to declassify Australian secret intelligence records relating to East Timor and Indonesia in and around 1970?

Mr Fricker: Yes, Senator.

Senator PATRICK: I think there's an application that has been with the Archives since about 2014. It took three years for you to process. My understanding is you kept asking for extensions.

Mr Fricker: That's correct. The case you're referring to was made by Professor Fernandes—

Senator PATRICK: Yes.

Mr Fricker: and that's correct: it's been in the process for that period of time. I should add that it is a matter that's before the Administrative Appeals Tribunal, so you'll understand if I measure my answers accordingly.

Senator PATRICK: Absolutely. You will, of course, appreciate that privilege means nothing said here can be used in evidence. I'm going to go only to what happened in the processing of the application inside your organisation, not to the decision itself. In general, when you're dealing with a matter related to a request for ASIS documents, how do you go about making that decision? Do you access the documents that are in your possession and then examine the documents, but also seek advice from ASIS? Is that how it works?

Mr Fricker: In general terms it's a combination of those things. Generally speaking, ASIS documents would not be in our possession, under the Archives Act. The records of the intelligence community—and the number of agencies are specified in the act—are kept by those agencies because behind the act is the understanding that those agencies have the proper secure facilities to properly protect those records. If the records are not in our custody, an application for access would trigger a process for us to then work with that agency to have them examined and to retrieve them for release. Section 35 of the Archives Act provides for arrangements to be made between the Archives and other Commonwealth institutions to make arrangements for the proper examination of records, under the proper conditions, to inform the determination of whether or not those records are exempt.

Senator PATRICK: But you can confirm that all decisions made by a National Archives decision-maker are done with the decision-maker having seen the documents that are being requested?

Mr Fricker: That will vary depending on the nature of those section 35 arrangements that we enter into. The ultimate decision-maker is my office, the Office of Director-General of the National Archives. As the occupant of that position, I have to satisfy myself that the requirements for exemption have been fulfilled as required under the act, so I do make it a practice to understand as completely as possible what the nature of those records are and the reasons for exemption. Ordinarily that would involve me seeing those records. However, I further add that the section 35 arrangements as prescribed under the act allow us to make arrangements for the proper examination and handling of records, and the advice that I would receive from the controlling agencies would weigh very, very heavily upon any decision that the Archives would make.

Senator PATRICK: So you take advice from the agency and give that relatively significant weighting?

Mr Fricker: Not relatively; very significant—especially in matters of national security, because clearly the complexities around the enduring sensitivities of national security records are such that you would want very deep expertise and experience applied to any decisions to release or exempt those records.

Senator PATRICK: Going back to the Fernandes case: he made application in 2014. The normal statutory time frame is 90 days but you can seek extensions, and my understanding is that he was very gracious and just kept granting extensions. You got to 2017 and came with a 'neither confirm nor deny decision'; is that correct?

Mr Fricker: That is correct. Again, Senator, we're drifting into matters, very live matters, before the Administrative Appeals Tribunal.

Senator PATRICK: That's just a question of fact.

Mr Fricker: Yes.

Senator PATRICK: It's now gone to the AAT, and now that it's gone to the AAT suddenly there's a change. After three years you couldn't find the document, an application gets made to the AAT, and now we actually discover there are documents. How does that happen?

Mr Fricker: We are now entering into, as I say, a very live matter before the AAT. I'm very happy, of course, to assist this committee to understand the processes we go through, but in this forum I feel a bit uncomfortable in pre-empting evidence which may be presented before that tribunal.

CHAIR: Thanks, Mr Fricker. For the long time I've been in parliament, any matters live before the courts have automatically been excluded. There seems to be a new paradigm operating in this crazy Senate at the moment that you've somehow got to claim public interest immunity and then explain why talking about evidence in a court or the AAT is—

Senator PRATT: Privilege is in the Senate. You're supposed to have confidence, Chair.

CHAIR: It's the privileges of the majority of the Senate, which is the Greens and the Labor Party and none of them have much sense.

Senator PATRICK: The point of order you have, Chair, the particular—

CHAIR: I will add in Xenophon's team if that's where you are going to.

Senator PATRICK: No. The resolution on how to resolve public interest immunity claims was moved by Senator Cormann back in 2009.

CHAIR: That still doesn't make it right just because Senator Cormann does it, might I say. What I'd suggest you do Mr Fricker is take it on notice, claim public interest immunity and explain why talking publicly about evidence that's about to be led in a hearing is contrary to the public interest. That's the best advice I can give you. Perhaps you could seek some more professional advice from Mr Moraitis.

Senator PATRICK: The AAT is examining a decision related to whether or not to release these documents. Is that correct?

CHAIR: I'd take it on notice—on anything you're uncomfortable about.

Mr Fricker: I will. I simply can't answer that question, because I can't speak for the tribunal, so it really is—

Senator PATRICK: An application has been made. What's the nature of the application? To review the decision?

Mr Fricker: I am very happy to discuss that. As I'm sure you are aware, if an application takes longer than 90 days to resolve then it becomes a deemed refusal and that is an appealable decision to the AAT. That's the basis upon which this matter has been taken to the AAT. However, there are a number of matters tied up in this but it is also the case that if any decision we make can be taken to the AAT—so the decision to neither confirm nor deny the existence of records is also an appealable reason.

Senator PATRICK: I don't think that's a question before the tribunal, because my understanding is the tribunal understands that there are documents now. That's been conceded. Is that correct?

Mr Fricker: That is correct, yes.

Senator PATRICK: I'm now suggesting that the AAT would be looking into a decision relating to access to those documents that've now been found. I'm curious: is that the business of the AAT?

Mr Fricker: That's correct, yes.

Senator PATRICK: I'm wondering how, in your process, you got to a point where, after three years, you got to neither confirm nor deny. Is that indicating you didn't find documents, or does that just say, 'We're not going to say'?

Mr Fricker: It's not uncommon that the longer that we have to examine an application, to understand what records do exist behind the nature of the application—an application may be made for any records that may exist on a particular topic, so it's not uncommon that over the period of some time the more information you gather then the more improved your decision becomes.

Senator PATRICK: I appreciate that. I'm happy for you to take this on notice. What was the total cost to the Commonwealth of its appeal to the Federal Court in the matter of National Archives v Fernandez in FCAC 158?

Mr Fricker: I will have to take that on notice.

Senator PATRICK: What was the total cost to the Commonwealth of Fernandez v National Archives of Australia in the AAT 2014 180?

Mr Fricker: I'll take that on notice.

Senator PRATT: I have some questions about your relocation to Parliament House, which I understand is a temporary relocation; is that right?

Mr Fricker: That's correct.

Senator PRATT: And that's because the government's announced that it's renovating and selling East Block in the Parliamentary Triangle. I want to ask you what the impact of this relocation has been on the operational ability of the National Archives.

Mr Fricker: As you quite rightly said, East Block was put on the market and sold. The condition of sale was that the building would then be brought into line with contemporary standards. The building was constructed in the 1920s. It has some issues with it that did require attention. As I said, the sale is an opportunity to attend to those matters. Some of the matters include removal of asbestos within the building. In my view, it would have been unsafe for us to remain in that building while that work was conducted—for the staff, for the work of the Archives and of course for the public who come to visit, such as the school groups. As a precaution, we have vacated the building to allow that remediation to occur.

To your question, relocating into Old Parliament House has meant that we can sustain all of our operations, with the exception of public programs, which we have had to wind back, because in our temporary digs we don't have adequate space to run exhibitions, public programs et cetera. Some of those areas have been wound back for the duration.

Senator PRATT: So you're able to manage. You haven't had to wind back anything to do with the managing of information and the historical record in any way?

Mr Fricker: No. All of our preservation activities, all of the transfers that we do, the work we do in managing government information management standards, can proceed without impediment.

Senator PRATT: Was the building owned by and sold by the National Archives?

Mr Fricker: No. The building is owned by the Commonwealth. The Department of Finance managed the sale transaction.

Senator PRATT: So, any questions about the time line with respect to the rent paid versus what the sale and refurbishment has cost will have to go to them?

Mr Fricker: Yes.

Senator PRATT: What community consultation has happened regarding the future of the National Archives in Canberra? And what is the operational ability of Archives services more broadly?

Mr Fricker: We operate a number of channels in terms of our consultation. We of course have operations in every capital city around Australia. In each of those locations we have a consultative forum that has been established. In Darwin we also have an Aboriginal advisory council, which assists us to collect those views that you're talking about. Those consultative fora are made up of individuals from other government agencies, historians, researchers et cetera. We meet on a regular basis to engage in consultation and take onboard the issues that are raised there.

Just going to the move out of East Block, we had a communication strategy, a formal strategy, that was put together and a communication plan that was enacted well in advance of that move to keep the public advised and informed about what we were doing and why we were doing it. That included media interviews, newspaper and discussion groups.

Senator PRATT: Is the government's announced time frame of returning to East Block late this year still correct?

Mr Fricker: I think that's a developing picture, as all construction and refurbishment projects are. I think it's reasonable to expect that there will be some shift in that schedule as to when we move back. I don't see that presenting me with any particular urgency at the moment in terms of sustaining the operations of the Archives.

Senator PRATT: Have you placed on hold any planning for your public programs because of the uncertainty around that? Are you planning for public programs in 2019? And how will you accommodate those if there's ongoing uncertainty about your return to East Block?

Mr Fricker: We're planning for success, so we are planning to resume—I might add that our public programs haven't stopped. I think I was saying that it's been wound back a bit. We still have exhibitions touring around Australia and we continue to invest and promote those exhibitions. In our other locations around Australia we also make sure we have public programs to promote and assist people engaged with the collection. We have programs planned for when we are moving back into East Block. So in the next year we are planning on doing that. If schedules change we'll adjust to what the circumstances are at the time.

Senator PRATT: What reduction has there been in community use of the National Archives services because of the reduced space available to the National Archives in your current location?

Mr Fricker: As I said, we've wound back our exhibition programs—public programs. We still operate a reading room in Old Parliament House and we have a space set aside with the foundation documents of Australia to support civics and citizenship activities. People visiting Old Parliament House can freely see those documents on display. And we have our gallery hosts, who are available to provide educative services to go with that. The reading room occupies a smaller footprint in Old Parliament House than it did in East Block. However, we've still had active traffic through the reading room. We maintain our retrieval services and our archives and our reference services in that reading room.

Senator PRATT: Have people doing research been impinged on by the change in any way?

Mr Fricker: In the period during the actual move we of course diverted resources away from our public reference services to enable all hands to the pump so we could move to Old Parliament House. That was a fairly short disruption, but there was some disruption. And of course people come to visit the Archives. They still expect us to be where we used to be, so they'll turn up and find an empty building, and that's disruptive. But, with signage and assistance, hopefully they're finding their way.

Senator PRATT: There's a fondness and an attraction for the building, which you will return to. So I understand that people do like to go and visit it. Finally, the government introduced an efficiency dividend for the National Archives of Australia, and I want to ask you about the manner in which this has affected services or reduced public use of the Archives.

Mr Fricker: It's forced us to enter into what I keep telling staff: we're doing less with less. I'm not insisting that we keep doing more with less. We're doing less with less. We've undertaken a number of function reviews within the organisation to see what we are doing at the moment that we could stop doing and what we would need to focus on to maintain our core functions and to uphold our mandated functions as per the legislation. There's a number of things that we have wound back. Our acquisition policy has been wound back, for example. We no longer take personal papers from Commonwealth officials other than the Governor-General or prime ministers.

Senator PRATT: Wow.

Mr Fricker: We would take personal papers only under exceptional circumstances. We used to have a much more open acquisition policy. We've had to review some of our fees that we charge for discretionary services to bring them into line with actual costs, because we could no longer sustain providing those services at less than actual cost.

Senator PRATT: What does that do to the quality of our historical collection that we might need for future use as a nation?

Mr Fricker: I would say that the quality is maintained, and that's something that we've been quite focused on—that we continue to do the things we do to the very highest standards and quality. That's the nature of archives.

Senator PRATT: But it's not as broad as it might otherwise have been.

Mr Fricker: Precisely. The level of service has had to be reviewed to fit within our budgetary envelope.

Senator PRATT: I appreciate that the personal papers of prime ministers and governor-generals are important, but surely the role of the National Archives is to capture the snapshots of the history of a great many different Australians? Otherwise, we have only the important person's version of our history accessible to future researchers.

Mr Fricker: The role of the Archives is to select, preserve and make accessible the essential evidence of the Commonwealth government and its agencies. It's quite specific under the act as to what constitutes Commonwealth institutions. They are not individuals operating in an individual capacity. To the extent that we do collect those papers and maintain them, that is over and above what is mandatory within the act. So, in looking at what we're doing to accommodate efficiency dividends and continue to deliver quality services, of course we focus on what we are mandated to do by the Archives Act, which is to appraise, preserve and make accessible Commonwealth records, not personal records.

Senator PRATT: Thank you, Mr Fricker.

CHAIR: So, Mr Fricker, you're not interested in my papers that I've accumulated over the last 30 years?

Mr Fricker: Senator Macdonald, I'm fascinated by your papers, but I might have to take it on as a hobby rather than actually do it at the Archives!

CHAIR: Oh, well; that's a shame. I am one of the very ordinary people Senator Pratt's talking about that perhaps history might benefit from. Thanks very much for appearing before us, Mr Fricker. I think you have taken one question on notice and obviously would seek advice from the secretary about that. We have set a time for the return of questions on notice, which is 10 April, if we could have those answers by then. And for my colleagues, anyone who wants to put in written questions on notice should do that by Tuesday 13 March.

Senator PRATT: And could I just put on record the opposition's thanks to all of the officials and everyone, in all of the departments and agencies that have had to prepare for estimates. Thank you.

CHAIR: Yes, thanks, Senator Pratt. That's very generous—and perhaps an apology for keeping people here until 11 o'clock for two nights! Thank you. Thanks, ministers; thanks, secretariat; thanks to Hansard, who have to sit here and take all this. We appreciate that.

Committee adjourned at 23:01