



COMMONWEALTH OF AUSTRALIA

# Proof Committee Hansard

## SENATE

LEGAL AND CONSTITUTIONAL AFFAIRS LEGISLATION  
COMMITTEE

**Estimates**

(Public)

MONDAY, 22 MARCH 2021

CANBERRA

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**SENATE**

**LEGAL AND CONSTITUTIONAL AFFAIRS LEGISLATION COMMITTEE**

**Monday, 22 March 2021**

**Members in attendance:** Senators Ayres, Canavan, Kim Carr, Ciccone, Faruqi, Fierravanti-Wells, Henderson, Keneally, McKenzie, McKim, Molan, Patrick, Rice, Roberts, Scarr, Thorpe, Van, Waters, Watt.



## HOME AFFAIRS PORTFOLIO

### In Attendance

Senator Cash, Minister for Employment, Skills, Small and Family Business

Senator Payne, Minister for Foreign Affairs and Minister for Women

Senator Stoker, Assistant Minister to the Attorney-General

### Department of Home Affairs

Mr Michael Pezzullo AO, Secretary

### Australian Border Force

Mr Michael Outram APM, Commissioner

### National Resilience and Cyber Security

Mr Marc Ablong PSM, Deputy Secretary

Mr Samuel Grunhard, First Assistant Secretary, Critical Infrastructure Security

Ms Melissa Bennet, Acting First Assistant Secretary, Identity and Biometrics

Mr Hamish Hansford, First Assistant Secretary, Cyber, Digital and Technology Policy

Ms Alana Sullivan, First Assistant Secretary, Regional Processing and Resettlement

Mr Ky Blackman, Acting First Assistant Secretary, International Policy

### Chief Operating Officer

Ms Cheryl-anne Moy, Deputy Secretary, Chief Operating Officer

Mr Pablo Carpay, First Assistant Secretary, People and Culture

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

Mr Ben Wright, First Assistant Secretary, Integrity, Security and Assurance

Ms Lee-anne Monterosso, First Assistant Secretary, Procurement, Property and Contracts

Mr Stephen Hayward, First Assistant Secretary, Health Services

### Immigration and Settlement Services

Mr Andrew Kefford PSM, Deputy Secretary

Mr Michael Willard, First Assistant Secretary, Immigration Programs

Mr Andrew Rice, Acting First Assistant Secretary, Immigration Integrity, Assurance and Policy

Ms Justine Jones, Acting First Assistant Secretary, Status Resolution and Visa Cancellation

Mr David Wilden, First Assistant Secretary, Refugee Humanitarian and Settlement

Ms Leanne Smith, First Assistant Secretary, Service Delivery and Transformation

Ms Sandra Jeffery, Assistant Secretary, Temporary Visas and Border Measures

Ms Alison Larkins, Coordinator-General for Migrant Services

### Global Business and Talent Attraction Taskforce

Mr Peter Verwer AO, Prime Minister's Special Envoy for Global Business and Talent Attraction

Mr Andrew Chandler, First Assistant Secretary, Global Business and Talent Attraction Taskforce

### Social Cohesion and Citizenship

Mr Chris Teal, Deputy Secretary

Mr Richard Feakes, First Assistant Secretary, Counter-Terrorism Coordination Centre

Mr Patrick Hallinan, Acting First Assistant Secretary, Counter Foreign Interference Coordination Centre

Mr Angus Kirkwood, First Assistant Secretary, Citizenship

Dr Richard Johnson, First Assistant Secretary Social Cohesion

### Emergency Management and Coordination

Ms Kaylene Zakharoff, Acting Deputy Secretary

Mr Joe Buffone, Director-General, Emergency Management Australia

Ms Vanessa Holben, First Assistant Secretary, National Coordination Mechanism

**Strategy and Law Enforcement**

Ms Cath Patterson, Deputy Secretary  
Ms Kendra Morony, First Assistant Secretary, Strategy  
Mr Anthony Coles, First Assistant Secretary, Law Enforcement Policy  
Ms Ciara Spencer, First Assistant Secretary, Aviation and Maritime Security  
Mr Steve Davies, First Assistant Secretary, Chief Data Officer  
Mr Andrew Warnes, Acting First Assistant Secretary, Electronic Surveillance Reform Taskforce

**Technology and Major Capability**

Mr Michael Milford AM, Group Manager, Technology and Major Capability  
Mr Radi Kovacevic, Deputy Group Manager, Chief Information Officer  
Ms Claire Roennfeldt, Senior Assistant Secretary, Major Capability  
Mr Sean Hugo, Assistant Secretary, Cyber Risk Services

**Legal**

Ms Pip de Veau, General Counsel/Group Manager Legal

**Operational Strategy and Coordination**

Mr Dwayne Freeman, Deputy Commissioner  
Ms Kylie Rendina, Assistant Commissioner, Operational Coordination and Planning  
Ms Sharon Huey, Assistant Commissioner, ABF Workforce  
Mr Kingsley Woodford-Smith, Assistant Commissioner, Close Support Command

**National Operations**

Ms Justine Saunders APM, Deputy Commissioner  
Ms Erin Dale, Assistant Commissioner, East and Port Operations  
Mr Tim Fitzgerald, Assistant Commissioner, North and Immigration Detention  
Mr Phil Brezzo, Assistant Commissioner, South and Enforcement Operations  
Rear Admiral Mark Hill, Commander, Joint Agency Task Force Operation Sovereign Borders

**Customs**

Mr Matthew Duckworth, Acting Group Manager

**Industry and Border Systems**

Mr Malcolm Skene, Group Manager

**Australian Federal Police****Commissioner**

Mr Reece Kershaw APM, Commissioner  
Mr Ian McCartney, Deputy Commissioner Operations  
Mr Brett Pointing, Deputy Commissioner Investigations  
Mr David McLean, Chief of Staff  
Ms Charlotte Tressler, Chief Operating Officer  
Mr Neil Gaughan, Chief Police Officer

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

Mr Michael Phelan APM, Chief Executive Officer  
Dr Rick Brown, Deputy Director, Australian Institute of Criminology  
Mr Matt Rippon, Executive Director Intelligence Operations  
Ms Yvette Whittaker, Chief Financial Officer

**Australian Transaction Reports and Analysis Centre**

**Executive**

Ms Nicole Rose PSM, Chief Executive Officer [by video link]

Mr Chris Collett, Deputy Chief Executive Officer Intelligence

Mr Peter Soros, Deputy Chief Executive Officer Regulation, Education and Policy

Dr John Moss, Deputy Chief Executive Officer Capability and Strategy

Mr Ben Skaines, National Manager Strategic Planning, Finance and Performance (Chief Finance Officer)

**Australian Security Intelligence Organisation****Executive**

Mr Mike Burgess, Director-General

Ms Hazel Bennett, Deputy Director-General

**Office of the Special Investigator****Executive**

Mr Chris Moraitis PSM, Director-General

Mr Ross Barnett, Director of Investigations

Ms Helen Daniels, Deputy Director-General

Ms Catherine Fitch, Chief Operating Officer

**Committee met at 09:02**

**CHAIR (Senator Henderson):** I declare open this hearing of the Senate Legal and Constitutional Affairs Legislation Committee for the additional estimates. The Senate has referred to the committee the particulars of proposed expenditure for 2020-21 for the portfolios of Home Affairs and the Attorney-General, and other related documents. These are additional estimates proceedings, and the outcomes to be heard during today's hearing are from the Home Affairs portfolio. The committee has set Friday 7 May 2021 as the date by which answers to questions on notice are to be returned. The committee has also decided that written questions on notice should be provided to the secretariat by 5 pm on Wednesday 31 March 2021.

Under standing order 26, the committee must take all evidence in public session. This includes answers to questions on notice. I remind all witnesses that in giving evidence to the committee they are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to a committee, and such action may be treated by the Senate as a contempt. It is also a contempt to give false or misleading evidence to a committee.

Officers and senators are familiar with the rules of the Senate governing estimates hearings. If you need assistance, the secretariat has copies of the rules. The Senate, by resolution in 1999, endorsed the following test of relevance of questions at estimates hearings: any questions going to the operations or financial positions of the departments and agencies which are seeking funds in the estimates are relevant questions for the purpose of estimates hearings. I remind officers that the Senate has resolved that there are no areas in connection with the expenditure of public funds where any person has a discretion to withhold details or explanations from the parliament or its committees unless the parliament has expressly provided otherwise. The Senate has also resolved that an officer of a department of the Commonwealth shall not be asked to give opinions on matters of policy and shall be given reasonable opportunity to refer questions asked of the officer to superior officers or to a minister. This resolution prohibits only questions asking for opinions on matters of policy and does not preclude questions asking for explanations of policies or factual questions about when and how policies were adopted. I particularly draw the attention of witnesses to an order of the Senate of 13 May 2009 specifying the process by which a claim of public interest immunity should be raised.

*The extract read as follows—*

**Public interest immunity claims**

That the Senate—

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

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

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

(1) If:

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

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

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

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

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

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

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

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

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

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

*(13 May 2009 J.1941)*

(Extract, Senate Standing Orders)

**CHAIR:** Witnesses are specifically reminded that a statement that information or a document is confidential or consists of advice to government is not a statement that meets the requirements of the 2009 order. Instead, witnesses are required to provide some specific indication of the harm to the public interest that could result from the disclosure of the information or the document.

Senators, departments and agencies have been provided with advice on the arrangements in place to ensure the additional estimates hearings are conducted in a COVID-safe environment. This guidance is also available from the secretariat. The committee appreciates the cooperation of all attendees in adhering to these arrangements. In order to comply with social distancing requirements, senators and the secretariat may use their electronic devices to communicate with one another during the hearing. We ask witnesses' forbearance and apologise in advance for any discourtesy.

### **Australian Federal Police**

[09:06]

I welcome Senator the Hon. Marise Payne, representing the Minister for Home Affairs, the Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs and the Minister for Agriculture, Drought and Emergency Management. Minister, would you like to make an opening statement?

**Senator Payne:** No.

**CHAIR:** I also welcome officers from the Australian Federal Police, including Commissioner Kershaw. Would you like to make an opening statement before we proceed to questions?

**Mr Kershaw:** Yes, I would. Good morning, Chair and committee members. To begin with, I'd like to congratulate you, Senator Henderson, on your appointment as the new chair.

**CHAIR:** Thank you.

**Mr Kershaw:** I have a lot of ground to cover in this opening statement, so I'll do my best to make it concise.



Whilst the AFP's operational priorities are focused on counterterrorism and foreign interference, transnational serious and organised crime, cyber, fraud and child exploitation, the AFP's maxim is 'Policing for a safer Australia'. It is in our DNA to protect Australians and Australia's interests. It is incumbent on all law enforcement leaders to work together to ensure Australians feel safe at home, in their workplace and in the community. In the context of events and public discourse in recent weeks, both in Australia and overseas, it is important for me as the Federal Police commissioner to call out and denounce in the strongest possible terms the prevalence of violence, abuse, harassment and intimidation in our community, and in particular against women and the vulnerable. It is unacceptable. The AFP has zero tolerance for violence and abuse of any nature in our organisation. In order to strengthen culture, people and wellbeing priorities in the workplace, in late 2020 we established a new partnership agreement with the Australian Human Rights Commission, and we're looking forward to working with Sex Discrimination Commissioner Kate Jenkins and her team to build on past initiatives with practical solutions suitable to the AFP's context. I hope to provide you with further detail on this at the May budget estimates hearing.

In relation to the alleged sexual assault at Parliament House in 2019, I will be limited in what I can say, to ensure the active criminal investigation is not compromised. The allegation is serious, and the AFP, through ACT Policing, is investigating this matter and it is being treated with due care and attention, including with oversight by our Sensitive Investigations Oversight Board. This is an internal senior-level decision-making body chaired by Deputy Commissioner McCartney. Noting there are a number of inquiries in related matters, I have communicated, to those responsible, the primacy of the criminal investigation and the importance of letting it run its course. This includes the presiding officers, Senator Chandler, as the chair of Finance and Public Administration Committee, and Ms Jenkins about her inquiry. I also spoke with Mr Gaetjens, secretary of the Department of Prime Minister and Cabinet, that I am particularly concerned about the intersection of his inquiry with our investigation.

I would like to reference the letter I wrote to the Prime Minister shortly after media coverage and the receipt of a separate allegation in relation to a serving member of parliament. My letter provides guidance to members, senators and staff in their parliamentary and electoral offices in relation to the reporting of any criminal conduct to police without delay. The AFP is available to provide advice to parliamentarians and their staff regarding appropriate processes to be followed. While alleged criminal conduct may not always be within the jurisdiction of the AFP investigate and may, instead, be a matter for state or territory police, we will assist with reporting and advising to the appropriate agency. I want to re-enforce how reporting a crime intersects with the wishes of alleged victims. An investigation will always turn on the unique set of circumstances and available evidence and the earlier a report is made the best chance police have to secure evidence. Our officers are well trained in dealing with vulnerable witnesses and ensuring the rights of victims are respected.

I will now outline the AFP's involvement in relation to the allegations against a member of parliament. We received a report on 24 February 2020 via a member of parliament. We made contact with the New South Wales Police at the earliest opportunity, on 25 February. AFP officers, including at the deputy and assistant commissioner levels, spoke with their New South Wales Police counterparts during that week to confirm contact points for previous involvement with the complainant. The matter was also considered by our Sensitive Investigations board and, after ascertaining there were no allegations within the jurisdiction of the AFP, we provided all relevant documents to our colleagues in New South Wales Police.

I request that further details on matters currently under consideration, either by police or state coroners, not be aired in this public forum today. My focus remains on both respect for the privacy and dignity of complainants and the resolution of any investigation in a timely manner. I will always be frank, open and as helpful as I can be to this committee; however, where answering a question that may prejudice an ongoing or future criminal investigation, I will consider this to be contrary to public interest. I invite you to consider this in framing your questions, noting I'll be prepared to confer with the minister to make public interest immunity claims and protect the integrity of these investigations if required.

While these investigations continue, I'd also like to highlight the extraordinary results the AFP is recording in challenging circumstances. The focus of these results are centred on the ministerial direction issued by the Minister for Home Affairs on 12 December 2020. Under the AFP Act, the minister provided clarity on the expected areas of focus, namely counterterrorism, espionage and foreign interference, combating child exploitation, transnational, serious and organised crime, cybercrime, fraud and anticorruption, and the provision of specialist protection services and operations.

In the time available, I'll touch on a few key operational successes to demonstrate our performance against that direction. During the height of the pandemic, in the period March 2020 to February 2021, compared to the same

period in 2019 we accepted 28 per cent more matters for investigation—that is, 1,105 matters in total—and this included a 75 per cent increase in online child abuse matters. Overall, we seized 50 per cent more of illicit drugs. This included continued significant volumes of MDMA and ice, almost 12.5 tonnes, as well as concerning increases, like three times as much cocaine, almost four tonnes, prevented from entering our community and a 60 per cent increase in the quantity of heroin and other opiates seized.

I wish to acknowledge our forensics teams who deliver specialist, scientific, technical and intelligence capabilities in support of AFP operations. They also play a key role in supporting our state and territory counterparts and work with our international partners to take the fight against illicit drugs offshore through our world-leading drug-profiling program, which analyses and identifies the origin of seized drugs.

Transnational and serious and organised crime: actors involved in transnational, serious and organised crime are highly adaptable and resourceful. Many operate well outside of Australia, confident they won't be caught. Unfortunately for them, the recent arrest in Amsterdam of one of our highest priority targets, Tse Chi Lop, demonstrates what I've indicated previously: if you commit a crime against Australians or Australian interests, we'll come after you. We allege Mr Tse is responsible for multiple large-volume drug importations worth billions of dollars into Australia and the region for more than a decade. Australian authorities are now seeking his extradition to face prosecution in Australia. Last week, in a joint operation with the Australian Criminal Intelligence Commission, Australian Border Force, New South Wales police and the NSW Crime Commission, a vessel was intercepted off the New South Wales coast carrying approximately 200 kilograms of cocaine on its way to Sydney's Port Botany.

We're also prioritising our criminal assets confiscation practice. Last financial year the AFP led task force restrained \$264 million in criminal assets and this year we're already up to \$140 million. We don't just go after multimillion-dollar bank accounts and megamansions; we have seized cars, electrical equipment and even scuba gear. We're working tirelessly with law enforcement and other agency partners to dismantle criminal structures that are directly harming the Australian community. My message to these criminals is: we're coming, whether you're in Australia or abroad. We will also target everything obtained by ill-gotten wealth. We will be relentless. I acknowledge the change in language recently to 'religiously motivated violent extremism' and 'ideologically motivated violent extremism' announced by the Director-General of Security last week. In the AFP we'll adopt this new terminology, as well as the subsets within those categories, but our primary focus remains on targeting criminality. As we saw with the arrest and charging of two men by the Victorian Joint Counter Terrorism Team last week, we continue to see members of our community radicalising to violence. We are committed to supporting communities who are at the forefront of prevention and early intervention efforts.

I'd also like to acknowledge two recent significant efforts from our teams who have one of the toughest jobs: child protection, human trafficking and slavery. Operation Arkstone revealed an online network of alleged child sex offenders sharing child abuse material on social media forums. On 24 February this year a 30-year-old man in WA was the first convicted offender sentenced as a result of the operation. Since the first arrest in February 2020, AFP investigators and forensic specialists have worked tirelessly to examine evidence from each arrest in order to identify more alleged offenders linked to this network. So far, 20 men have been charged and 53 children have been removed from harm. We won't stop until we uncover the entire network of individuals and the full extent of their criminal activity. Just last week we laid a further 152 charges against a Sydney man for his alleged role in sexually abusing young children, some under the age of 10 years. Last week a 40-year-old man was arrested in Armidale, charged with three slavery and sexual servitude offences, and has been remanded in custody. The AFP wants all victims, potential witnesses and others impacted by human trafficking or slavery to be aware that there are pathways to get help. The criminals who perpetrate these crimes are hiding in plain sight and I urge the entire Australian community to look a little deeper and contact police if something doesn't seem right.

Cybercrime continues to be a significant priority for the AFP and we are aggressively progressing the Cyber Security Strategy 2020. We know firsthand that cybercrime can affect everyone in our community, and the AFP is shifting to a victim centred approach. We will continue to reduce the volume of cybercrime and other online harm by growing numbers of tech-savvy cyberinvestigators working more closely than ever with our international partners to uncover offshore cybercriminals targeting Australia and by building even stronger partnerships with the Australian Cyber Security Centre and with the eSafety Commissioner, who also does important work to keep Australians safer online. As we said to the Parliamentary Joint Committee on Intelligence and Security last week, the proposed powers and surveillance legislation amendment bill currently before parliament will help us to better uncover, identify and then target those profiting from the theft and sale of Australians' identities and financial information. In some circumstances, we'll be able to disrupt or frustrate online offending, with reduced harm and better outcomes for would-be victims in the community. It is important that the public knows that the appropriate

place to make reports of online thefts, frauds and scams is through ReportCyber. The AFP and every state and territory police force partner with the Australian Cyber Security Centre to coordinate this process and ensure your report gets to the appropriate investigating authority. If you've had your identity stolen, I encourage you to get in contact with IDCare, who can help.

Finally, I just want to draw your attention to the new AFP jobs website, [jobs.afp.gov.au](http://jobs.afp.gov.au). I want this agency to fully represent the community that we serve. I'm proud that our most recent recruit training program, which commenced last Monday in Sydney, comprised a higher number of women than men. To help us achieve a more diverse workforce, we launched the interactive site to reach a wider audience and provide applicants and their families and friends with information about exciting career opportunities in the AFP. At the AFP, we outsmart serious crime, we use intelligence action, we out-think and outmanoeuvre, and we're a step ahead. So if you know someone, or if there is anyone, who is interested in being part of our team and serving our country in any of our commands across Australia, I encourage them to take a look at the new site and apply.

There's a lot more I could mention, like our ongoing contribution to the COVID-19 response, but I think I'm out of time. I now welcome your questions. Thank you, Chair.

**CHAIR:** Thank you very much, Commissioner. I would also like to welcome to the hearing this morning Senator Scarr, Senator Vann, Senator Molan, Senator Waters, Senator Fierravanti-Wells, Senator Ciccone, Senator Patrick and Senator Keneally. I'm going to kick things off with a couple of questions to you, Commissioner, and then we will share the call around. You've made some comments in relation to the risks of prejudicing any possible trial involving the allegations of sexual assault that have arisen as a result of the allegations in this building. Could you just explain in more detail why it's not appropriate to discuss any of these factual matters?

**Mr Kershaw:** What happens is that a criminal investigation has primacy over any other inquiries. The reason for that is that, to enable a fair process and the course of justice to take its course and for us to be able to follow the evidence and not have anything tainted or a witness interfered with, that provides what we call a comprehensive brief of evidence that we can then put before the DPP without having those issues interfere with the process. I have seen it before where some people have attempted—it's a very small margin on attempting to pervert the course of justice. People might have good intent, but you can actually interfere with that investigation, which triggers other issues in relation to other offences. Also, we need to have what we would say is a clean corridor for us to be able to do our investigation without any interference from other inquiries or witnesses being asked the same question that we're asking through a civil based inquiry. It's not helpful at all and it's actually quite a risky undertaking.

**CHAIR:** Is that even more so when there might be a jury involved in any criminal prosecution?

**Mr Kershaw:** Yes, of course. You want to make sure that we're objective and impartial, so we present the facts and the evidence, to make sure that, at the end of the day, a jury or a judge may make the decision on that brief of evidence.

**CHAIR:** What would be the risk if factual matters were canvassed in any forum apart from through your proper investigation procedures?

**Mr Kershaw:** For example, even matters reported in the media can affect a fair process being undertaken or prejudice an outcome or provide bias to one side or the other, so we'd really respectfully ask that it doesn't disturb our criminal investigation or intersect with our investigation.

**CHAIR:** Thank you very much, Commissioner. I'm now going to hand over to a senator from the opposition. Would anyone like to take the call? Senator Keneally.

**Senator KENEALLY:** Thank you, Chair. Thank you, Commissioner, and thank you to your team for the work that they do, particularly the work in terms of child protection. It's extremely important, and I place on the record again—and I think you know it—my professional and personal support for the work of the AFP.

**Mr Kershaw:** Thank you.

**Senator KENEALLY:** First, I would like to go to the letter that you wrote to the Prime Minister on 24 February. You referenced it in your opening remarks. I would like to go to a reference you made in your opening remarks about urging members of parliament when they receive allegations to forward them as soon as possible to the AFP. Commissioner, I have read your letter carefully and it says, 'Such matters should be reported to the AFP without delay, taking into account the rights and privacy of the victim.' Some sectors of the media and in some public conversation your letter has been interpreted as establishing a mandatory reporting regime such as exists for child abuse. Could you clarify here today whether your letter does seek to establish a mandatory reporting regime or if there is more nuance in the letter that you have sent to the Prime Minister.

**Mr Kershaw:** In relation to sexual assault or other matters where there is a victim, no, not mandatory—

**Senator KENEALLY:** An adult victim?

**Mr Kershaw:** Yes, it's not a mandatory report. It may be that that victim does not want any action taken criminally; maybe it's an internal issue or not at all. That's happened across workplaces across Australia, where they are having to deal with those internally or maybe there's no action be taken at all; the person wants to actually just tell their story. I think in that letter that's what that line means, 'taking into account the rights and privacy of the victim'. So if the victim says, 'I don't want this to go any further,' then it doesn't go any further. Where we focused on our matters is it is a victim-centred approach, so we respect the rights and privacy. At any point in time, they may withdraw that or there may be no action that is taken.

**Senator KENEALLY:** I also note that your letter says, 'Because these matters are complex and sensitive that members and senators are encouraged to contact the AFP for advice.' Could you elaborate on the types of advice and support that the AFP could provide should a member or senator become aware of an alleged criminal activity.

**Mr Kershaw:** We've already seen that we've been able to provide advice as to how to report matters and which jurisdiction. It may not come through the AFP; it may go direct from your office or yourself to that particular jurisdiction, so we can identify that jurisdiction. It was also to make sure that there are processes in place to ensure that no-one is holding onto things and then down the track in two year's time there is an inquiry as to why anyone didn't report this or why anyone didn't take any action. It's really to support and provide that guidance and advice where appropriate. We have seen already a number of matters that have come to us.

**Senator KENEALLY:** Just to circle back on the question of mandatory reporting, I note that two weeks ago the Sex Discrimination Commissioner, Kate Jenkins, was on *Insiders*, and it was put to her by the interviewer, David Spears, 'He,' the Commissioner, 'said you've got to report it to police.' Ms Jenkins disputed that, that that was your assertion. She said, 'It shouldn't be taken out of the hands of the victim.' I take it from what you are stating here that you would agree with Ms Jenkins's assessment?

**Mr Kershaw:** Yes, and I did speak to her about that and we were able to clarify that.

**Senator KENEALLY:** Just to round this off, could I note that members of parliament and senators receive a wide range of correspondence and often alleging a wide range of either criminal or corrupt activity across all sectors of society and all levels of government. Would you agree that, at some levels, members of parliament and senators need to exercise discretion and judgement about what rises to the level of referral to the AFP?

**Mr Kershaw:** Yes. I think that is wise, given the fact that there is material that you can obviously see is not appropriate to even advise police and I think that judgement and discretion should be on yourselves.

**Senator KENEALLY:** Commissioner, I do have some questions that relate to the alleged sexual assault of Brittany Higgins in this building on Saturday, 23 March, 2019. My questions are not about the alleged commission of a crime and what a male colleague reportedly did to her. I understand and respect the investigation—

**CHAIR:** Senator Keneally, can I just ask you to hold there. If you are intending to ask questions in relation to any factual matter concerning these allegations, it's not for senators to determine if they may or may not be relevant in the context of the criminal investigation. So I just ask you to take extreme care in your questions in light of the commissioner's concerns that he has raised that any factual matter may be relevant to the AFP's investigation or, indeed, any criminal trial.

**Senator KENEALLY:** Thank you, Chair. I fully respect the right and responsibility of the commissioner to advise the committee about questions that he would not wish to answer because of that potential to prejudice.

**CHAIR:** But also, Senator Keneally, just to be very clear in relation to your questions, I would say that, in the framing of your question itself, you need to be very careful in relation to any suggestions of any factual matters which may go to the heart of this matter. Thank you.

**Senator PATRICK:** Point of order, Chair: I don't actually think the standing orders prohibit a senator asking questions, and the commissioner is quite entitled to simply advance a public interest immunity claim. I don't think we should be constraining senators in what they do. I don't think it's in the standing orders, Chair.

**CHAIR:** On the point of order, Senator, it is a matter for the chair and for the committee as to matters of sub judice.

**Senator PATRICK:** 'Sub judice' refers to a court hearing. There are no court proceedings underway.

**CHAIR:** Excuse me, Senator Patrick. I'm ruling on the point of order. In relation to allegations of a very serious crime, involving allegations of sexual assault in this building, I am simply reminding Senator Keneally of the very precarious nature of these questions if they were to give rise to any prejudice. We don't know whether

someone may be charged imminently in relation to these matters. So I am simply asking for all senators to respect the commissioner's concerns which he has raised, and we will proceed from there. Thank you very much, Senator Keneally.

**Senator KIM CARR:** Madam Chair, on the point of order, what Senator Patrick has raised is entirely consistent with the standing orders. It may well be that you can provide advice to senators, but it is the witness who has to respond to the question. The commissioner's highly experienced in these matters and more than capable of responding appropriately. I'd hate to think that you were trying to inhibit people from asking questions which are the province of this committee.

**CHAIR:** Senator Carr, I have ruled on the point of order, and I give the call. Thank you very much. Please don't reflect on my chairing of this committee. I would now give the call to Senator Keneally. Thank you.

**Senator KENEALLY:** Thank you. May I clarify the amount of time I have remaining?

**CHAIR:** Yes, you have one minute, but I will give you a couple of minutes grace, Senator Keneally.

**Senator KENEALLY:** Yes, thank you, because I had six minutes before this discussion that I was not participating in.

**CHAIR:** You have the call, Senator Keneally. Thank you.

**Senator KENEALLY:** Thank you. Commissioner, as I was saying, my questions today are instead about the AFP's conduct. The AFP, as you know and respect, is required to account for its conduct to the Senate. So, in that vein, I would like to ask some questions in relation to your contact with the Department of Parliamentary Services. On what date did the AFP first have communications with the Department of Parliamentary Services, which includes the Parliamentary Security Service, about an incident in Senator Reynolds's office on the morning of Saturday 23 March 2019?

**Mr Kershaw:** Specifically the Department of Parliamentary Services?

**Senator KENEALLY:** Yes, but noting that that department also includes the Parliamentary Security Service.

**Mr Kershaw:** Yes. In relation to the current matter?

**Senator KENEALLY:** An incident in Senator Reynolds's office.

**Mr Kershaw:** We were first notified by the complainant on 1 April 2019.

**Senator KENEALLY:** You had no communications with the Department of Parliamentary Services, including the Parliamentary Security Service, prior to 1 April?

**Mr Kershaw:** Correct.

**Senator KENEALLY:** Thank you. So when—

**CHAIR:** Senator Keneally, you have about a minute left.

**Senator KENEALLY:** Chair, I would seek a few moments in addition, given—

**CHAIR:** We can come back to you, Senator Keneally. We'll share the call around. I'm very happy to come back to you.

**Senator KENEALLY:** Then please move on. I would prefer to have a longer block of time.

**CHAIR:** Alright. Thank you very much, Senator Keneally. I now give the call to Senator Scarr.

**Senator SCARR:** Thank you, Chair. Commissioner, you spoke in your opening statement about quite a material increase in child sex offences that has occurred over the last short while. I note that in 2018 the federal government dedicated quite a considerable amount of funds to the establishment of the Australian Centre to Counter Child Exploitation. To what extent has that centre been involved in pursuing potential illegal conduct in that space, and how has it contributed to the success in relation to some of the cases you referred to in your opening statement?

**Mr Kershaw:** Thanks, Senator. If I could, I might just hand over to Deputy Commissioner Pointing, who has responsibility for the ACCCE, which has been an absolutely wonderful initiative in the sense of the number of children that they've saved, not just here in Australia but overseas. The number of arrests of offenders—again not just in Australia but with what they've coordinated overseas—has been simply remarkable. The women and men in that area do an unbelievable task in identifying victims and pursuing these offenders and networks, and it's simply been an outstanding effort from those detectives and the support staff and specialist staff in that centre in Brisbane. But I will just hand over to the deputy.

**Mr Pointing:** Thanks, Commissioner. Good morning, Chair and committee members. Thank you for your question. I support the commissioner entirely about the wonderful work our team at the ACCCE is doing. I'll give

you some background. Through the ACCCE, which is the Australian Centre to Counter Child Exploitation, with joint anti-child-exploitation teams around Australia, or JACETs as we call them, and with ThinkUKnow, our major education strategy, and other critical initiatives, the AFP and its state and territory partners—because a big part of the success of the work the ACCCE does is to connect with our partners in the states and territories and also members of the community; it's got a strong community base—collectively are continuing to make inroads in countering online child sexual exploitation.

I will just give you some examples of the amount of work that's coming to the ACCCE. From 1 July 2019 to 30 June 2020, the ACCCE Child Protection Triage Unit received more than 21,000 reports. That's up 50 per cent on the previous year. There's been a strong influence of COVID. Criminals have recognised that during COVID more of our children have been at home, and they've exploited that, unfortunately. But the ACCCE has engaged in an enormous amount of online preventive work through our programs, including ThinkUKnow, which is to educate not just children but parents, teachers and all those who can influence our children and try to raise awareness of some of the dangers that might exist on the internet.

I will just give you some examples of the work the ACCCE is doing. In the 2018-19 financial year, the ACCCE arrested 74 individuals on 372 charges. In the 2019-20 financial year, that jumped to 161 offenders on 1,214 charges. In the seven months from 1 July 2020 to the end of January this year, the ACCCE and its partners arrested 126 individuals on 1,612 charges. So we're seeing, as the ACCCE matures, creates those stronger networks and explores innovation with its investigative techniques, a lot more great results.

The commissioner has already mentioned some of the national operations we do. Operation Molto, in particular, so far this financial year has arrested 57 persons on 487 charges. From Operation Arkstone, to date, a total of 17 people have been charged with 856 offences. So the ACCCE continues to do amazing work. On reflection, I think one of their greatest strengths is their connection to community. Everything they're doing is very much community based. It's victim centred. It's strongly driven by education. We all know that we need to raise the awareness of these types of offences. We need to work with all stakeholders. Parents, in particular, are struggling sometimes with what to say to their kids about safe online use, so we're doing an enormous amount of work in that space. COVID has impacted on that to a degree. We couldn't do the face-to-face training we'd like to do.

**Senator SCARR:** Just on COVID, Deputy Commissioner, you made the point that children are perhaps in a more vulnerable position because more children are staying home for longer.

**Mr Pointing:** Correct.

**Senator SCARR:** Is that a material factor, from your perspective, in relation to the increase in activity? What are the other factors, from a COVID perspective, that might be increasing the activity? Just to flush that out a bit, ACCCE is obviously established. It's doing a great job, so more offences are probably being identified and carried through the process. Then you've also got COVID, so to what extent can we attribute the increase to ACCCE's fine work and the factors generated through COVID, or is it a combination?

**Mr Pointing:** It's a combination, but I think we can separate the two to the extent that, if we look at the pre-COVID financial year, there were 14,285 reports. It jumped 50 per cent the following year, so clearly the fact that children are spending more time at home, as are offenders—we firmly believe that that change in the external environment has prompted that 50 per cent jump in reports. I think there's a clear connection to be made with the amount of time vulnerable people and, of course, offenders are at home. The jump in arrests is also connected to that, including the incremental effectiveness of the ACCCE as they make broader connections with the community and broader connections with their partners. I think a 50 per cent jump in reports is clearly linked to the amount of time children are spending at home.

**Senator SCARR:** Okay. Chair, perhaps just one more question on this, and then I'm happy to give the call to someone else.

**CHAIR:** Thank you very much, Senator Scarr.

**Senator SCARR:** I've so much admiration for members of the Federal Police and law enforcement agencies who are working in this space. I can only try to imagine how difficult it is to do the things you need to do to acquire the evidence that's necessary to pursue charges. What programs or protocols are in place to actually protect the welfare of the officers who are doing this extraordinarily confronting work?

**Mr Pointing:** It's a very good question. As you could only imagine, the evidence, the images, that our people have to view to form a brief of evidence is abhorrent, so we have a very strong focus on their welfare, including regular assessments. This year we've seen an enormous investment, through Project Shield, in the welfare of our staff, which is focused on the physical and mental welfare of our people. We'll see nurses and medical

professionals actually embedded in our offices so that our people have got immediate access. But there are strong protocols for regular assessments, peer-support networks and other support mechanisms. We're also looking at ways that we can categorise our image library so as to minimise the amount of time our members have to be exposed to those images. It's an area of high concern for us. The welfare of our people has primacy. I'm very thankful for the investment in Operation Shield, which will see medical professionals embedded in our teams.

**Senator SCARR:** Thank you very much, Deputy Commissioner, and thank you to everyone for the work you are doing in that space.

**Senator WATERS:** Thanks for joining us today. Commissioner, I note in your opening statement, on page 5, in paragraph 15, you refer to providing 'all relevant documentation to our colleagues in NSW Police.' In estimates before the New South Wales parliament on 12 March it was established that the AFP passed on only a summary of the allegations rather than the full dossier. Can you just explain the apparent discrepancy there?

**Mr Kershaw:** I don't think there is a discrepancy. It's not unusual for us to—I have read that email and I have satisfied myself the detail of that. It's a detailed summary and it explains what's in the dossier. The process that we undertook was to make sure there was no Commonwealth nexus; that means you are required to digest the 31- or 32-page dossier and also put that through our internal process. We made contact with the New South Wales police and they said it wasn't urgent, so we put it through our internal process, which is our sensitive investigation oversight board. Then they deemed there was no Commonwealth nexus, so the dossier was forwarded on. But prior to that, we immediately submitted to New South Wales police a detailed summary of that dossier. I have read that document and I'm satisfied that there's enough in that to explain what was in the pipeline for them.

**Senator WATERS:** Can I just ask why the full dossier wasn't provided?

**Mr Kershaw:** Because of the fact that we put it through our process to make sure there were no Commonwealth offences or any Commonwealth nexus.

**Senator WATERS:** Once you'd satisfied yourself that there wasn't, why not release the full dossier to the police?

**Mr Kershaw:** That's what we did do. We did. So it's gone.

**Senator WATERS:** What was the gap between the provision of the summary and the full dossier?

**Mr Kershaw:** I haven't got the exact date; I'll take the date on notice. It wasn't that long after our email. It may have been nine or 10 days.

**Senator WATERS:** Thank you.

**Mr Kershaw:** We were informed by New South Wales police there was no urgency on that.

**Senator WATERS:** In relation to the letter you sent that came to members of parliament on 24 February, advising of the processes that MPs should use if informed of a serious allegation, why and when did you decide to write that letter?

**Mr Kershaw:** There was a sequence to that. I'm not too sure if this is known or not, but it will be now. I had written to the secretary of Prime Minister and Cabinet on 22 February around the extent to which these inquiries may traverse the same subject matter, and I was looking for the terms of reference of those inquiries. Then, subsequently, the Prime Minister was seeking guidance. I wrote that other letter then on 24 February.

**Senator WATERS:** When you said the Prime Minister was seeking guidance, is that from you?

**Mr Kershaw:** Yes.

**Senator WATERS:** On what date did the Prime Minister seek guidance from you?

**Mr Kershaw:** That was on 24 February 2021.

**Senator KENEALLY:** That was the date of the letter, yes?

**Mr Kershaw:** Yes.

**Senator WATERS:** Did the Prime Minister ask you to write that letter so that MPs could be aware of what the process was?

**Mr Kershaw:** Yes, he did ask me to provide guidance, given the fact that I'd already written to the secretary of Prime Minister and Cabinet on 22 Feb.

**Senator WATERS:** Did you get a response to that letter of 22 Feb with an outline of the terms of reference that you'd sought?

**Mr Kershaw:** I will have to take that one on notice. I have got that many letters from the Presiding Officers and parliamentarians and everyone—if I could take that on notice, please?

**Senator WATERS:** Sure, thank you. Were you furnished with the detail of the scope of that Gaetjens inquiry?

**Mr Kershaw:** Yes, I was.

**Senator WATERS:** In a timely manner?

**Mr Kershaw:** Yes, on 4 March.

**Senator WATERS:** Did you form a view that there was likely to be any crossover or implications for any investigations that you might conduct?

**Mr Kershaw:** Sorry, 4 March was my response to the secretary of Prime Minister and Cabinet, so that would have been earlier. I will have to come back to you with the date that I was responding to, but I wrote back to the secretary on 4 March, and in my letter I said that I appreciated the information and assurance that he'd provided concerning the ongoing investigations.

**Senator WATERS:** And did you form a view that there would be any sort of overlap between the Gaetjens investigation and any inquiries that you might be making?

**Mr Kershaw:** Our view—and I consulted with the Chief Police Officer of ACT Policing, who had carriage of that matter—was just to ensure that we had that clean corridor and that that investigation was not disturbed. You didn't want anything to intersect with that investigation.

**Senator WATERS:** Yes.

**Mr Kershaw:** So it's just making sure that everyone understands that.

**Senator WATERS:** Did you form a view that there wouldn't be such an intersection or that there would?

**Mr Kershaw:** Our view was that we were just making sure that that didn't occur, in the best interests of following the evidence and making sure that the investigation was allowed to run its course without having any interference.

**Senator WATERS:** So did you make requests about the nature of the Gaetjens report so that there wouldn't be any interference? How did you ensure that there wouldn't be any interference?

**Mr Kershaw:** No, I think we looked at the terms of reference, and then that's a matter for the secretary, not me, to make that determination, because we didn't have access to that material.

**Senator WATERS:** Okay. Did you request that anything either be done or not be done so that your investigations weren't intersected, to use your words?

**Mr Kershaw:** We just made sure there was an understanding there of our concerns and that, if they wanted to, they could consult with me or the Chief Police Officer. That's occurred at those levels within the department.

**Senator WATERS:** I note that in your opening statement you talked about the jurisdiction of the AFP and you advised that there were no allegations within the jurisdiction of the AFP, and therefore you provided the documents to the New South Wales police. The Prime Minister and many MPs have been repeatedly saying that this is a matter that's been investigated by police. Have you reached out to the Prime Minister and others to explain that, in fact, the AFP did not have jurisdiction and that at that point in time the New South Wales Police investigation had been closed and, ergo, there was no active investigation on foot?

**Mr Kershaw:** No. I think what's clear is that there is a process here, because you also have an active coroner in South Australia who is examining this particular matter. The New South Wales police had been dealing with that complainant. I think it was pretty well-known to everyone that that specific matter, in relation to the allegation of sexual assault, was in the domain of the New South Wales police.

**Senator WATERS:** Yes, but they did not have an active investigation on foot, given that the complainant is no longer with us.

**Mr Kershaw:** Well, they did.

**Senator WATERS:** At all times?

**Mr Kershaw:** If you look at the time line, if you go back to last year, they were actively talking and communicating with that complainant.

**Senator WATERS:** Yes, but I'm talking about this year—

**Mr Kershaw:** Yes.

**Senator WATERS:** when members of parliament, including the Prime Minister, have been saying they can't talk about this because it's an active police investigation. My question is whether you advised them that, in fact, there was not an active police investigation at the time.



**Mr Kershaw:** Well, there was.

**Senator WATERS:** By whom?

**Mr Kershaw:** By the New South Wales police, and you can ask them why they then closed that investigation on the date that they did. That's a matter for them.

**Senator WATERS:** Yes. Well, I think you're getting the dates perhaps a little bit mixed up there.

**CHAIR:** Just confine yourself to questions only, please, Senator Waters.

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

**CHAIR:** Thank you.

**Senator WATERS:** How many members of parliament have been participating in the now active AFP investigation into this matter?

**Mr Kershaw:** I couldn't tell you how many members of parliament, but I'm prepared to say that we've had 32 different, I would say, referrals of information to us, some anonymous—that is, the material was anonymous, but the people who referred it weren't. However, that's been narrowed down—maybe the deputy commissioner will correct me on this—to six matters out of those 32 pieces of information forwarded to us from various parliamentarians.

**Senator WATERS:** Thank you. We learnt that there's a protocol for the AFP to inform the Minister for Home Affairs regarding politically sensitive complaints. Given the politically sensitive nature of the allegations made against Minister Porter, did the AFP advise Minister Dutton of those allegations, and, if so, when?

**Mr Kershaw:** I'll have to go to my time line, if you just give me a moment.

**Senator WATERS:** Thank you.

**Mr Kershaw:** That would have been on 24 February 2021.

**CHAIR:** Thanks very much, Commissioner. And thank you, Senator Waters. I will hand the call to Senator Van.

**Senator VAN:** Commissioner, congratulations on all the great work you're doing. Your opening statement was very comprehensive, and certainly the scale of work and the crimes that you're preventing and disrupting are to be noted. I've got a few questions arising from your opening statement around seizures of drugs et cetera. I noted there were some eye-watering numbers in your statement. What trends are we seeing in the international drug landscape, and what does this mean for Australia?

**Mr Kershaw:** Truly, for us, the threat of transnational serious organised crime is at its highest level, and that's globally. With our Five Eyes law enforcement partners we're often coordinating and referring different matters to each other, but we're seeing the same increases. Methamphetamine, as you know, can tear down the fabric of regional communities and communities in general.

**Senator VAN:** And urban.

**Mr Kershaw:** So it's a real threat to our communities as far as that goes. Unfortunately, we're an attractive market because the price is right and profit margins are high. That's why we're going after outlaw motorcycle gangs and others who peddle in misery. All they want to do is profit from the misery of seeking to do harm to Australians.

**Senator VAN:** And I'll come to gangs next.

**Mr Kershaw:** We have a large international network and we know where a lot of these drugs are coming from, and we're working with those international partners. And we continue to work with the Home Affairs team, the whole portfolio, on innovation and different ways we can dismantle these syndicates. They are truly global now. In the old days, you would have an Australian syndicate who was just interested in Australia. Now they've become global, so Australian criminals are not just targeting Australia; they're targeting other markets as well. So, more than ever, we need to partner up with the community, all the different law enforcement agencies and different governments across the globe and work in partnership to do what we can to dismantle and disrupt these syndicates.

**Senator VAN:** And where are these drugs coming from? What countries?

**Mr Kershaw:** A lot of our cocaine obviously comes from South America and Mexico, and now methamphetamine is also coming from Mexico. We've also seen South-East Asia and Asia in general with methamphetamine, and then MDMA and others come from Europe. That's often where it's manufactured and where they're actually producing it. Heroin is also coming from that region in Asia and even the Middle East. It

continues to be a real challenge for us, but we've been able to deliver what I would say is a bit of an offshore punch on organised crime, and we're going to go after them even further. Some of our capability around seizing assets offshore has improved. We've got greater agreements with different countries now to go after assets offshore—they often move their assets offshore—and also, our partner agencies offshore, more than ever, are really willing to work with us. We have a long history working with a lot of those agencies, so there's a lot of trust between those agencies. But, as Australia continues to be a profitable market, unfortunately the threat's not going to go away.

**Senator VAN:** You mentioned gangs. Could you please provide us with an update on the focus or priorities of the AFP's National Anti-Gangs Squad?

**Mr Kershaw:** I might have my colleague Deputy Commissioner Ian McCartney answer that.

**Mr McCartney:** I think the NAGS concept and construct of the AFP has been extremely successful, particularly in working with our state and territory partners, but also with our international partners. The key focus is to hurt, disrupt, and degrade OMCGs in Australia and offshore by seizing drugs and weapons, by seizing cash and by arresting them where we can. Since 2013 there have been over 1,300 arrests, working with our domestic partners, and over \$11 million in cash has been seized, again working with our domestic partners and working with them very well. Obviously a key focus is not just domestically, and the commissioner noted the work the AFP undertakes offshore through its international network. There's been a key focus on South-East Asia in terms of targeting OMCGs' impact on the Australian community.

**Senator VAN:** How many arrests have there been made by the National Anti-Gangs Squad?

**Mr McCartney:** I think, since the concept, there have been over 1,300 arrests. They have been made by AFP and state and territory police, but under that construct, in terms of the AFP providing a coordinating role in relation to focus on this crime type.

**Senator VAN:** How many have related to outlaw motorcycle gangs?

**Mr McCartney:** They all have.

**Senator VAN:** Wow. Across the country has the number of motorcycle gang members grown in recent years?

**Mr McCartney:** It has. I think it's fair to say the challenge and the threat is constant in terms of the work that we do in this space.

**Senator VAN:** So the quicker you lock them up, the faster they are growing or—

**Mr McCartney:** They're a highly resilient organised crime group which requires a coordinated focus in terms of the work that we do in this space.

**Mr Kershaw:** What you may find interesting is how they're structured. They have a full logistical arm, they have an administration arm, they have vehicle supply units—they're actually structured around a proper organisation, but it's all for criminal activity and criminal proceeds. We're seeing those structures come forward globally, so they have a global capability. But we know that and we're coming after them, and you'll see some more in this space over the next 12 months.

**Senator VAN:** What sorts of activities? Is it just around the drugs component or are they involved in other activities?

**Mr Kershaw:** Fraud. We've even have had child abuse matters, online child abuse, extortion—a whole range—kidnap, robbery, theft, breaking into people's houses. The list just goes on and on.

**Senator VAN:** Incredible. Keep up the good work there. Can I now take you to some of your work around the dark web. What types of crimes are you seeing being facilitated on the dark web?

**Mr Kershaw:** Sadly, every kind of crime that you can think of is being committed on the dark web. Recently, we were able to show a certain committee, real-time, that we could get on the web and order a fake vaccine, for example, straight away, for about \$200. So it is a criminal marketplace. It's also a way of communicating using encryption and obviously being able to be anonymous and unidentifiable. There's lots of activity that happens—drugs, child abuse, terrorism—again, the list goes on. Most of them are living in that marketplace. There is not anyone, in my view, that is on the dark web for a lawful reason, except police.

**Senator VAN:** Incredible. What is the growth or scale of use of such technologies for criminal purposes? How big is it?

**Mr Kershaw:** It's growing, because encryption—I have said this before—is like a shield, and then anonymity is part of their sword. The fact is that they are able to operate anonymously using encryption and other methods to stay and evade law enforcement. So you actually don't even know where syndicates are based, individuals are

based and so on. You have seen some arrests recently, even the Australian that was arrested Germany. That was some great work from detectives that had some pretty lucky breaks, but otherwise, technically, it is very difficult to track down people on the dark web.

**Senator VAN:** That takes me to my next question. What challenges do the dark web and anonymising technologies pose to traditional investigative powers?

**Mr McCartney:** You spoke before about OMCGs as a crime group. In terms of the crime groups that we investigate, we estimate close to 95 per cent of their communications is encrypted. So the challenge for us is operating in the dark, understanding those crime groups and the criminality that's involved in those crime groups. Obviously, for us there's an important piece of legislation that's before parliament at the minute, the Surveillance Legislation Amendment (Identify and Disrupt) Bill. That's incredibly important—we would argue a game changer—in terms of our fight against organised crime on the dark web, our fight against paedophilia and child exploitation on the dark web. In terms of the threat that the commissioner has noted, the threat is real. The powers that are before parliament at the minute, through that legislation, will provide the investigators in AFP and our partner agencies with the tools to undertake this work.

**Senator VAN:** I will have some further questions about that that we can come back to in my next block.

**CHAIR:** Thank you very much, Senator Van. I will give the call to Senate Keneally.

**Senator KENEALLY:** I will note for the record it is 10.06. Can I please go back to some of the other questions that were canvassed earlier. On the matter of the Gaetjens inquiry, Commissioner, following your conversations with Secretary Gaetjens, is there any reason, in your view, that the secretary's investigation cannot proceed at this time?

**Mr Kershaw:** My view is that that's a matter for him.

**Senator KENEALLY:** From a policing perspective, is there any reason his investigation needs to be discontinued, stalled or altered at this time?

**Mr Kershaw:** To my knowledge, I don't have access to that material, so that is a matter for the secretary.

**Senator KENEALLY:** So that I am clear: have you asked the secretary to stall, pause or alter his investigation?

**Mr Kershaw:** No.

**Senator KENEALLY:** If I can go back to your previous answer, regarding when the AFP first had communications with the Department of Parliamentary Services, which includes parliamentary security services, your answer was 1 April.

**Mr Kershaw:** Yes.

**Senator KENEALLY:** Are you sure about that date?

**Mr Kershaw:** Yes. I have a letter that was sent from Commissioner Colvin on 13 September indicating, on the face of that letter, that the AFP was not notified by DPS until a few days after 1 April—two days after then, which would make it roughly 3 April. That's off the letter written by Commissioner Colvin on 13 September 2019.

**Senator KENEALLY:** You said that the complainant contacted the AFP on 1 April?

**Mr Kershaw:** Yes, 2019.

**Senator KENEALLY:** Of 2019, yes. Thank you for that clarification.

**Mr Kershaw:** I might help you out here. That was with the assistance and support of the chief of staff of the relevant minister's office.

**Senator KENEALLY:** I have a few questions that arise from that. First of all, was this considered a sensitive investigation after you'd had the contact on 1 April?

**Mr Kershaw:** It's hard for me to answer that, in the sense that our sensitive investigation board only came out recently, from the John Lawler review. But what I would say is that back then the category would have been a special investigation, which is the same sort of connotation as being—yes, it would have been treated as being sensitive.

**Senator KENEALLY:** Correct me if I am wrong—I don't have the previous protocol in front of me—but it's my recollection that the protocol did indicate that when it was a special investigation, now known as a sensitive investigation, the Minister for Home Affairs would be notified. Am I correct in that recollection? Was the minister notified and, if so, on what date?

**Mr Kershaw:** I will get Deputy Commissioner McCartney to answer that.

**Mr McCartney:** You're correct. There is a better practice guide, in terms of ministerial briefings. It states that the minister should be briefed by an AFP officer on any sensitive or significant operational matter. But there are a number of thresholds that dictate it, in terms of when and the conditions that the minister should be briefed, and they include 'when overt action has or is about to occur' in relation to an operational matter 'or when it is considered likely that a matter will otherwise come to the attention of the minister or the broader public'.

**Senator KENEALLY:** I take it, from that answer, that the minister was not briefed.

**Mr McCartney:** That's before my time.

**Mr Kershaw:** That's correct, to my knowledge, noting that I wasn't around back then.

**Senator KENEALLY:** Right. I have a letter, supplied to the Senate, from Senator Michaelia Cash stating, in response to a question she took on notice, that the Minister for Home Affairs was first informed about the alleged sexual assault that occurred in Minister Reynolds' office on 11 February 2021.

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

**Senator KENEALLY:** Back to the date of 1 April. It was reported on 15 February 2021, in the interview that Ms Higgins did with *The Project*, that she was told the AFP unit at Parliament House had been engaged due to a security breach.

**CHAIR:** Senator Keneally—

**Senator KENEALLY:** Chair, with the greatest of respect, if the commissioner does not want to answer that question, and assert a public interest immunity claim, he is free to do so.

**CHAIR:** Excuse me, you are now going to factual matters, in relation to this investigation, and I would ask you to exercise extreme caution.

**Senator KENEALLY:** Thank you for that. I respect your prerogative as chair. I note that it is up to the commissioner to make that determination.

**Mr Kershaw:** Thanks, Chair. I don't think it would be useful for me to answer that question, for a number of reasons, and it wouldn't be appropriate for me to. So I would appreciate if I could make a claim, if required, under public interest immunity.

**Senator KENEALLY:** But it is your advice to this Senate that the first date that you became aware of an incident in Minister Reynolds' office, whether it is a security incident or an alleged sexual assault, was on 1 April.

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

**Senator KENEALLY:** And it's your evidence to this committee that you had no prior contact from the Department of Parliamentary Services before 3 April?

**Mr Kershaw:** To my knowledge, that's correct.

**Senator KENEALLY:** Thank you. If I may continue, Commissioner, on what date did the AFP first have communications with the Department of Finance about an incident in Senator Reynolds' office on the morning of Saturday 23 March?

**Mr Kershaw:** Sorry, Senator, I was distracted. Could you ask me that again?

**Senator KENEALLY:** It's essentially the same question but about the Department of Finance.

**CHAIR:** Could you just repeat the question, Senator Keneally.

**Senator KENEALLY:** On what date did the AFP first have communications with the Department of Finance about an incident in Senator Reynolds' office on the morning of 23 March 2019?

**Mr Kershaw:** I'd have to take that on notice, but I can't find that anywhere.

**CHAIR:** Thank you very much.

**Senator KENEALLY:** So it's your evidence that you don't have a recording—

**Mr Kershaw:** I think my evidence is I'll take it on notice.

**Senator KENEALLY:** Thank you. Commissioner, again noting that it is up to you whether you take this on notice or assert a public interest immunity claim, on what date did the AFP first have communications with Senator Reynolds or her office about an incident in her office on the morning of Saturday 23 March 2019?

**Mr Kershaw:** I would like to take that on notice, because there are two different parts to that question. One is the office, and I've already said that the chief of staff to the relevant minister was involved in making that complaint on 1 April.

**CHAIR:** One minute, Senator Keneally.

**Senator KENEALLY:** Thank you, Chair. With respect, I would note that I did lose four minutes earlier due to no fault of my own.

**CHAIR:** One minute, Senator Keneally.

**Senator KENEALLY:** Chair, with respect, I would ask that I be allocated four minutes back, given that, through no fault of my own, through the interjections of other senators, non-Labor senators, I lost four minutes of my time.

**CHAIR:** Senator Keneally, you've had 16 minutes already. This is the second time you've had the call. I just indicated you have got one more minute, thank you.

**Senator KENEALLY:** Indeed, as I note, I lost four minutes, and I do note the practice established by Senator Stoker to allocate time back to senators when other people took their time. So, Chair, I ask you again to consider allocating Labor an additional four minutes, given that it was not Labor who lost those four minutes.

**CHAIR:** Senator Keneally, please, if I could ask you not to argue in relation to these matters.

**Senator KENEALLY:** I am not arguing; I am simply requesting that you follow the protocol established by Senator Stoker. Otherwise, Chair, it could be up to Labor senators to interject and take time from the coalition senators, and I don't think this benefits the Senate if that is a practice that is established.

**CHAIR:** Senator Keneally, you had two blocks of time.

**Senator KENEALLY:** Four minutes of my 20 minutes was taken up by others.

**CHAIR:** Could you please not interrupt me. You've had two blocks of time.

**Senator KENEALLY:** Given you interrupted me.

**CHAIR:** You've had two blocks of time, Senator Keneally.

**Senator KENEALLY:** Not a full 10 minutes, both blocks.

**CHAIR:** Your full 10 minutes has now been used.

**Senator KENEALLY:** You know it looks like you are seeking to shut down questions from opposition senators?

**CHAIR:** No, not at all, Senator Keneally. I am just asking you to respect fact that we are sharing the call and all senators want to ask questions.

**Senator KENEALLY:** That is a bit rich, Chair, given that your chairing of this does not allow Labor senators to have their time.

**CHAIR:** Senator Keneally, do you have any more questions for the commissioner, because if not—

**Senator KENEALLY:** I have many questions for the commissioner.

**CHAIR:** We will now—

**Senator KENEALLY:** I flag, Chair, this committee has had spillover days in the past, and we are prepared to do them again.

**CHAIR:** Excuse me, Senator Keneally, you don't have the call. Yes, Senator Carr.

**Senator KIM CARR:** Madam Chair, I recognise this is the first meeting of this estimates committee that you are chairing. It has been a custom and practice of the Senate estimates committee to acknowledge that this is a period of time in which the opposition has the opportunity to pursue appropriate questions in regard to the accountability of the administration of this country, namely the government. Attempts to actually frustrate that work by allocating time to other senators invariably means that the program that you have issued will be blown out.

**CHAIR:** Senator Carr—

**Senator KIM CARR:** Let me finish my point of order, Madam Chair.

**CHAIR:** I would ask you not to reflect on my work as chair.

**Senator KIM CARR:** I will reflect on what I need to reflect upon as the deputy chair of this committee.

**CHAIR:** Excuse me, Senator Carr, I would ask you not to reflect on the work of the chair and my chairing of this committee. I hear your point of order—

**Senator KIM CARR:** My point of order is simply this, Madam Chair: this is your first meeting. If you want to blow up the committee, keep going the way you are, because we will be here for a very long period of time.

**CHAIR:** Senator Carr, I would ask that you not raise your voice. Senator Keneally, do you have another question or two that you would like to ask the commissioner, and then we will move to Senator Fierravanti-Wells for a brief time and we will share the call. I'm very happy for more of the time to be taken by Labor and Greens senators, but it is also important that government senators are given opportunities to ask questions as well. So you have the call for a couple more questions. Thanks very much, Senator Keneally.

**Senator KENEALLY:** Thank you very much, Chair. I would like to move to the allegations of sexual assault in relation to the Attorney-General and just ask some clarifying questions. On what date did the Prime Minister first have communications with the AFP about the sexual assault allegations against the Attorney-General?

**Mr Kershaw:** 24 February 2021.

**Senator KENEALLY:** Thank you. Was that by phone?

**Mr Kershaw:** Yes.

**Senator KENEALLY:** Who called who?

**Mr Kershaw:** I was on the call to the Secretary of Prime Minister and Cabinet.

**Senator KENEALLY:** I'm sorry, could you repeat that?

**Mr Kershaw:** I was on a telephone call to the Secretary of Prime Minister and Cabinet.

**Senator KENEALLY:** You were on a telephone call. The secretary, Mr Gaetjens, is I presume who you are referring to?

**Mr Kershaw:** Yes.

**Senator KENEALLY:** And he called you?

**Mr Kershaw:** Yes.

**CHAIR:** One more minute, Senator Keneally.

**Senator KENEALLY:** I will follow up this set of questions in my next time, but, before we leave this block of questioning, can I go back to the issue of Mr Gaetjens's inquiry in relation to the Prime Minister's office and the alleged incident, the alleged sexual assault, on 23 March. Let me think about how I would like to ask this. I understand from the Prime Minister's own statements that he is asking Mr Gaetjens to determine whether his staff had knowledge, and who in his office had knowledge, of the alleged sexual assault to Brittany Higgins. From a policing perspective, do those inquiries hamper your investigation?

**Mr Kershaw:** It may.

**Senator KENEALLY:** Pardon me?

**Mr Kershaw:** It may. That's where I use the language around 'intersect' with our investigations. So, whilst I have the terms of reference, we are not embedded in that inquiry, nor would we want to be. So, yes, it may.

**CHAIR:** Thank you very much, Senator Keneally.

**Senator KENEALLY:** If I could clarify: you haven't asked Mr Gaetjens to alter those terms of reference or to go slow or pause his inquiry?

**Mr Kershaw:** No. That's a decision that he may wish to take, but that's based on the conversations I've had as far as any intersect with our criminal investigation goes.

**Senator KENEALLY:** Thank you.

**CHAIR:** Thank you very much, Senator Keneally. I will now give the call to Senator Fierravanti-Wells. I understand you have just a couple of minutes and then we'll move to Senator Patrick.

**Senator FIERRAVANTI-WELLS:** Commissioner, I start by commending you and your team on your ongoing work across a wide spectrum of very difficult and challenging issues, and thank you for your leadership. I'd like to refer to answers that you gave to my questions on notice regarding the transfer of funds from the Vatican and the answers on 16 September. You indicated that you were undertaking a review of information received and that it would be premature at that stage to provide an indication of potential further activities and associated leads. Can you advise me and provide me with progress on this matter?

**Mr Kershaw:** I will hand over to Deputy Commissioner McCartney.

**Mr McCartney:** The commissioner was correct. There was information that had been provided to us by AUSTRAC—a number of information reports. Since the date of the last Senate estimates, we've reviewed that financial information and our position at this stage is that we can't identify any misconduct in relation to that financial information.

**Senator FIERRAVANTI-WELLS:** So, you've left it open or you've concluded your investigations?

**Mr McCartney:** Based on the information we have, we've completed our inquiry.

**Senator FIERRAVANTI-WELLS:** But, if there is further information that comes to light, you can review that matter in due course?

**Mr McCartney:** Of course, Senator.

**Senator FIERRAVANTI-WELLS:** Thank you.

**CHAIR:** Thank you very much, Senator Fierravanti-Wells. Senator Patrick.

**Senator PATRICK:** Thank you, Chair. Related to the Lawler report on sensitive investigations, you provided the committee advice that you intended to complete about eight or nine recommendations by the end of last year. I'm referring to question on notice BE20-003. Can you advise whether those recommendations have been completed?

**Mr McCartney:** We have made progress since the last Senate estimates. I can tell you now that 22 options, or recommendations, from the Lawler report have been implemented and the remaining two are ongoing.

**Senator PATRICK:** So 8 and 15 are still ongoing? That is what you indicated in your answer—that 8 and 15 would take into this year?

**Mr McCartney:** Correct.

**Senator PATRICK:** So you are own track, basically?

**Mr McCartney:** We are.

**Senator PATRICK:** Thank you. I want to move very quickly to the Privileges Committee reports, No. 168 and No. 174. These relate to intrusive powers that the AFP have—things like metadata searches and so forth, in respect of parliamentary privilege. There was a recommendation. I understand the commissioner was working towards an updated MOU in relation to new intrusive powers and parliamentary privilege. Can you give the committee an update on where you're up to with that, please?

**Mr McCartney:** Sure. The Attorney-General's Department have the lead on that review, and that review is ongoing.

**Senator PATRICK:** The MOU that is currently in existence in relation to search warrants, for example, is an MOU between the AFP and the President of the Senate, is my understanding.

**Mr McCartney:** Correct.

**Senator AYRES:** Referring to that element of it, are we close to an update in respect of that MOU?

**Mr Kershaw:** My information is that on 9 February we held a meeting between Attorneys-General's, AFP and Home Affairs, that's of this year, and that the working group is still discussing the principles and establishing the plan for the way forward in updating the MOU and national guideline, based on feedback, and the resolution, I think, passed in December 2018. So that is ongoing.

**Senator AYRES:** Do you have any feel for when that will conclude, because it's been going for some time?

**Mr Kershaw:** Yes. We have scheduled a number of meetings and look at having this complete and in effect by the end of this year.

**Senator AYRES:** I have a final question that relates to your opening statement. I'm just trying to understand, when we're talking about sensitivities. There are two public interest immunities that relate to these sorts of incidents. One of them is sub judice, which relates to matters before the court, and I understand there are none at this present time. The others relate to a public interest immunity claim around investigations by police and law enforcement. Does that cover off on the coronial investigation that is occurring in South Australia? Is that considered a policing investigation, just out of understanding?

**Mr Kershaw:** I'm not an expert in the South Australian act, but most of the coroner's police investigate on behalf of the coroner. The coroner can direct the police investigation as to avenues and inquiries, and that's how most coroners operate.

**Senator PATRICK:** The coroner normally deals with circumstances around a death, one presumes, and—

**Mr Kershaw:** It's normally cause of death and/or whether it's preventable and there are other circumstances as well.

**CHAIR:** Last question, Senator Patrick.

**Senator PATRICK:** Yes, thank you. In circumstances where a coroner does come to some conclusion that further investigation may be required, is that the normal process or does the police investigation take place within the context of the coronial investigation, or does it occur when you have the findings of the coroner's investigation and that may invoke a police investigation?

**Mr Kershaw:** My own experience is that it is a bit of a twin speed. You can have both in one aspect or you can have the coronial process hold until the police, say, homicide investigation is complete. So it just depends on that negotiation or constant communication between a coroner and the police as to how that matter's going to be investigated.

**Senator PATRICK:** Alright. Thank you very much.

**CHAIR:** Thank you very much, Senator Patrick. I'll now give the final few minutes of the call over to Senator Keneally, noting that I haven't taken many minutes at all and that Labor and the Greens have had the majority of the time. But it is at the discretion of the chair as to the allocation of time. Thank you very much, Senator Keneally.

**Senator KENEALLY:** Thank you. I do note that estimates has been going for an hour and 20 minutes and, excluding interjections, Labor has had 17 minutes of that time, which is about 20 per cent of it. I also note that, under standing order 26, the chair cannot bring an item to an end if a senator has further explanations to seek, and I do flag I have further explanations to seek.

**CHAIR:** By resolution of the committee there has been a determination that this committee will follow the estimates program as closely as possible, as scheduled. If you have any further questions of the AFP, we would need to go to a spillover hearing.

**Senator KENEALLY:** I'm prepared to do that.

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

**CHAIR:** Yes?

**Senator PATRICK:** The resolution of the Senate overrides any resolution of a committee.

**Senator KENEALLY:** That is correct.

**Senator PATRICK:** It must take precedence.

**CHAIR:** No, that's not the case according to the standing orders. This also occurred last time, Senator Patrick. There's been a resolution of the committee, and that is in accordance with standing order 26. Senator Keneally.

**Senator KENEALLY:** May I seek clarification from the secretariat on that?

**Senator PATRICK:** That's not right.

**CHAIR:** We now resume this hearing. We have made a small adjustment to the program and agreed that the Australian Federal Police will give further evidence.

**Senator KENEALLY:** Going back to the contact between the Prime Minister and the AFP regarding the sexual assault allegations against the Attorney-General, I believe we were establishing that it was a phone conversation, and the secretary of the Prime Minister's department, Mr Gaetjens—did you say he contacted you?

**Mr Kershaw:** Yes.

**Senator KENEALLY:** And the Prime Minister was patched into the call?

**Mr Kershaw:** Yes.

**Senator KENEALLY:** How long was that phone call, approximately?

**Mr Kershaw:** I'd have to take that one on notice, because there was a few phone calls that did occur.

**Senator KENEALLY:** There were a few phone calls between the PMO, the Prime Minister's department—

**Mr Kershaw:** No, between myself and the secretary.

**Senator KENEALLY:** All of those were on 24 February?

**Mr Kershaw:** Yes.

**Senator KENEALLY:** On the conversation with the Prime Minister, was anyone else on the call?

**Mr Kershaw:** Yes: the secretary and, I believe, the deputy secretary as well.

**Senator KENEALLY:** The deputy secretary of Prime Minister and Cabinet?

**Mr Kershaw:** I believe so, yes.

**Senator KENEALLY:** Do you know the name of that person?



**Mr Kershaw:** I think it was Stephanie Foster.

**Senator KENEALLY:** I apologise; I'm trying to establish a time line. Was it morning or afternoon?

**Mr Kershaw:** It was around about, roughly, 5.00 pm on the 24th.

**Senator KENEALLY:** Just remind me: when did you send the letter to the Prime Minister regarding advice for members—

**Mr Kershaw:** On the 24th.

**Senator KENEALLY:** Was it after that phone call?

**Mr Kershaw:** After those phone calls, yes. It was a late night.

**Senator KENEALLY:** I note an answer from the Prime Minister during question time on 15 March where he said he had been briefed on the contents of the documents—he was referring to the documents he received regarding the allegations against the Attorney-General: 'I was briefed on the contents of those documents by the police commissioner.' Did you brief the Prime Minister on the contents of those documents—of that dossier?

**Mr Kershaw:** Yes, on what the allegation was and that New South Wales police were involved.

**Senator KENEALLY:** Was it in that phone call on 24 February?

**Mr Kershaw:** Yes, I believe so. Yes.

**Senator KENEALLY:** You believe so?

**Mr Kershaw:** Yes. That was discussed—that referral from Celia Hammond MP.

**Senator KENEALLY:** The document was sent on 24 February to the Prime Minister and Senators Wong and Hanson-Young; Celia Hammond, I think, received it on the same day. She provided it to the AFP?

**Mr Kershaw:** Yes, I have here that it was around—and these are approximate times—3 pm on 24 February.

**Senator KENEALLY:** That's when you received the dossier from Ms Hammond?

**Mr Kershaw:** Yes. It went through our Parliament House superintendent.

**Senator KENEALLY:** Yes. Then, in that phone call that afternoon, sometime around 5 pm, you briefed the Prime Minister as to the allegation and you briefed him as to—

**Mr Kershaw:** The existence of a dossier that had been sent to us and the fact that New South Wales police had carriage of a criminal investigation, and also that the South Australian coroner had jurisdiction over her inquiry as the coroner for a person who had taken their own life.

**Senator KENEALLY:** Is it usual practice for the AFP to brief the Prime Minister on details of sensitive investigations?

**Mr Kershaw:** Well, at that stage, I believe it had come through that inquiry. I don't know if the Prime Minister was aware of that through that inquiry, but I made a view that it was appropriate.

**Senator KENEALLY:** Right. Why did you form a view that it was appropriate to brief him?

**Mr Kershaw:** Because at that stage you have an active criminal investigation in the jurisdiction of New South Wales, and because of the seriousness of the allegations. It was my judgement based on those matters, and the fact that you are dealing with a senior member of parliament.

**Senator KENEALLY:** Did you brief the Prime Minister on the details of the dossier or just that there was an allegation of a sexual assault made?

**Mr Kershaw:** My recollection was just a brief around the general details.

**Senator KENEALLY:** The general details?

**Mr Kershaw:** Yes. And that, again, going back to the jurisdiction issues, the process—

**Senator KENEALLY:** Because the Prime Minister has said that, based on that briefing, he raised the matter with the Attorney-General. So I'm just trying to understand the extent of the Prime Minister's knowledge.

**Mr Kershaw:** Well, he was aware that there was a criminal allegation, there's an investigation by New South Wales police and there is also jurisdiction within South Australia with regards to her unfortunate death.

**Senator KENEALLY:** Yes. So the Prime Minister was briefed by you that there was a criminal allegation against the Attorney-General. Was he briefed on the nature of that allegation—that it was an allegation of sexual assault?

**Mr Kershaw:** From memory, yes.

**Senator KENEALLY:** But he was not briefed on the details in terms of time, place, who, what was alleged to have happened?

**Mr Kershaw:** In my recollection it was not on the detail, but fact that, again, referring to New South Wales Police, the jurisdiction issue and the fact that the AFP had been referred the matter from the Celia Hammond inquiry.

**Senator KENEALLY:** And on 24 February it was still an active investigation by the New South Wales Police?

**Mr Kershaw:** That is my recollection, yes.

**Senator KENEALLY:** If I could just quickly go back to a matter that Senator Waters raised earlier, I have seen the evidence in the New South Wales *Hansard* as well from the New South Wales police. It would appear from that evidence that they did not receive the full dossier from the AFP. Can you clarify again what information was provided to the New South Wales Police?

**Mr Kershaw:** A detailed summary of that dossier. As an investigator myself, I have read that. There is quite an amount of detail of what the allegations are in succinct form. Then subject to that, and those conversations with some senior officers in New South Wales Police, as I said, we put it through, the dossier itself before we released that, we put it through our internal process, the sensitive investigation oversight board, to understand if there was a Commonwealth nexus. We were informed by New South Wales Police that it was a routine non-urgent matter, so that is what occurred. If they had requested it urgently—because this is not uncommon in policing, for us to give you a heads-up on perhaps what is in the pipeline, but to say, 'We are just going to put it through our processes first.' If there was a request for it to be urgently sent to them, that would have occurred.

**Senator KENEALLY:** I would like to be clear about this. You received the dossier; you were doing your own assessment of it; you gave a detailed summary to the New South Wales Police; but because you still were assessing the dossier, you didn't send it to them immediately. They did not request it immediately?

**Mr Kershaw:** Correct.

**Senator KENEALLY:** what date did you notify them? Was that 24 February as well, or was that a subsequent date?

**Mr Kershaw:** It looks like around 25 February.

**Senator KENEALLY:** Right. Just for clarification, they announced their investigation was closed on 2 March. They never requested the full dossier before they announced that the investigation was closed?

**Mr Kershaw:** They did not, but they were aware of its existence officially, in our email.

**Senator KIM CARR:** Mr Commissioner, could you help me with something. I understood you to be saying before that the matter was first reported to you on 1 April, but you didn't refer it to what was then known as a special investigations board or unit. Is that correct?

**Mr Kershaw:** No. I think we might be getting confused with the two matters. On 1 April it was actioned by ACT Police. But back then we did not have a sensitive investigation oversight board.

**Senator KIM CARR:** But it was a matter of—it was treated as a special investigation. ACT Police is still part of the AFP, isn't it?

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

**Senator KIM CARR:** I don't mean to be pedantic, but it was a special investigations question, wasn't it?

**Mr Kershaw:** Yes, it would have been, as the deputy as said in relation to that definition, correct.

**Senator KIM CARR:** But you chose not to escalate it, to treat it as a registered matter, is that right?

**Mr Kershaw:** Yes, that was the decision made.

**Senator KIM CARR:** You weren't the Commissioner at the time.

**Mr Kershaw:** No.

**Senator KIM CARR:** In retrospect, do you regret that?

**Mr Kershaw:** I wouldn't want to comment on that, Senator. That was a matter for those back in that time period. There are also sensitivities around making sure that the rights of the complainant are treated appropriately. There may have been other issues and other things that came into their decision-making.

**Senator KIM CARR:** Of course that's true. But, given what has happened, I find it odd that it wasn't treated in the same manner, given the criteria you have already listed and that it was likely to become a matter of public interest. I repeat: given what's happened, all of the criteria had been met. That's why, at a later date, you referred it

to the Sensitive Investigations Oversight Board. But, as of 1 April 2019, someone in the AFP chose not to treat it in the same manner. I'm just trying to fathom why that is.

**Mr Kershaw:** I know this is probably not helpful, but it's probably a question for those on the day.

**Senator KIM CARR:** You have no explanation that immediately occurs to you?

**Mr Kershaw:** No.

**Senator KIM CARR:** Alright. You'll have to leave me wondering about that. Does the deputy commissioner have anything to add? You were there at the time, were you?

**Mr McCartney:** I wasn't.

**Senator KIM CARR:** No-one was there at the time. Is that right—no-one in senior command?

**Mr Kershaw:** That would be correct, yes.

**CHAIR:** Senator Carr, the commissioner has already answered that question.

**Senator KIM CARR:** I want to come back to a matter that we've raised on a previous occasion. The matter relates to the Moselmane case. In response to questions I raised at previous estimates you quite appropriately said to me that, pending the outcome of that investigation, you were going to look into the matters that related to the compromise of the AFP's professionalism by the inviting of the media to the raid on a member of parliament's premises. You indicated to me at the time that 'pending the outcome of our investigation, we're happy to share that with you.'

**Mr Kershaw:** Yes.

**Senator KIM CARR:** Are you in a position now to advise us as to what the status of that inquiry is?

**Mr Kershaw:** My brief is that our professional standards area did undertake an internal investigation, and there was no compromise from within the AFP.

**Senator KIM CARR:** Are you able to tell me who was responsible for inviting the media to accompany you on that raid?

**Mr Kershaw:** We don't know.

**Senator KIM CARR:** You don't know?

**Mr Kershaw:** We don't know.

**Senator KIM CARR:** I see. When did you discover that there was no compromise to your professional standards?

**Mr Kershaw:** I would have to look at when the investigation was completed. I don't have that in front of me, unless one of my colleagues here has the date. Normally, these things take a little while.

**Senator KIM CARR:** It's been five months.

**Mr Kershaw:** It hasn't been formally completed yet, but my initial brief, verbal brief, is that there was nothing within the AFP.

**Senator KIM CARR:** Is Mr Moselmane considered a suspect in the investigation associated with the raids of June 2020?

**Mr Kershaw:** I don't think that would be right for me—it's currently an ongoing investigation. It's very sensitive, and it wouldn't be appropriate for me to comment either way. I'm not on the investigation team. That's a matter for them to determine.

**Senator KIM CARR:** So you won't take that on notice?

**Mr Kershaw:** I can take that on notice, yes.

**Senator KIM CARR:** Thank you. He's stating explicitly that he's not and that he's been provided with advice from you. I just wanted to confirm that that was the case.

**CHAIR:** Senator Carr, the commissioner has already answered that question, and he's taken it on notice—

**Mr Kershaw:** I'll take it on notice.

**CHAIR:** Could you move to your next question.

**Senator KIM CARR:** I'm also advised that some bank accounts from Mr Moselmane family have been frozen. Was the AFP involved with that at all?

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

**Senator KIM CARR:** Thank you. Was the opposition leader in New South Wales briefed on the raids?

**Mr McCartney:** The opposition leader was briefed.

**Senator KIM CARR:** By whom?

**Mr McCartney:** By the AFP and by ASIO.

**Senator KIM CARR:** Who requested the briefing?

**Mr McCartney:** It wasn't an issue of request; it was the AFP and ASIO being proactive.

**Senator KIM CARR:** So it's standard practice?

**Mr McCartney:** Correct.

**Senator KIM CARR:** Was the Minister for Home Affairs briefed before the raids occurred in June 2020?

**Mr McCartney:** He was.

**Senator KIM CARR:** On what date?

**Mr McCartney:** We'll take that on notice, in terms of the specific date, but he was briefed.

**Senator KIM CARR:** Could you confirm if it was 19 June.

**Mr McCartney:** I'll take that on notice and come back to you.

**Senator KIM CARR:** And how was the minister's office advised?

**Mr McCartney:** There were a range of discussions, I think, with the office, but we will take that on notice in terms of the context and how they were briefed.

**Senator KIM CARR:** Was the minister's office part of the investigation into how the leak occurred, which allowed the media to participate in this raid?

**Mr McCartney:** No, not to my understanding.

**Senator KIM CARR:** Why not?

**Mr McCartney:** Can you provide some more—in terms of the context of your question?

**Senator KIM CARR:** I'm just making it clear that you've indicated to me that there is a serious problem if the media accompanies the AFP on a raid on an MP's house. I understand there were 40 officers present. It was a major media event. Warrants were issued at 11 o'clock the night before. In the middle of a COVID emergency, media managed to get from Melbourne to the MP's office and be there at six o'clock in the morning. That suggested to me some pre-advice had been provided. At previous estimates you indicated that there would be a proper investigation as to who provided that information. You've said to me today that you don't think it was the AFP. I want to know whether or not your investigations went to the question of who else was advised of this raid. I've put it to you that the minister's office was involved. It was on 19 June that it was provided with that advice. Is it not appropriate that he be part of the investigation, or that office be part of the investigation?

**Mr Kershaw:** We would not normally have jurisdiction over the minister's office to conduct an investigation on that kind of matter.

**Senator KIM CARR:** It just means that your investigation would be somewhat limited, wouldn't it, if you don't make inquiries into all those who actually knew of the raid?

**Mr Kershaw:** It's because ours was an internal investigation. If you want us to go doing more warrants—which we don't want to do—on journalists and everything, that's something that we're very sensitive to—investigating journalists—and we have different protocols now.

**Senator KIM CARR:** Yes, you do. But you have—

**Mr Kershaw:** So it is quite challenging for us, given the framework that we have to work around.

**Senator KIM CARR:** That is absolutely correct.

**Mr Kershaw:** So that's why we wanted to look in-house, to make sure that our house is in order. And I'm confident to say that our house is in order.

**Senator KIM CARR:** It's challenging for your professional standards to be accompanied by media on a highly sensitive raid into a member of parliament's house. It's a highly sensitive matter in regard to the MOU you have on parliamentary privilege.

**Mr Kershaw:** What I can say is that it's very disappointing, to say the least.

**Senator KIM CARR:** It's a bit more than that. And it's happened several times now that police raids have been accompanied by media.

**Mr Kershaw:** I'm not aware of—

**Senator KIM CARR:** Senator Conroy's staff and offices, as I've said to you before, were accompanied by media.

**Mr McCartney:** That's incorrect, Senator.

**Senator KIM CARR:** Sorry? It's incorrect?

**Mr McCartney:** It is incorrect. The media were not at Senator Conroy's office when the AFP arrived. The media turned up—

**Senator KIM CARR:** Well, I certainly recall the pictures of his staff—

**CHAIR:** Senator Carr, could you allow the witness to answer the question, please.

**Mr McCartney:** I was involved in that investigation. The media were not at the search warrant when we arrived. They turned up afterwards.

**Senator KIM CARR:** Well, with the AWU media were present.

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

**Senator KIM CARR:** How did they know about the raids that you were undertaking?

**Mr Kershaw:** Just to clarify that, too. When we do a stand-by assist, which is what that was, unfortunately the AFP get dragged in as though we're doing the actual warrant; we're not. We're there for breaches of the peace and to make sure that the agency executing that warrant can do that lawfully. So it's not really our investigation at all. So that means we don't control all the information.

**Senator KIM CARR:** Alright, but Moselmane was yours, with ASIO?

**Mr Kershaw:** Correct.

**Senator KIM CARR:** A joint operation?

**Mr Kershaw:** Yes.

**Senator KIM CARR:** Open-and-shut case.

**CHAIR:** Last question, Senator Carr.

**Senator KIM CARR:** We did talk about this, Madam Chair. I'm nearly finished my line of inquiry. I believe there is a problem here. Mr Kershaw, you have acknowledged that it is disappointing, at the very least. I'm saying it's a bit more than that. Can I ask you this, though: you are required, as I understand it—unless there's an exemption, and this is in the correspondence you have issued in regard to FOI matters—to report the FOIs that you've actually released? A log is produced? That's correct, isn't it?

**Mr Kershaw:** Yes.

**Senator KIM CARR:** So CRM2021-96 is not on the disclosure log for the AFP which was released to the applicant on 26 November 2020. Is that correct? Have I got that right?

**Mr Kershaw:** I actually don't have that in front of me.

**Senator KIM CARR:** I would ask you to look at that, because it's not there, in the sequence of releases.

**Mr Kershaw:** Okay. We'll have a look at that.

**Senator KIM CARR:** Can you tell me why? How many other FOI releases were not placed on the disclosure log when there has been no exemption issued? Can you provide that?

**Mr Kershaw:** Yes. I will take those on notice.

**Senator KIM CARR:** Has the minister been provided with an interim report as to your investigation?

**Mr Kershaw:** I don't believe so. Normal practice for us would be that an internal investigation stays internally within the AFP.

**Senator KIM CARR:** Thank you very much.

**CHAIR:** Senator Carr, I will now need to give the call to Senator Rice. She's only got a couple of minutes, but she does need to leave. Senator Rice, you have the call.

**Senator RICE:** Thanks, Chair. I want to ask some questions about the AFP's involvement with various foreign government military or police forces. I've only got a couple of minutes, so I think I'm going to have to end up putting a lot of these on notice. I wanted to ask about Myanmar, the Philippines, Sri Lanka and Indonesia. Starting with Myanmar—this month the government announced that it was suspending its defence training program with Myanmar, but we know through documents released under FOI that the AFP also has been involved

in Myanmar. Can you please share the extent of that involvement or cooperation and whether that program has also been suspended?

**Mr McCartney:** We have liaison officers as part of our international network based in Myanmar. I think it's fair to say it's a fluid situation in Myanmar, in terms of the security situation, including for our officers at the Australian Embassy. I think it's fair to say, in terms of our engagement, it's pretty much on hold at this stage.

**Senator RICE:** Has it formally and officially been suspended?

**Mr McCartney:** It hasn't officially been suspended. It's on a case-by-case basis.

**Senator RICE:** Do you expect to announce the suspension?

**Mr McCartney:** It's obviously an issue that we'll work through with the department of foreign affairs in relation to that issue, but there are times we may have to engage on a place-to-place basis, in terms of engaging with a place.

**Senator RICE:** Perhaps I'll put some more questions on notice regarding that, because that's extremely concerning. With the Philippines, can you provide details of any assistance provided to the Philippines military, security or police forces?

**Mr McCartney:** We have significant interaction with the Philippines police, particularly in relation to one of the previous topics that was raised, child protection. We have a number of liaison officers based in the Philippines. Noting the time, I'm more than happy to take that on notice and to outline the level of interaction with the Philippine authorities.

**Senator RICE:** Thank you. I've asked a couple of questions on notice that didn't give a lot of detail, so as much detail as possible would be appreciated.

**Mr McCartney:** Sure.

**Senator RICE:** Is there any involvement or cooperation with Sri Lankan authorities?

**Mr McCartney:** Again, we have liaison officers based in Sri Lanka. Our primary focus is in relation to people smuggling. We have a longstanding level of cooperation, particularly in relation to—I highlight the example of the heinous terrorist attack in Sri Lanka, where we deployed additional officers into Sri Lanka to provide assistance to those authorities in relation to that attack. But, again, noting the time, I'm more than happy to provide the level of detail in terms of our interaction with Sri Lankan authorities.

**Senator RICE:** My final questions, which I'll start and put the rest on notice, are about Indonesia. They're about the Jakarta Centre For Law Enforcement Cooperation, which I understand the AFP have got a significant involvement with. Can you tell me whether the following five Indonesian National Police officers have been trained at JCLEC: Deputy Chief of Police of East Paniai, Mr. Hanafi; Chief Brigadier Mr Ridido Bagaray; Chief Brigadier Mr Haile Salvert Teferi; Brigadier Mr Abner Windesi; and the Chief of Police of Merauke, Mr Untung Sangaji?

**Mr McCartney:** I'll take that on notice.

**Senator RICE:** These individuals have all been accused of gross human rights violations. The rest—obviously, I want to know what past and current SAS soldiers have worked as trainers, educators or consultants at JCLEC. Could you also provide me with a copy of the AFP National Guideline on offshore situations involving potential torture or cruel, inhuman or degrading treatment or punishment?

**Mr McCartney:** Of course, Senator, more than happy to provide that, but I think an important part with JCLEC is we don't provide any military training. The focus of JCLEC is a focus on leadership training and technical assistance when it comes to policing interaction, particularly with Indonesian police, but more than happy to provide that information.

**Senator RICE:** Given that, do those guidelines actually restrict the AFP from training alleged human rights abusers?

**Mr McCartney:** We've made a conscious decision in terms of our focus on JCLEC, and it has been on leadership and police technical training in terms of the joint work that we continue to do with IMP.

**Senator RICE:** But would you be training those alleged human rights abusers? You're saying you're just training them in leadership.

**Mr McCartney:** I don't know whether they've come through JCLEC, so I'll take that on notice and provide more detail.

**Senator RICE:** And in particular whether the guidelines would restrict you from providing leadership training to alleged human rights abusers.

**Mr McCartney:** Yes, we have guidelines and I'm more than happy to provide that in our response.

**Senator RICE:** Thank you.

**CHAIR:** I think Senator Keneally has indicated that she has a number of questions on notice for the Australian Federal Police. That now brings to an end the evidence given by the Australian Federal Police. Thank you very much for agreeing to allocate this additional time; we do appreciate your time this morning.

**Australian Criminal Intelligence Commission**

**Australian Institute of Criminology**

**CHAIR:** I now call officers representing the Australian Criminal Intelligence Commission and the Australian Institute of Criminology. Mr Phelan, good morning. Do you have an opening statement?

**Mr Phelan:** No, I don't, thank you, Chair. I'm happy to answer any questions.

**CHAIR:** Does any senator have any questions? Senator Keneally, I'll give you the call.

**Senator KENEALLY:** Thank you, Mr Phelan, for your attendance today. In the last estimates you said your agency is funded for 17 full-time equivalent positions to undertake criminal intelligence assessments. Can you please provide an update as to how the ACIC's progressing to get that capability up and running?

**Mr Phelan:** Certainly, Senator. At this particular point in time, we've invested approximately \$300,000 last financial year in doing the study that was required to work out what technical requirements are needed for the development of the system, the end-to-end system from the Department of Home Affairs through the criminal history checking and intelligence checking. Given that the legislation is currently before the Senate, I have taken the decision to start to employ one full-time person at—

**Senator KENEALLY:** Sorry, which legislation, just to clarify, the Transport Security—

**Mr Phelan:** Yes, that legislation.

**Senator KENEALLY:** Amendment (Serious Crime) Bill 2020?

**Mr Phelan:** That's right, the legislation with the component to conduct criminal intelligence checks for ASIC and MSIC.

**Senator KENEALLY:** Yes.

**Mr Phelan:** I've take the decision to put on one full-time person out of our Melbourne office at the executive level 2, so EL2, to help coordinate the process to build that out.

**Senator KENEALLY:** Okay.

**Mr Phelan:** We also have people working on the system, the throughput. But I haven't hired any staff yet because we've still got 12 months, I think, in the clauses within the legislation for the potential that I could issue adverse criminal intelligence assessments. But, having said that, the recruitment of staff will be pretty much that I'll move some people into those roles that are already inside the organisation and I'll be backfilling some of those roles with new appointees. I'll be looking for some opportunities for promotion and transfer et cetera.

**Senator KENEALLY:** Just for my own understanding, first of all, what security clearances will these staff need?

**Mr Phelan:** Everybody in the organisation will get an NV2, so top secret. If it's someone new, they don't require that, but, as a matter of course, I put people through a top secret clearance—not positive vet, but—

**Senator KENEALLY:** How long is the average wait time for the security clearance for a new ACIC officer?

**Mr Phelan:** I'd have to take that on notice, but just for an NV2 it's not as long as it what is it for a positive vet.

**Senator KENEALLY:** That's not entirely answering my question.

**Mr Phelan:** Sorry, Senator, I'll have to take it on notice. Someone might be able to get that information for me while I'm here, and I'd be happy to talk to you about it.

**Senator KENEALLY:** That would be quite useful, thank you.

**Mr Phelan:** I am confident, though, that I'll have all the staff on well and truly before the 12 months starts so that I can start to have the throughput of work with the assessments—

**Senator KENEALLY:** By the time the 12 months starts? Remind me.

**Mr Phelan:** When the legislation finally gets royal assent—should it pass the Senate, of course—then 12 months from then is when the provisions kick in to enable adverse criminal intelligence checks.

**Senator KENEALLY:** Just for clarification: are the criminal intelligence assessments only done on domestic workers who are applying for an MSIC or an ASIC?

**Mr Phelan:** It's anybody that will apply for an ASIC or an MSIC.

**Senator KENEALLY:** Sorry, anyone who applies for an ASIC or an MSIC.

**Mr Phelan:** That's right, yes.

**Senator KENEALLY:** Do crew of foreign flagged vessels apply for an MSIC or an ASIC?

**Mr Phelan:** I'm trying to recall some of the evidence given by the Department of Home Affairs. My understanding is that some of them do. It depends on whether or not the owner of the ship requires it for the individuals to have free access to the areas that are restricted. If they don't require them to have that access, then, no, they do not.

**Senator KENEALLY:** They do not?

**Mr Phelan:** Yes, that's my understanding of the legislation, but I'm happy to be corrected.

**Senator KENEALLY:** So it's up to the vessel owner to determine whether or not their staff require that security clearance?

**Mr Phelan:** That is my understanding, but that is a question that is probably better put to the Department of Home Affairs, because I'm actually a little bit out of my lane in terms of whether it actually applies to ASICs and MSICs.

**Senator KENEALLY:** I see Mr Pezzullo agitating, but I do remind him that later on today I can ask him these questions.

**Mr Pezzullo:** I'm not agitating. I just picked up my pen.

**CHAIR:** I hope that's reflecting on the witness.

**Senator KENEALLY:** The secretary and I have spent way too much time together to know the body language.

**Mr Pezzullo:** I am just looking at my pen.

**Senator KENEALLY:** In terms of this new capability, I'm interested in whether the ACIC has turned its mind to oversight. Which agency will be responsible for oversight of the provision of criminal intelligence assessments?

**Mr Phelan:** My understanding is that there'll be the general oversight provisions of the organisation. There will obviously be scrutiny by the parliament, and I'm also assuming that, if people make complaints or otherwise, queries go through the ombudsman—or any other requirements they do have. But, as I understand it, there's no standing requirement for oversight as there is with telephone intercepts or something similar.

**Senator KENEALLY:** Noting that these assessments are different from police checks—you mentioned last year in evidence that they were totally different—would the person who is the subject of a criminal intelligence assessment be provided details of that assessment?

**Mr Phelan:** That would be a matter for the issuing agency, which is the Department of Home Affairs. But, as a matter of course, probably not. They will not know the details.

**Senator KENEALLY:** How would one dispute an adverse criminal intelligence assessment, then?

**Mr Phelan:** The matters are able to be taken before the AAT on the substance, which means someone can be appointed by the AAT. They can have their lawyer look at it, they can be represented, and there will be enough information for them to make an assessment on what it was based, but they certainly will not get the actual intelligence that might give up either source material or sensitive capability. They are similar standards to those that are applied with national security assessments within the AAT jurisdiction when an adverse or a qualified adverse security assessment is provided by the Director-General of Security—very similar provisions.

**Senator KENEALLY:** This may be a question I need to ask Home Affairs later on, but has the ACIC considered aftercare arrangements similar to the Department of Home Affairs employment suitability clearance for circumstances or individual cases where risks could be adequately and cost-effectively managed and mitigated?

**Mr Phelan:** In what circumstances, sorry?

**Senator KENEALLY:** Where someone is seeking to contest an adverse criminal intelligence assessment. Maybe this is a question better put to the Department of Home Affairs.

**Mr Phelan:** It is a matter for the department. Once we provide our assessment, it's forming part of the department's assessment to grant or not grant an ACIC or MSIC card. I have answers to those questions, Senator.

**Senator KENEALLY:** Great, thank you.



**Mr Phelan:** Two things have to happen. We've got the AGSFA clearance for standard national security clearances. They take approximately six months. And we do our own organisation suitability assessments, for new individuals, to see whether or not they are suitable for our organisation. They take between eight and 12 weeks as well. Those processes, we do concurrently.

**Senator KENEALLY:** Thank you, that's very helpful. Chair, given the rather thorough answers provided, I can cede my time for the ACIC.

**CHAIR:** Thank you very much.

**Senator McKENZIE:** I want to go to a few of the questions on notice asked at last estimates and a couple of your answers. QON No. 40, where we went to the electronic firearms licensing database—

**Mr Phelan:** I have the QONs in front of me.

**Senator McKENZIE:** Great. It's BE20040. I can read your answer.

**Mr Phelan:** Okay, read my answer. I have them in front of me but I'll try and find them for you!

**Senator McKENZIE:** I asked a range of questions. Given jurisdictions' leakage around law-abiding firearm owners' personal information being released to the media and, potentially, being used by criminal organisations, I was asking questions about the security of the database itself.

**Mr Phelan:** Yes, I do recall that.

**Senator McKENZIE:** In your answers, you said the AFIN—and, for those listening at home, it's the Australian Firearms Information Network—has mandatory core data fields that all agencies must adhere to, to ensure consistency. Can you outline what those core data fields are, please?

**Mr Phelan:** It just so happens I have the question written in front of me.

**Senator McKENZIE:** Excellent.

**Mr Phelan:** I've asked someone to get that data for me—I don't have it with me, right now—which we'll have, and I'll be able to answer the question.

**Senator McKENZIE:** I'm sure it's a spreadsheet.

**Mr Phelan:** It is. It's just a list of criteria. It will cover things like—I'll get it exactly for you.

**Senator McKENZIE:** I want exactly—

**Mr Phelan:** No problem. I'm happy to get it and table it.

**Senator McKENZIE:** Hopefully, someone's getting that right now. Do you know, whilst they're getting that, whether it does include personal details of firearm licence holders?

**Mr Phelan:** I don't know, but I'm assuming it does.

**Senator McKENZIE:** Given the security risk to these licensed firearm holders, when their personal details are made widely available, can you outline the end-to-end security measures in place to protect the personal details of the people whose details are being shared, obviously, and broadcast?

**Mr Phelan:** When you say 'widely available', these are not made public.

**Senator McKENZIE:** No, I know they're not public. There are a lot of public servants—

**Mr Phelan:** There are.

**Senator McKENZIE:** at a state and a federal level.

**Mr Phelan:** The ACIC—

**Senator McKENZIE:** And we do know that security clearances are required by many of these public servants for very good reasons.

**Mr Phelan:** Just for context, the ACIC holds a myriad of sensitive data on a lot of individuals in our country, everything from fingerprints, DNA samples to the national criminal checking system. There is a large number of Australians and different data, and a lot of personal data as well, that is maintained in our systems. Our systems are rated to protect it. The connectivity between us and the states and territories, and when it comes to firearms the registries sit within the state and territories authorities—

**Senator McKENZIE:** Sorry to interrupt, but you would recognise that certain jurisdictions have been less than careful with the details of their own licensed firearm owners.

**Mr Phelan:** I wouldn't wish to comment on other jurisdictions.

**Senator McKENZIE:** I think it's all out in the media.

**Mr Phelan:** But commenting on their ability to maintain security is not something—

**Senator McKENZIE:** I think it's all quite self-evident. If the list is made public, then it's quite clear that they do not have appropriate security.

**CHAIR:** Senator McKenzie, could I just ask you to allow the witness to answer the question.

**Mr Phelan:** I know from time to time, of course, private information leaks out of databases. That's why we have an information commissioner, a privacy commissioner—all these sorts of things. These things, unfortunately happen, but systems themselves are made as tight as they possibly can. As I was saying before, the connectivity between the ACIC's databases and the states' and territories' is at protected level into the jurisdictions.

**Senator McKENZIE:** In terms of end-to-end security, ACIC only looks after the interface between—

**Mr Phelan:** And our own database; yes. Everything that we hold goes back out to the jurisdictions, and then the jurisdictions determine their own assessment as to who has access to that information based upon the need-to-know principle or the need to use that information, and it varies across states and territories. Welcome to my nightmare of a federation!

**Senator McKENZIE:** So there's no consistency on how this data may be used?

**Mr Phelan:** There is no consistency in terms of any of the systems that we run when you run states and territories and a Commonwealth system, and that's the difficulty of trying to run hybrid systems. The reasons for disclosure of information—and I'm not just specifically saying firearms here—depending on its character, vary from state to state. For the same piece of information, whilst it might seem self-evident that what you can disclose in Victoria should be disclosed in New South Wales, that is not the case. We're going through those issues at the moment with the development of the National Criminal Intelligence System, where it's actually the jurisdictions that place on it the caveats of the information as to whether or not it can be used and accessed by individuals. So, it doesn't all go into us and then we decide who gets it; it's whoever provisions the information decides the restrictions upon that information and how it can be distributed. And then we handle the information management system.

**Senator McKENZIE:** So the mandatory core data fields?

**Mr Phelan:** We're on it, and they're coming.

**Senator McKENZIE:** Okay, I'll continue with my questions then. Regarding questions 41, 42 and 43, which, again, went to who can access, who has accessed, et cetera: in question 43, you responded that the ACIC has no jurisdictional management authority for partner agencies' local IT systems, which is one of the challenges you were just outlining. Where does ACIC's responsibility for the security of this information start and stop?

**Mr Phelan:** It's an information exchange system when it comes to AFIN. For example, the information is vested and held in each of the jurisdictions in their relevant firearms registries, and the idea of AFIN is to pull all that material together so others can have access so that we can have that cradle-to-grave initiative. So when a firearm is first imported into Australia, Border Force or Home Affairs place the information into the system, and it will now carry through the life cycle of a firearm, even moving interstate. Other firearms that are registered, perhaps for the first time, are put on by state registries within the policing jurisdictions, and that's how they get onto our system. It is our responsibility to manage that system and the security around that system, not the whole end-to-end process, and that is consistent with the need to share information and intelligence across all of our systems.

**Senator McKENZIE:** Is there an audit trail of who's accessed what information and when?

**Mr Phelan:** Inside our systems, I'm sure there is, but please let me take that on notice. I'll give you a comprehensive answer on the audit trail.

**Senator McKENZIE:** I think what you said, when I wanted to know who had and hadn't accessed it, was it would be an unnecessary diversion of resources. But I want to understand: does that provision exist?

**Mr Phelan:** I take what you said as correct, Senator. But I think when reading through the questions on notice again, refreshing myself with them last night, the only one I think I said would be too many resources to look at was how much information was shared between the states.

**Senator McKENZIE:** Asking who had access et cetera, and actually digging down—so that's fine, as long as there is an ability to audit if required.

**Mr Phelan:** And I will only be able to go into our audit trail facility.

**Senator McKENZIE:** How will ACIC ensure that the AFIN will capture information that exists for the three million firearms already in different registries accurately in a nationally consistent form? Are there deadlines to fix the mess that you're talking about? You've had the NFA now for 20 years.

**Mr Phelan:** There are no deadlines. It's the same as all other intelligence and information holdings across the country as matters are cleaned up, as jurisdictions receive the funding to do so or, indeed, go through their own exercises of cleaning up their own data. I don't want to harp back on it, but with ACIC, for example, there is a data-cleansing process that's gone through to clean as much of the data from states and territories as we can to provide them information in relation to their own holdings with named persons and entities. That itself is not an easy task to do. You can clean up the data as much as you can. Everybody wants the data clean so they can make good tactical decisions if they need to at the operational level rather than having to look at multiple pieces of information to make some sort of subjective judgement.

**Senator McKENZIE:** Are all states using AFIN yet?

**Mr Phelan:** No.

**Senator McKENZIE:** Who isn't?

**Mr Phelan:** At this stage we're still waiting for the AFP and New South Wales Police, I think. Please just let me check.

**Senator McKENZIE:** The AFP?

**Mr Phelan:** Everybody's provided the data. It's just the consuming of the data. No, it is VicPol and AFP. All jurisdictions are in, including ABF. They have completed integration. Just Victoria Police and AFP are provision only. They're just not at the consumption of data yet.

**Senator McKENZIE:** Do we have any reasons why, in particular, VicPol hasn't?

**Mr Phelan:** VicPol in particular, in relation to some of their IT systems, has been in relation to COVID. It's fair dinkum. They have pushed a lot of their stuff back in Victoria.

**Senator McKENZIE:** Yes, I know.

**Mr Phelan:** The Victoria Police had to move on to other things, particularly some of their IT systems. But it's still all on track to be done by 30 June this year.

**Senator McKENZIE:** Excellent. Final question: how will the success of the AFIN be benchmarked and measured? Will we have success measures included in the ACIC's annual report?

**Mr Phelan:** I don't whether I've worked out what the performance indicators will be yet, but I'll do a measure of qualitative and quantitative data: the amount of times it's used et cetera, matched—those will be the sorts of things.

**Senator McKENZIE:** Usually we'd have the KPIs and objectives we want to achieve from the start.

**Mr Phelan:** I'm sure they're in the business case. I just don't have them in front of me. I'm happy to table them if they are there.

**Senator McKENZIE:** Thank you.

**CHAIR:** I now give the call to Senator Thorpe.

**Senator THORPE:** My question is for the Australian Institute of Criminology. I understand that the institute reports that there have been 455 Aboriginal deaths in custody since the Royal Commission into Aboriginal Deaths in Custody. That figure is up to 30 June 2020. Do you have a figure that is up to date?

**Mr Phelan:** I do. I will try to find it here. The next data set will be up to 19 June, which is the most up-to-date data. It takes 12 months to put it all together. That is 89 deaths inside prison, of which 16 were Indigenous. There were 24 deaths in police custody, of which four were Indigenous. So it was 20 out of a total of 113. Police custody is everything that involves police, basically, so it is everything from police pursuits through to watch-house custody. That is my understanding.

**Senator THORPE:** So that's 20 Aboriginal deaths in custody in 12 months?

**Mr Phelan:** Under the definition, yes.

**Senator THORPE:** There are a number of different figures out in the community, particularly amongst the Aboriginal community across the country, about how many deaths in custody there are. There are a number of communities and agencies holding their own tally. People are really confused about the exact number. Can you tell us why this hasn't been open and transparent to the people?

**Mr Phelan:** I think the number is open and transparent, because the Institute of Criminology has been reporting on these now since the royal commission and the parameters for counting the data are public. People know what we count as a death in prison custody, what we count as a death in law enforcement police custody, what constitutes a death in custody, whether it is self-harm by a firearm, by an assault or as a result a result of a police pursuit. All of those criteria are fairly well mapped through the system. Whilst I understand people might keep their own stats for consistency across the states and territories, for the Commonwealth we keep one consistent set of stats. We compare one year upon the next and look for trend analysis and we make sure that we collect the same set of data all the time.

**Senator THORPE:** Can you also explain in detail how you involve Aboriginal communities around the country in tracking and monitoring of the deaths of our people in custody?

**Mr Phelan:** I can't tell you off the top of my head how we engage in communities themselves, but the methodology we use is counting decisions of coroners courts and police reports et cetera. We also look at media reports. We take all those things into account when counting all deaths in custody and, of course, one of the subsets of that are Indigenous deaths in custody. Indigenous deaths in custody, unfortunately, have stayed around 20 per cent mark of deaths in custody. As to engaging directly with the community, I would have to take that on notice and I am more than happy to do that.

**Senator THORPE:** How can our people be given oversight of the data you collect about our deaths and in particular the decisions that are made by the institute based on the data that is collected?

**Mr Phelan:** I suppose they are as transparent as they can be. I suppose with anything they are decisions of coroners courts, they are decisions of the cause of death that has been recorded on death certificates. That is about as much transparency as I think we are able to offer. I do not think it is as if the individual officers of the AIC sit there and go, 'That's an Indigenous death, that's not an Indigenous death.' But I'm more than happy to take on notice the exact process we go through to determine whether someone is Indigenous and, indeed, what counts as a death in custody so it is quite clear. But it is my understanding that there is a fair bit of that detail in the annual reports that go out.

**Senator THORPE:** Do you think that there needs to be more work done in this space given the numbers are increasing and we have had a royal commission into aboriginal deaths in custody. We are coming up to the 30th anniversary of the royal commission and your updated numbers won't happen until June. The 30th anniversary is in April, where we are looking at major cities being shut down as a result of the increased number of Aboriginal people being killed at the hands of this system.

**Senator MOLAN:** Killed?

**Senator THORPE:** Yes, killed. Did you hear that right? Murdered.

**Senator MOLAN:** Murdered?

**Senator THORPE:** Genocided—which one do you want?

**CHAIR:** Senator Thorpe has the call. I just remind senators that they cannot ask the opinion of any witnesses as to matters of government policy.

**Mr Phelan:** Sorry, in all that I forgot the beginning part of your question.

**Senator THORPE:** Given the real stats, and it has taken you 12 months to count the number of black deaths in custody who have been killed, murdered, genocided by a systemic, racist system—

**Mr Phelan:** I don't agree with that.

**Senator THORPE:** I'm still talking. Your stats won't come out until June. The 30th anniversary of the Royal Commission into Aboriginal Deaths in Custody is April and you will see streets around this country being shut down because we have not seen any action in 30 years. Is it impossible—

**CHAIR:** Could you make sure that you are asking a question.

**Senator THORPE:** It's relevant as a black women. This is the reality. Nothing has happened in 30 years since the royal commission and people are still being murdered at the hands of the system. So I'd like to know whether, before the 30th anniversary in April of the royal commission, people will get accurate details of how many black deaths in custody there have been.

**Mr Phelan:** I don't want to get into a discussion with you around the narrative that you've put forward.

**Senator THORPE:** No-one does.

**Mr Phelan:** If I stick to the statistics, Senator—

**Senator THORPE:** That would be great.

**Mr Phelan:** As you're aware, Aboriginal deaths in custody are approximately 20 per cent of all deaths in custody, which is reflective, unfortunately, of the prison population as well. It's a factor, in terms of percentages, that the number of non-Indigenous people, as a result of deaths in custody, is the same—around about 80 per cent of the deaths in custody are non-Indigenous. But it is representative of the prison population, which is unfortunate, because Indigenous people are overrepresented in our prison populations. I think we all know that. That's a matter for government policy and others to determine. I am just counting the stats, unfortunately.

**Senator THORPE:** Thank you. My final question is: will your department consider having Aboriginal people involved in the whole process of ensuring that black deaths in custody are counted appropriately and also labelled appropriately?

**Mr Phelan:** I'm happy to take that on notice.

**Senator THORPE:** Thank you. I have no further questions.

**Mr Phelan:** Chair, I have those results for Senator McKenzie, if I can table that.

**Senator McKENZIE:** Read them out for me, please.

**Mr Phelan:** It's pretty long. Do you want me to waste—

**Senator McKENZIE:** We've now got new standing orders, thanks to the Labor Party, that say I can actually ask any question that I like as a senator and have it answered.

**CHAIR:** Senator McKenzie, I am going to give the call to Senator Scarr for a couple of minutes next, and then we will go to you, Senator McKenzie, and then you can discuss those matters. I give the call to Senator Scarr.

**Senator SCARR:** Mr Phelan, I had some questions in relation to a report the Australian Institute of Criminology released in March, 'Trends and issues in crime and criminal justice' dealing with crime, justice and social capital in the Torres Strait Island region. Is anyone in a position to answer questions in relation to that?

**Mr Phelan:** If you don't mind, I will ask the deputy director, Dr Rick Brown, to come forward.

**Senator SCARR:** First, can I commend the authors of this paper. Obviously, the Torres Strait Island is within my jurisdiction as a Queensland senator. I think it's a terrific piece of research, and it was released in March, so it's quite current. There is discussion in it around the importance of community justice groups. To quote from the report:

The Courts Innovation Program was set up by the Queensland Government in 1993 in response to the Royal Commission into Aboriginal Deaths in Custody ... This program funds community justice groups, which operate across Queensland's remote Indigenous communities ...

I am wondering if you can provide some general comments in relation to the importance of those groups in terms of addressing the issue of Aboriginal deaths in custody, Torres Strait Islander deaths in custody and generally in response to the justice system.

**Dr Brown:** Firstly I note that this research was undertaken by academics from Queensland University of Technology as part of a criminology research grant process that we funded the researchers to undertake. The Community Justice Group process is interesting, because it provides a means by which members of the community can feed into justice processes and act, if you like, as a restorative justice process that can mediate as part of the core process. Interestingly, obviously because of the nature of the Torres Strait being so spread out, these offer an opportunity to provide justice forums in a different kind of way in very remote communities which may be difficult to deliver in other ways, and there are potentially learnings in terms of ways in which restorative justice processes could work elsewhere.

**Senator SCARR:** One of the things that stood out to me from the report was the importance of the involvement of the community elders in terms of the justice system in the Torres Strait Islands. There was a point that was made—given it was prepared by some academics outside of the institute, you may or may not be able to comment on this. A distinction was drawn between the recognition of the work of the elders, including their remuneration and the support provided to them in the discharge of their obligations in accordance with the Community Justice Group Program, as opposed to, say, what is provided to the Torres Strait island police support officers, who are better remunerated, better funded and better supported. Is there an opportunity for us—us collectively—to do more to provide support to community justice groups, such as the elders in the Torres Strait Islands, when they are participating in these sort of processes to get better results in our criminal justice system?

**Dr Brown:** As I understand it, there has been some change in funding from the Queensland government to the community justice groups. I think there is some discussion going on right now as to the nature of that support. As you will appreciate, there is often a lag between the production of the research in terms of our researchers going

out to the Torres Strait and collecting information and then the subsequent production of the report. I think in that interim period there has been some change in terms of Queensland government policy and funding towards those groups. Whether that is sufficient, I can't comment, but it's certainly a live issue.

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

**CHAIR:** Thank you, Senator Scarr. We are trying to catch up in the program. I will give the call to Senator McKenzie, hopefully for just five minutes.

**Senator McKENZIE:** I will be as quick as I can be. I would love you to read out those mandatory fields, please.

**Mr Phelan:** There are 97 of them.

**Senator McKENZIE:** That's alright; I've got five minutes. I bet it won't take you five minutes.

**Mr Phelan:** I am a pretty slow reader sometimes.

**Senator McKENZIE:** Try and be quick, Mr Phelan, please.

**Mr Phelan:** I'll do my best.

**Senator McKENZIE:** Humour me.

**Mr Phelan:** Sure. Under the field name of local firearm, there is the registration number, the local reference number, firearm status, local firearm status category, loading action, barrel configuration, cartridge type, serial number and location, manufacturer, make and model, model variant, country of manufacturer, template ID, capacity, the notes put in by the user, the end and start dates of the processing and the source of that information. In relation to a firearm component, there is the local reference number, component type, serial number, barrel and overall length, magazine type, capacity and calibre, any other detail that might be available, the start and finish of the process and the source of that information—

**Senator McKENZIE:** How are we defining a firearm component as opposed to firearm? Or is that the firearm component?

**Mr Phelan:** I will take that on notice. My understanding is firearm component would be—

**Senator McKENZIE:** A scope?

**Mr Phelan:** The scope or the casing, for example, if a Glock comes in half-built. In relation to persons, there is the local reference number; their first, middle and surname; date of birth, sex, driver's licence and issuing jurisdiction; the CNI number; the person's role and when that process starts and finishes. If it is an organisation, there is the local reference number for that organisation, the Australian company number, the ABN, the company's name, the business name if it is a business, the start and end time of the processing of this report and the source of that information. If it's an associate—I'll have to take on notice what 'associate' means—there is the local reference number; first, middle and surname; date of birth, driver's licence and which state or territory it came from; the associate's role; and the start and end processing dates and the source of the information. If it relates to a particular event involving a firearm—disposal, et cetera—there is the event type and status, the disposal licence and source, acquirer licence and source, reason and notes, permit number, arrival port and destination, origin country and departure port, consignment number and item number, declaration number, passport, contact number, inspection date and location of inspection, inspection status and type, inspection outcome, ABN reference, incident local reference number, ballistics test reference number and test outcome, start and end of the process and the source of that information. In relation to a permit, there is the local reference number, permit number, type and status, approval and expiry dates, special conditions, reason, applicant licence number and type, applicant first and surname, licence jurisdiction, issuing jurisdiction, nominated dealer and dealer licence number, intended import or export date, source country, destination country, notes, start and end of the process and the source. For an address, it's the local reference number, the standard address fields—road number, type, et cetera, locality name, state, postcode, unstructured address, address type—and start and finish of the processing dates and source. For a licence, it's the local reference number, the licence number type and status, special condition indicator, expiry date, licence holder type, special conditions, licence category, reason and status, start and end of the process and the source for that information.

**Senator McKENZIE:** Well done. You've still given me a couple more minutes to ask my final questions.

**Mr Phelan:** I'm happy to table that if you like.

**Senator McKENZIE:** Thank you so much. I will have that tabled. I want to briefly take you to the AIC's *Statistical bulletin 30: experiences of coercive control among Australian women*. It's a very important paper. On page 9, it says that, 'when looking at the specific forms of physical violence reported by women who experienced

coercive control', sadly, one in four women said their partner had assaulted them with a weapon. But you haven't broken down which weapons. You put knives—

**Mr Phelan:** Yes. I did get a query from the firearms lobby in relation to this particular thought that was put out.

**Senator McKENZIE:** Do you have an answer you can provide me?

**Mr Phelan:** I do. The bit that concerned them the most was an original—

**Senator McKENZIE:** No, the thing that concerns me.

**CHAIR:** Senator McKenzie, could we just allow the witness to answer the question.

**Mr Phelan:** The report was altered last week—on Thursday, as I understand. I've got a draft letter here to write back to the firearms industry, which wrote to me and brought it to our attention. I'm writing back to them as we speak.

**Senator McKENZIE:** I'd like a copy of that, too.

**Mr Phelan:** A copy of the draft?

**Senator McKENZIE:** Or you can answer my question.

**Mr Phelan:** I'll tell you what I'm changing. The original statement read:

- one in four said their partner had assaulted them with a weapon, including a gun or knife (23 per cent) ...
- It was put to me that that could unduly influence firearms policy.

**Senator McKENZIE:** I'm not interested in what whoever you are talking about said. I want to know—

**Mr Phelan:** What we changed it to?

**Senator McKENZIE:** where that data came from. You might like to give this to me on notice, given the chair is very concerned about time.

**Mr Phelan:** I'll take that on notice.

**Senator McKENZIE:** I would like you to break down the weapon types in the cases of the one in four women tragically assaulted by their partners.

**CHAIR:** Mr Phelan, you have got the information there as to what you are changing the letter to. Do you want to read that out?

**Mr Phelan:** Yes, sure. Thank you, Chair. We are changing it to:

- one in four said their partner had assaulted them by hitting them with something that could hurt them, beaten them, stabbed them with a knife or shot them with a gun (23 per cent) ...

This is an accurate reflection of the question that was asked.

**Senator McKENZIE:** And the reporting.

**Mr Phelan:** Yes.

**Senator McKENZIE:** Thank you so much.

**CHAIR:** Thank you very much, Senator McKenzie. With no further questions, I can happily dismiss the officers from the Australian Criminal Intelligence Commission and the Australian Institute of Criminology. Thank you very much for your time and evidence this morning.

#### **Australian Transaction Reports and Analysis Centre**

[12:13]

**CHAIR:** Do you have an opening statement that you wish to make before we go to questions?

**Ms Rose:** Yes, I do. Thank you, Chair. I'd like to start by providing further clarity around AUSTRAC's role, explaining our part in the complex law enforcement and financial ecosystem, and correcting the record on some recent reporting.

Our dual role as Australia's financial intelligence unit and AML/CTF regulator places us within a strong network of state and Commonwealth financial regulators, intelligence agencies and law enforcement bodies tasked with protecting Australians and the economy. To try and explain our specific part of this ecosystem, allow me to make a comparison to a more familiar regulatory model.

Consider the role, perhaps, that a roads and traffic authority plays in a state. They provide registration services, they oversee compliance to specific rules and regulations, and they work to improve road safety. We all know that we need to be licensed by them to drive a car and, if you are lucky enough to own a car, it has to be roadworthy

and certified. The onus is on the driver to ensure these requirements. However, it's the police who monitor and enforce compliance with the road rules—such as those against speeding or drink driving—and not the roads and traffic authority.

Similarly, we engage our registered community of businesses with a range of different regulatory tools, some proactive and some reactive. Proactive prevention is best done, of course, with education, guidance and compliance checks. We've been particularly focused on this and continue to build our capacity in this area. Enforcement action, however, is usually at the end of the oversight continuum, when we have detected serious and systemic noncompliance. This civil action, under the AML/CTF legislation, confers some of this country's most serious financial penalties to breaches, due to the serious harm that can result when the regulated entity does not fulfil its responsibilities under the act, or—as Justice Perram put it, in the Tabcorp matter—'The act deals severely with breaches of that trust.' This is a really important point. This action is taken against the entity providing a service, not any criminal who may exploit that service.

The criminal actions of money launderers and those financing terrorism are investigated and prosecuted by police. The national financial intelligence unit, AUSTRAC, provides specialist financial intelligence and draws on our extensive international FIU network to contribute to law enforcement and additional security operations.

There are, of course, some similarities between criminal investigations undertaken by police and civil regulatory enforcement investigations undertaken by AUSTRAC. For complex matters, investigations to secure evidence can take extended periods of time. Matters being investigated have, in many instances, occurred years prior to the investigation being commenced. All evidentiary standards, whether in criminal or in civil matters, must be adhered to.

Of course, you may know that AUSTRAC's regulatory posture was renewed and elevated significantly a few years ago and has maintained momentum ever since. AUSTRAC's first significant enforcement action in 2017 was against Tabcorp, in the gambling sector. At the time it was Australia's largest single penalty. Since then our approach has been increasingly proactive and forward-leaning, and I am sure we will discuss details of this today.

I'll make one last point before I take questions. I would like to correct the record on an issue that was discussed in a Senate committee hearing late last week and was reported by the media on a number of occasions. A case that AUSTRAC provided to our international partners, who have used it to demonstrate various aspects of trade based money laundering, showcased the working partnership within criminal investigators and our intelligence support. In this case, AUSTRAC, Australian banks and international financial intelligence counterparts supported an Australian Border Force investigation. In this example, the proceeds of illicit narcotics sales in the United States were placed into the US financial system and then layered by transferring funds internationally to jurisdictions in Asia. From Asia, funds were then further layered through the financial system into Australia. No Australian institution would have any awareness of the links to the US or South America.

This case study was chosen because it highlights the complexity and scale of international trade based money laundering and the need for government agencies to work not only with each other but with private sector and international partners to tackle transnational serious and organised crime. This case study does not demonstrate noncompliance with the AML regime. It is not accurate to suggest that this case study demonstrates the failure of banks to meet their obligations. The banks, like many financial institutions, are used by sophisticated criminal networks. To suggest that banks, or law enforcement, for this matter, will always be able to detect such use is misguided. Where there is no noncompliance identified in this matter, accordingly, potential enforcement activity against a bank is not pursued. While AUSTRAC does not comment on the specifics of operational matters, we will note that the agency did contribute financial intelligence to the effort to identify and combat this criminality. These contributions included reporting provided by banks and engagement with international partners. With that, I am happy to take questions.

**CHAIR:** I thank you very much, Ms Rose. I would like to give the call to Senator Ciccone.

**Senator CICCONE:** Thank you, Ms Rose, for your opening statement. You'd be aware that the New South Wales casino inquiry report was released on 1 February. Have you read that report?

**Ms Rose:** Yes, I have.

**Senator CICCONE:** There are a few aspects of that report that I wanted just to discuss, which I also understand has been circulated with the secretariat as well. Commissioner Bergin is commenting on your 2017 report.

**Ms Rose:** Yes.



**Senator CICCONE:** In that report, I think at paragraph 119, the Commissioner questions why your 2017 report was never shared with casinos to help improve them and their organisations. Why didn't you share your concerns directly with the casinos?

**Ms Rose:** It was shared, to my knowledge, and I'll ask my staff to interject if I need to be corrected on this, because I can't see them. We worked with the BCG on a number of assessments and we worked with a range of casino regulators on putting that 2017 report together. It was only written as a Commonwealth and state and Territory government audience and it was to share learnings from the campaign that we had in 2017 and to alert those people in the system to vulnerabilities and risks posed.

**CHAIR:** Ms Rose, just to let you know Mr Soros and Mr Brown are at the table. Do you wish to add to that answer at all?

**Ms Rose:** If Mr Soros wishes to add to that, I am happy for him to.

**Mr Soros:** Senator, specific elements of that compliance activity that related to individual casinos would have been provided back as feedback to them directly.

**Senator CICCONE:** Okay. We are in a position where, obviously in 2017, there was this damning report. According to the evidence put before Commissioner Bergin, it seems that nobody in the federal government either seemed to want to listen or had the ability to actually digest what was put to them. It does give the impression to people reading Commissioner Bergin's report that your organisation probably seemed to want to hide some of the results from organisations, from the casinos. I am just curious as to what else had unfolded once that 2017 report was tabled.

**Ms Rose:** I have to strongly refute any assertion that we're not sharing information. Casinos are one of the three areas that we are most concerned about. Banks, casinos and remittance agents are three areas that we have been focusing on for the last three years. Prior to that, we'd done a range of compliance assessments on a range of casinos—not just Crown but a number of casinos. I think we have done 12 assessments in the last four years.

The 2017 report wasn't released publicly, because when I read it—and I came in after the report was produced—I felt that the summary of the report, which was a statement along the lines that Crown applied generally across AML/CTF, whilst technically correct didn't reflect the substance of the report. It was, as you would have seen, pointing out a whole range of areas that we went back to Crown and asked if they would remediate, and we have been working on those. So this has been a work in progress with the sector. Certainly, in 2019 and 2020, it has been concentrating on banks—the banks have the highest risks, because there is a volume that goes through banks—and now we are focusing on casinos. We have done four years worth of compliance assessments to help them raise their maturity in this area. It's become very deep, which is why we have taken enforcement action against Crown and we are looking at others in the industry right now.

**Senator CICCONE:** I appreciate that, Ms Rose, but it's quite clear from what I have read that the commissioner was critical of AUSTRAC's decision not to share documents with casinos. Don't you think it was a mistake not to raise any concerns publicly at the time?

**Ms Rose:** I was criticised for this excuse before: I wasn't here when it was written and produced. When we were asked to provide the 2017 report to the commissioner—and I have to say that AUSTRAC, in my view, cooperated with the commissioner and her team very well; we engaged early and regularly—we were building an updated risk assessment. And we made the call that it was better to wait for the updated, much more thorough risk assessment, which we did provide the Bergin inquiry, than to provide a 2017 report which I think was, in some places, clumsily written.

**Senator CICCONE:** Commissioner Bergin has criticised your organisation for not sharing the entire report with the casinos. She said it was 'ironic' that you didn't share the report. Do you disagree with the commissioner?

**Ms Rose:** No, and I am happy to take that specific part about how much of the 2017 report was shared with each casino. There are a number of considerations when we look at sharing these reports with group entities. One of them is commercial-in-confidence information. We won't share information that has been given to us by one entity that could be commercial-in-confidence with another. We will actually redact parts of the report. We also won't necessarily show things that involve SMRs that may be used by police in investigations. There are reasons not to give every single part of the information, but we have been speaking to the regulators in each of the states about the concerns that we have with their institutions.

**Mr Soros:** As I indicated earlier, and as Ms Rose indicated, the report, by its nature, was for state and Commonwealth government partners, but the content for the report was derived from compliance assessment work that AUSTRAC undertook on those casinos. So the individual information from those compliance assessments that related to individual casinos would have been shared with the casinos. The final report, because

of its nature, is for law enforcement and state regulatory partners, but the basis on which it was derived was provided back to the casinos individually on their own assessments.

**Senator CICCONE:** All right. The commissioner also revealed that they had asked for the 2017 report, which you refused to provide, and that they only saw it after the Senate had ordered its release.

**Ms Rose:** Correct.

**Senator CICCONE:** Why did you put out the release of the 2020 junket report without sharing the information with the New South Wales casino inquiry?

**Ms Rose:** I may have to refer to my staff on the specifics of this but I understood that we did share that when we released it.

**Mr Soros:** That's correct. The 2020 junkets risk assessment document was shared with the Bergin inquiry, if I recall correctly—

**Senator CICCONE:** Share all of the information, or just some information?

**Mr Soros:** The full report that was publicly released was provided to the inquiry. I understand—I'll have to confirm my memory—but I believe it was provided ahead of its public release.

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

**Senator CICCONE:** Can you take it on notice just to make sure that what you're saying—which I'm not questioning—it's just to make sure that it's right.

**Mr Soros:** I'm happy to take it on notice.

**Senator CICCONE:** Commissioner Bergin clearly thinks that state/federal cooperation is an issue. I know, Ms Rose, you may not have the report in front of you, but on page 620 in paragraph 12 she says:

Without wishing to invite debate or spark a constitutional crisis, it is appropriate to observe that whilst ever these differences exist with the consequence of fragmentation, the organised criminals and the money launderers have the advantage.

That's a very pointed remark. The commissioner is clear expressing her frustration at the lack of cooperation between your organisation and state agencies. She also goes on to provide further examples in paragraph 66 on page 620 of the casino regulator not being informed of money laundering and risk by AUSTRAC. The question I'd like to ask is: why the secrecy? Why is there a lack of cooperation?

**Ms Rose:** That's a good question, Senator. It's a more complex answer than at first look. We obviously didn't explain it as well as we could have to the commissioner. All of the information that we have and particularly suspicious matter reports, are provided to police in states and territories within 24 hours of us receiving them. In many of the state and territories, that is the way that regulates that these oversight agencies get their information on criminal issues. Some of them are looking at or have direct access to our information. They've all been offered that, but it requires them to have appropriate systems and security-cleared staff to access it, and some prefer to go through the police. It is not as simple as us just sending through SMRs to casino regulators. One: because of the volume and, two: because that can often be either just one small piece of information or not information that's necessarily of any use until it's been looked at by an intelligence analyst. The information is certainly there and we do share it.

**Senator CICCONE:** On the surface it just doesn't seem to pass the pub test. You knew there was an issue and it does appear that you and your organisation may have hidden information from the Victorian regulator. So, from my point of view, it doesn't make sense. The commissioner's criticism is that the report also wasn't shared in advance of its release. I think that's been the biggest criticism from the commissioner. Feel free to answer that, but in light of the time I'd appreciate it if you could just take on notice any of the other questions that I've raised.

**Ms Rose:** Absolutely. I'm happy to, Senator.

**Senator SCARR:** Chair, can I just quickly follow up from Senator Ciccone's question? He referred to 'hidden' from the Victorian regulator. That characterisation concerns me somewhat. Mr Soros, can you perhaps just quickly advise whether or not you agree with that characterisation?

**Mr Soros:** I'm happy to. As we undertook compliance assessments on Crown in Melbourne, we did share the findings of those compliance assessments with the Victorian regulator.

**Senator SCARR:** So it's not correct to say they were hidden?

**Mr Soros:** It wouldn't be how I would describe it, no. If I could just add one further point—for quite a few years, and Mr Phelan has previously mentioned this, ACIC has worked on investigations to do with individuals around junket operations in Melbourne, and worked closely with AUSTRAC and Victoria Police. To somehow

suggest, I think, that nothing was being done—I'd just point to that fact that there were detailed criminal investigations by our law enforcement partners which we supported and contributed to during that time as well.

**Senator SCARR:** Thank you.

**CHAIR:** Senator Fierravanti-Wells.

**Senator FIERRAVANTI-WELLS:** Ms Rose, I have been pursuing the issue of the Vatican funds to Australia. I have to say and ask you this: do you concede that AUSTRAC's reputation has been damaged, following the discrepancy in the reporting of the Vatican funds to Australia? I think some of the headlines on 14 January this year were very damaging and I'm concerned about that issue and I would afford you the opportunity to make some comments.

**Ms Rose:** I don't disagree. It was an incredibly disappointing error that occurred and, in my view, the only time AUSTRAC has tripped up in [inaudible] the 3½ years I've been there. It's incredibly disappointing. And it was disappointing more for the fact that it was a simple human error [inaudible] was we answered a question on notice without the rigour that we would have applied to our financial and regulatory work. And that is very disappointing.

**Senator FIERRAVANTI-WELLS:** I won't traverse more of that. I do want to take you to some particulars of your letter of 13 January, because, following my questioning, you clarified with this committee certain detail. When did you first engage with the Vatican City State Financial Intelligence Unit, and did AUSTRAC instigate the approach?

**Ms Rose:** I might go to deputy CEO Chris Collett for the dates we engaged with the Vatican.

**Mr Collett:** We engaged directly with the Vatican FIU on a number of dates in early January. I'd have to take on notice the specific dates that we were working with them on this matter prior to Ms Rose's letter to this committee on 13 January.

**Senator FIERRAVANTI-WELLS:** Thank you—if you could do that. On page 2 of the letter, it states that 'the statistics provided in our original response were generated for the specific purpose of responding to the question on notice. These statistics were not used for, nor were part of, any financial intelligence or regulatory analysis'. In the document *Overview international funds transfer instructions (IFTIs) 2010-2019*, the information that's contained in table 5 almost exactly matches the information that was provided to me in an answer to a question on notice on 16 December. That was the reason why I asked for a corrected version of this document. I would have thought that, surely, given the damage that this error has caused, particularly in light of the concession that Ms Rose has indicated, you would want to do everything possible to ensure that the data in the public domain, if it was incorrect, would be corrected. I'm very concerned that, if you got something so simple wrong in relation to the Vatican, what else is wrong in this document? Surely you would want to make sure that data that is out in the public arena is corrected? That's why I asked you for an updated copy of this document, but you have refused to provide that to me.

**CHAIR:** Senator, do you have a question?

**Senator FIERRAVANTI-WELLS:** I'm asking if you can provide it to me. Why won't you provide it to me?

**Mr Collett:** Ms Rose, would you like me to answer that question?

**Ms Rose:** Yes, please.

**Mr Collett:** Senator, the document you're referring to was prepared for an FOI request. It was a very, very broad request that covered international fund transfers over many years over every country. We have identified the error in that. It is the same error that was in our initial response to your question on notice, back in December. The FOI request, if you refer to the back page, states that it was a statement of raw data. We don't intend to undertake a full analysis of that table. We haven't been asked for a further request. We have removed that document from our website, though, because it does have the incorrect Vatican data. The correct numbers are in the response from Ms Rose to this committee on 13 January.

**Senator FIERRAVANTI-WELLS:** On page 2, paragraph 2, you refer to reporting data from international institutions. Given the time, can you take that on notice what international institutions you are referring to in that paragraph; also, why didn't AUSTRAC's quality assurance processes identify this issue in the first place?

**Mr Collett:** Certainly. Going to the second part of your question, our quality assurance processes should have identified it, as the CEO said. That was an error, and one that needs to be rectified. We have in very careful detail reviewed the process and updated and strengthened our practices when it comes to quality assurance. We deal with very large volumes of data. That data comes through Australian reporting institutions, but captured from

material they receive from across the world. It's important that we're able to manage incomplete data sets, and the quality assurance processes have been strengthened as a result of the matter.

**Senator FIERRAVANTI-WELLS:** I have some more questions in relation to an article in *The Australian* of 30 December last year: 'We risk being a dirty money haven.' Are you aware of that article?

**Mr Collett:** Broadly. Can you give me the topic of that article? I don't have it in front of me.

**Senator FIERRAVANTI-WELLS:** It says, 'We risk being a dirty money haven', and it basically talks about Russian money laundering. It also talks about the prospect of Magnitsky laws in Australia. My question to you is a twofold one. Your role in relation to investigation on the Russian money laundering—it was alluded to in that article—but with the prospect of a Magnitsky law in Australia and the prospect of it being enacted, are we sure that AUSTRAC is properly equipped to play probably a very vital role in the detection and analysis of dirty money? In other words, Mr Collett, do we have your assurances that what is now being put into place will ensure the accuracy of your data and again restore that international reputation that we have had in relation to these sort of issues in the past?

**Mr Collett:** Ms Rose, would you like me to answer that question?

**Ms Rose:** Yes, please.

**Mr Collett:** There are a number of elements to your question. Certainly, AUSTRAC's broad role when it comes to these sorts of matters—I don't think it's appropriate to talk about specific investigations—is to provide financial intelligence to our law enforcement partners, who will then be looking at other aspects, including criminal intelligence. We work closely with our international partners. There is a very strong network of financial intelligence units, which we're a founding member of, to facilitate the exchange of intelligence and information. The manner in which we would approach this sort of investigation would be the same as any other transnational serious and organised crime, and the role that we would play goes to the core function that we have.

When it comes to your question about the strengthening processes we have put in place as a result of the discrepancy with the Vatican data, that's not relevant to this scenario, in that this is about financial intelligence work, and the sort of analysis that is done in this context would have identified the sort of error that occurred.

**Senator McKIM:** Good morning, Ms Rose. Can I start by asking a couple of questions on the statutory review of the Anti-Money Laundering and Counter-Terrorism Financing Act? Firstly, is AUSTRAC the lead agency for that review, or is that the Department of Home Affairs?

**Ms Rose:** It's the Department of Home Affairs.

**Senator McKIM:** Is AUSTRAC aware of progress regarding the implementation of the recommendation that options be developed and costed to include lawyers, accountants and real estate agents as designated services?

**Ms Rose:** No. I believe—and I think Senator [inaudible] was the last to make reference to this—that the government are addressing it in a tranche-by-tranche way and that they're concentrating on phase 1.5, which has gone through the parliament just recently. I'm not aware that costings have started or were done on tranche 2.

**Senator McKIM:** When you say you're not aware that work is being done, are you referring to the development of legislation?

**Ms Rose:** I believe so, but that would be a better question for the department, I think.

**Senator McKIM:** Sure. In the recent Financial Action Task Force plenary session about a month ago—I understand it was in late February—who represented Australia?

**Ms Rose:** Mr Collett may correct me, but I understand it was led by Home Affairs with members of AUSTRAC and possibly one DFAT officer.

**Mr Soros:** That is correct. The delegation was led by Home Affairs.

**Senator McKIM:** Thanks—AUSTRAC did have members of that delegation?

**Mr Soros:** Yes.

**Senator McKIM:** Can I ask, without identifying the officers involved, for you to provide the level of AUSTRAC officers—that is, where they sit in the hierarchy? I'm not after names. You can take that on notice, if you wish.

**Mr Soros:** There were directors at the EL2 level that supported that delegation.

**Senator McKIM:** Thank you. Were any questions raised at that plenary about Australia's failure to regulate the gatekeeper professions—that is, relate estate agents, lawyers and accountants?

**Ms Rose:** I don't believe so, but Mr Soros may have more detail.

**Mr Soros:** I don't believe there was specific commentary at that meeting. Home Affairs may be able to help and support that comment later this afternoon, or we can take it on notice.

**Senator McKIM:** I'd appreciate it if you'd take it on notice as far as AUSTRAC's awareness. I'm sure Mr Pezzullo will be ready to respond in some form this afternoon! Do AUSTRAC have any evidence—and, if so, what evidence—that gatekeeper professions are being used in criminal activity, either wittingly or unwittingly?

**Mr Soros:** Sorry, I missed the start of the question. Ms Rose, you go.

**Ms Rose:** Yes, we do. Absolutely. We've got evidence that there are professional facilitators that are involved in criminal activity, and the AFP could give you details of those, as could state and territory police. That's wittingly. We also know that there have been professional facilitators unwittingly involved, but there are not broad numbers available on what sort of percentage that is of the 100,000 or so of those professional facilitators.

**Senator McKIM:** Did AUSTRAC provide that evidence to the plenary session of the Financial Action Task Force?

**Ms Rose:** I think we'd have to take that on notice.

**Senator McKIM:** I'd appreciate that; thank you. I understand that New Zealand's approach to combating money laundering was a key part of the plenary agenda. Does AUSTRAC have a view on the New Zealand approach to the gatekeeper professions? As you respond to that, basically, how burdensome has the compliance obligation been for lawyers, accountants and real estate agents?

**Ms Rose:** It's only relatively new, as you'd know, to New Zealand. National manager Bradley Brown may be able to give some more advice on this. The last time I remember I had a formal meeting with New Zealand, they said that they just didn't have enough evidence to understand whether it was working for them or not, but that was before COVID. Bradley Brown or one of my other deputies may have more information.

**Mr Brown:** Certainly, in relation to the New Zealand regime, AUSTRAC and our Home Affairs colleagues have kept in touch with them in relation to how the regulation around designated non-financial business and professions has operated. In terms of the compliance cost and understanding, Ms Rose is correct; they don't have a means to fully assess both cost on industry and the effectiveness of disruption ultimately in terms of how crime prevention et cetera has followed. However, we continue to engage with our New Zealand colleagues. By chance, there was an Australian officer involved in that mutual evaluation of New Zealand recently as well, which obviously assists us and aids us in terms of understanding the background of that report that was finalised.

**Senator McKIM:** On mutual evaluation reporting, has the Financial Action Task Force given any indication of when it will resume the follow-up of the mutual evaluation report that was suspended in November 2019?

**Mr Pezzullo:** To be honest, it would probably be more helpful if Home Affairs answered these questions as they were the lead at the delegation. But I certainly haven't personally been briefed on likely timings or anything like that.

**Senator McKIM:** Thank you. I saw Mr Pezzullo taking a few notes there, so we'll come up with that this afternoon. Chair, I'm nearly done, thank you.

**CHAIR:** Okay, thanks very much.

**Senator McKIM:** On another topic, I wanted to ask whether AUSTRAC has an information sharing agreement with the United States Financial Crimes Enforcement Network. For example, if they get a suspicious activity report relevant to an Australian company, would AUSTRAC hear about it?

**Ms Rose:** Brad, do you want to answer that?

**Mr Brown:** I can absolutely say, yes, we have an MOU in place with FinCEN, which is our counterpart in the United States.

**Senator McKIM:** Is that publicly—

**Mr Brown:** The question in relation to whether they receive or would pass intelligence if it may relate to an Australian would be a matter for themselves in terms of their own processes et cetera, in the same manner as when we receive intelligence that may relate to another jurisdiction, we would assess the implications of what that would be before contemplating whether we would pass that intelligence on. Separately, we may also receive direct requests from one of the counterparts in this example. If Australia were to request information from our US counterpart, FinCEN, on behalf of ourselves or on behalf of any of our law enforcement partners, that may prompt information to be provided to Australia.

**Senator McKIM:** Sure. Is that MOU publically available, Mr Brown?

**Mr Brown:** The MOU itself is not publicly available, no.

**Senator McKIM:** Last year Adani Global Pte, the parent company of Adani in Australia, which is now somewhat bizarrely known as Bravus, were named in financial crimes enforcement network reports as having had suspicious activity reports made against them regarding transactions with Thionville Financier Limited, a company based in the Seychelles, a known tax haven. Firstly, is AUSTRAC aware of that?

**Mr Collett:** Yes, we are.

**Senator McKIM:** What can you tell us about Thionville?

**Mr Collett:** It's not AUSTRAC's practice to make public commentary on matters that may or may not be under some further consideration.

**Senator McKIM:** So you're not able to inform the committee whether that is under further consideration or investigation?

**Mr Collett:** I wouldn't want to be speculating on individual companies, no.

**Senator McKIM:** I'm not asking you to speculate. It's a question of fact. My question is: is that under further consideration or investigation?

**Mr Collett:** As I said, it's not our practice to comment on financial intelligence matters.

**Senator McKIM:** Thank you and thanks, Chair.

**CHAIR:** That brings to an end the evidence given by the Australian Transaction Reports and Analysis Centre. I thank representatives.

### **Proceedings suspended from 12:53 to 13:46**

#### **Australian Security Intelligence Organisation**

**CHAIR:** Good afternoon. Would any officer like to make an opening statement?

**Mr Burgess:** I do. Thank you for this opportunity to make some opening remarks. ASIO's role is to protect Australia and Australians from threats to their security. These threats include espionage, terrorism and foreign interference. ASIO has been taking a forward-leaning, proactive approach, and just recently during my second annual threat assessment I outlined the threats we face. The reason for this is simple: we believe that awareness is the first line of defence. Australia's security environment is complex, challenging and changing. In terms of a threat to life, terrorism remains at probable. In terms of threats to our way of life, espionage and foreign interference are at unacceptably high levels. Agility and ingenuity are at the core of ASIO's operations. We need to be able to outimagine and outmanoeuvre sophisticated foreign adversaries that are effectively unconstrained by law, ethics and resource. We need to be aware and understand what security aware and tech savvy extremists are plotting.

Given the evolving nature of the threat we face, ASIO continues to review our capabilities, powers and resources to ensure they are fit for purpose and proportionate to the challenges we face. This is particularly important as we emerge from the COVID crisis. Hostile governments are seeking intelligence about our recovery. We have already seen key export technology and research industries being targeted. ASIO stands ready to detect and disrupt these threats. Security will underpin our recovery. As I said last week in closing, spies and terrorists should know this: we are looking for you. For the rest of the Australian community, we are looking out for you. ASIO is Australia's security service.

**Senator KENEALLY:** Thank you, Director-General, and your team for being here. I note that today the government has proscribed the Sonnenkrieg Division as a terrorist organisation, which would be Australia's first listing of an ideologically motivated group—to borrow your terminology—noting, as you said in your threat assessment, that at times it is appropriate to use the specific terminology when we are dealing with a specific threat. It is the first listing of a right-wing extremist organisation. I want ask you some questions about the information that feeds into the proscription processes, particularly in relation to the weighting ASIO gives to open-source reporting that feeds into the statement of reasons for proscription. Is this the first ideologically motivated organisation that ASIO has proposed to list?

**Mr Burgess:** During my time, it is the first one that has been listed. I would have to take on notice whether they have been listed before. I don't think they have.

**Senator KENEALLY:** My question specifically was: is it the first one ASIO has proposed to list?

**Mr Burgess:** It is not the only group that we have proposed.

**Senator KENEALLY:** Ideologically motivated group.

**Mr Burgess:** Yes, that's correct. There are other groups we have proposed. How that happens and whether or not they meet the legal threshold is a matter for others. And, if I may, just to clear the terminology: yes, ideologically motivated. This is an extreme right-wing group.

**Senator KENEALLY:** The Sonnenkrieg Division.

**Mr Burgess:** Correct.

**Senator KENEALLY:** Has any consideration been given to—let me ask this first, so that we're all clear. The Sonnenkrieg Division is an organisation that is UK based.

**Mr Burgess:** Correct.

**Senator KENEALLY:** Could you describe the extent of its influence in Australia or its interest in Australia?

**Mr Burgess:** This is a group that does have reach here because, unfortunately, the positives of the internet are such that it's very findable online. Some Australians do connect with this group, so it does have relevance here.

**Senator KENEALLY:** Noting that the internet, as you have said in your threat assessment, has made the capacity for such groups to have reach into Australia, has facilitated that capacity, are there other overseas far-right extremist groups that are listed in the United Kingdom or in Canada, like the UK based National Action, that have reach into Australia?

**Mr Burgess:** Yes, there are other groups that are listed overseas that do have reach here.

**Senator KENEALLY:** Recognising there may be matters you cannot ventilate in a public forum, for good security reasons, what I'm trying to understand is, what about Sonnenkrieg Division, elevated it to require a proscription, when there are groups like National Action that are listed, that have been involved in violent attacks and that have stated indirect links to groups here in Australia—why they have not yet been listed?

**Mr Burgess:** On National Action, we believe that group is defunct.

**Senator KENEALLY:** In the United Kingdom.

**Mr Burgess:** They were previously listed in the United Kingdom in 2016. We believe they're defunct. I guess the other thing, though, whether or not they're defunct, as we from time to time review these groups and look for connections here, is we might consider them to be something that should be considered for listing. Then, of course, we have to determine—and others do this—whether the legal threshold is met for that to occur. Other countries have different legislations for their listing.

**Senator KENEALLY:** That is true. The UK threshold has—how I would characterise it; you may or may not agree—a broader set of criteria. That is a policy debate, as to whether or not that is an appropriate threshold. But if I refer back to when the parliament first passed the proscription laws, the Attorney-General at the time made the point that proscription is not solely about the investigatory or other legal tools it provides but also it sends a clear message about what we as a country reject. Would you agree with that?

**Mr Burgess:** I do agree with that statement, yes.

**Senator KENEALLY:** I note that Canada has proscribed Blood & Honour, Combat 18 and Proud Boys. As far as I am aware, unless you have other information to update, those are groups that have local chapters in Australia. Could you comment about the approach you take—that is, in considering when a Five Eyes partner lists a group overseas that has a local chapter in Australia; does that spike your interest in whether or not they should be proscribed here? Do you then go and examine those groups here?

Could you provide some information that might be useful to the public consideration of what appears to be a juxtaposition in which we have allies and Five Eyes partners that have listed groups that are not listed here in Australia, despite having local chapters here?

**Mr Burgess:** Sure. Firstly, yes, it's a true statement that there are groups listed overseas that are not listed here. I come back to my point around the laws being different in those countries from how they are here. I don't disagree with your previous characterisation of the law in the UK. Here it's a very high bar because there are very high penalties, but, of course, that law is a matter for government and parliament in terms of how that plays out. Of course we will pay attention to any groups here in Australia and we look at them, but the principal focus—ASIO's, at least—is actually on individuals, groups of individuals or the group itself in terms of whether they will promote acts of violence or terrorism. That's my principal focus. Of course, as we're doing that, if we believe the group is promoting violence then we will consider pushing that forward for others to determine whether it meets the legal threshold for listing.

**Senator KENEALLY:** Thank you; that's helpful. I note there is a separate inquiry in a different committee underway where we might examine those matters further. On your point about National Action and whether or

not it is defunct: nonetheless it is still cited as an inspiration by groups that are active in Australia such as the National Socialist Network, which does, I think, suggest that, whether or not it has active members, its ideals are still inspiring people in Australia. Could you give us a sense of how active you understand the Sonnenkrieg Division to be in terms of membership?

**Mr Burgess:** It's not highly active, but it does have residents here.

**Senator KENEALLY:** It's not highly active?

**Mr Burgess:** As in there's not a large group of individuals in Sonnenkrieg Division here in Australia, but there are individuals—

**Senator KENEALLY:** I meant in the United Kingdom.

**Mr Burgess:** I won't comment on what is in the United Kingdom. I focus on how it is relevant to Australia's security environment.

**Senator KENEALLY:** Okay, but you have just said that National Action is defunct and therefore not something you had been considering in terms of listing. I make the point that there are today people on social media and other platforms where National Socialist Network is citing National Action as an inspiration. I'm curious to know, then: you must have some sense to the extent to which Sonnenkrieg Division is or isn't defunct in the United Kingdom.

**Mr Burgess:** Sonnenkrieg Division isn't defunct.

**Senator KENEALLY:** That's what I was trying to understand. Is it hundreds of members? Is it a dozen?

**Mr Burgess:** I could take that on notice. I don't know the answer off the top of my head. I don't pay attention to the numbers of individuals in that group in the United Kingdom. We worry about how it resonates here. To your earlier point: yes, I can also acknowledge that even defunct groups, like National Action, can still resonate with individuals long after the group's gone. What they put out there can still mean things to people.

**Senator KENEALLY:** How many ASIO analysts are examining the right-wing extremism? I'm interested in the proportion of analysts. You have talked about counterterrorism and 40 per cent. Are you able to answer that in terms of analysts?

**Mr Burgess:** I'm uncomfortable talking about those stats in public, but actually it's not so much the terms of the particular question. I'm not so worried about these groups knowing how many ASIO analysts; it would help them understand how many ASIO analysts are applied to espionage and foreign interference, and we like to keep that more closed so they can't figure out the level of our capability.

**Senator KENEALLY:** Thank you. I will leave that there, noting there are other forums where we might be able to pursue that.

**CHAIR:** We will now go to Senator Van.

**Senator VAN:** Director-General, I listened to your speech last week. I thought it was excellent. I think your move towards ideological and religious inspired violent extremism is a welcome move. To clarify that and look at the ideological extremism: was the move away because the ideologies that you're looking at aren't necessarily purely political—so not necessarily just left wing or right wing? Are there are other ideological things such as white supremacy et cetera that come into that?

**Mr Burgess:** Absolutely there are lots of ideologies at play here. Some are more dominant than others, but actually we think the new umbrella terms are helpful in terms of catch-alls for the groups. Of course, some commentators did suggest that I'd banned words, and that's simply not true. As you've heard me say here already, I will say extreme right wing where it's relevant. I will call out Islamic State when it's relevant. But there are many ideologies. One, for example, is involuntary celibate, or incel, ideology. I wouldn't want to put that on a political spectrum. We thought that was unhelpful.

**Senator VAN:** Definitely not. Terrific. I will go to some questions around foreign interference. As you may or may not know, I am on the Senate Select Committee on Foreign Interference through Social Media. Do you think the threat of foreign interference is getting worse?

**Mr Burgess:** Foreign interference is still at an unacceptably high level.

**Senator VAN:** But is it getting worse? Are we getting on top of it?

**Mr Burgess:** I will put this characterisation in the context of both espionage and foreign interference, because typically, if it's a nation-state coming at you, the instruments of that state, including their foreign intelligence services, are in both. They see opportunities in both. Levels there are unacceptably high. In the last 12 months the collective efforts across government have actually made a significant dent in these activities, but that's not a claim



of victory or mission accomplished. I used to say it was unprecedented. I don't say that now. But it's still unacceptably high. Moving forward, we do think that espionage and foreign interference will supplant terrorism as this nation's principal security concern if the current trajectory the world is on doesn't change. Of course, I also have to be clear there that the threat of terrorism remains probable and that will always be a priority for my agency and other agencies because threats to life are real and we must be prepared for them.

**Senator VAN:** So, as you say, the government and your agency are having an impact on foreign interference?

**Mr Burgess:** Very much so.

**Senator VAN:** Thank you. What are some of the dangers and risks that you see that are associated with foreign interference?

**Mr Burgess:** It comes at many different levels. As I've said, as you know, it's misunderstood, but foreign interference can be covertly or deceptively trying to change where a decision-maker lands and actually influence our country in a covert, deceptive way, and therefore it is interference and not influence. It can be threatening to individuals, and we see cases where members of diaspora communities are threatened because the foreign government doesn't like what they are doing and what they are saying and it's counter to their national interests. So it takes many forms. It can take the form of trying to interfere in our political system. We see that at all levels of government, local, state and federal, and we've seen that for the last three years.

**Senator VAN:** Between your agency and other government agencies, what are we doing to stop that foreign interference? Can you tell us about the Counter Foreign Interference Taskforce, for example?

**Mr Burgess:** Sure. The Counter Foreign Interference Taskforce was set up and has been effective since it stood up. Its job is with ASIO, Australian Federal Police, other members of our national security community and others. We're working hard to identify and disrupt activities of foreign interference. Since its inception it's investigated well over 30 instances. Law enforcement have taken a number of actions on those, and some of them are actually out there, so I won't comment on the charges. There are other matters which are ongoing investigations, so I wouldn't comment on them any further.

Of course, it's not just using the espionage and foreign interference laws that were put in place; it's other things the task force can do. As I said in my threat assessment last week, simply having an ASIO officer, or even an Australian Federal Police officer, go and talk to someone can be enough to disrupt the activity. So it is having an effect. Of course, there is—to borrow terminology that we use elsewhere—the 'Al Capone approach' where you might identify people who engage in acts of foreign interference and they can be prosecuted for other reasons, and that actually has the same effect. It doesn't matter which element of law goes at them; if they're breaking the law then that can be handled and passed through to police to handle in other ways.

**Senator VAN:** Terrific. Thank you. Specifically in reference to universities, what is the government doing to stop foreign interference at universities?

**Mr Burgess:** That's been a subject of much engagement over the last couple of years. I'd suggest that Home Affairs are best placed to talk about that. I can shout out and call out the threat. ASIO works with the Counter Foreign Interference Coordinator and the universities through Home Affairs, and that works exceptionally well. We have direct relationships with universities, but in terms of the collective effort to counter that and help universities identify and manage those risks effectively by themselves—which they're well on the path to doing—Home Affairs is best placed to take you through that later if you wish.

**Senator VAN:** Sure. Thank you. In your view, are the universities listening?

**Mr Burgess:** They are, very much so.

**Senator VAN:** Thank you.

**CHAIR:** I'd now like to call on Senator Carr.

**Senator KIM CARR:** I'm interested in the university issue. There were some five grants that the minister for education has vetoed, despite the Australian Research Council recommending that they be granted approval. I'm advised, according to media reports, that the decision by Minister Tehan, which was announced on the last day he was in office, was based on consultations with security agencies. There were a total of 18 grant applications referred to security agencies. Was ASIO one of the security agencies that were consulted?

**Mr Burgess:** We do give advice on research grants from a national security perspective, yes.

**Senator KIM CARR:** Specifically of the 18—I can table an article to that effect if you would find that useful.

**Mr Burgess:** Sure.

**Senator KIM CARR:** Specifically, there were five grants that were vetoed by the minister. Are they the ones that you were consulted on?

**Mr Burgess:** I'll just wait until I see the bit of paper.

**Senator KIM CARR:** Perhaps I will table these specific grants, if you need them, with the numbers on them.

**Mr Burgess:** Sure. Senator, I can tell you that we did obviously have involvement in these processes, as we do when we are asked. I'm not at liberty here to discuss in detail what we say on specific grants. I can talk about the nature of the problems that we have.

**Senator KIM CARR:** Yes. Did you consult with other agencies before you tendered advice on these matters?

**Mr Burgess:** We worked with other agencies.

**Senator KIM CARR:** Did you speak to the applicants about the nature of the grants?

**Mr Burgess:** No, we didn't.

**Senator KIM CARR:** Did any of these grants breach the Defence Trade Controls Act?

**Mr Burgess:** That would not have been my focus.

**Senator KIM CARR:** No, but did they?

**Mr Burgess:** I don't know that, because that would not have been my agency's focus.

**Senator KIM CARR:** You are aware of whether or not they breach the Defence Trade Controls Act, aren't you? I've asked you this question on previous occasions. Are you aware of any breaches of the Defence Trade Controls Act in regard to the ARC grant applications?

**Mr Burgess:** I don't spend my time focusing on what Defence needs to do in that space.

**Senator KIM CARR:** You are aware of whether or not there would be breaches of the Defence Trade Controls Act, because it's a reportable matter.

**Mr Burgess:** Sure, but that is not my focus.

**Senator KIM CARR:** It may not be your focus. I'm just asking: are you aware of whether or not there have been any breaches of the Defence Trade Controls Act in relation to any of these grants that you've made recommendations on?

**Mr Burgess:** No, I'm not aware.

**Senator KIM CARR:** Are you aware the Defence Trade Controls Act has a prescribed list of technologies which is reviewed annually?

**Mr Burgess:** I'll take your word for that.

**Senator KIM CARR:** It's no good taking my word for it. I would have thought, given this is your area of expertise, that you would be aware of that.

**Mr Burgess:** With respect, Senator—

**CHAIR:** Senator Carr, could you confine your comments to questions, please?

**Senator KIM CARR:** Well, I'm asking: are you aware of it or not?

**Mr Burgess:** I'm aware of the defence export control act, but, in terms of the details of that, that is not my business.

**Senator KIM CARR:** Specifically, I am seeking from you your knowledge of the proscribed technologies list contained within the Defence Trade Controls Act, which is reviewed annually.

**Mr Burgess:** Sure. My agency is aware of that list of technologies.

**Senator KIM CARR:** Are any of these grants that you have recommended against listed on that list of proscribed technologies?

**Mr Burgess:** I wouldn't know that, because that's not my primary concern.

**Senator KIM CARR:** Are you working on a new list of technologies for the application of research grants?

**Mr Burgess:** We don't work on lists of technologies. We look at a range of factors, yes. Some areas and some grants might be in areas that are deemed sensitive, and that list would be helpful. We're not the final arbiter on that, but we are aware of that list and how—

**Senator KIM CARR:** I'll table yet another article that reports that you are working on this. You can tell me whether or not that's correct. I will give you a few more copies of those. It says here:

The federal government is developing a list of key technologies and research areas to be protected from foreign adversaries as it cracks down on espionage in universities.

I take it that means a list of proscribed technologies. Are you working on a list of proscribed technologies?

**Mr Burgess:** Yes—apologies; I misunderstood. You were talking about defence export control and technologies under there. I am aware of this broader activity. I've actually talked about it to other committees before.

**Senator KIM CARR:** Have you discussed this list with the universities?

**Mr Burgess:** I haven't, no—not directly.

**Senator KIM CARR:** Is it being discussed as part of an IDC?

**Mr Burgess:** This work is subject to activity going on between Home Affairs and the Department of the Prime Minister and Cabinet, and I'm sure the secretary would be happy to talk about it during their session.

**Senator KIM CARR:** We'll get to the secretary. I just wanted to know what your view was, given you're the expert on research now. What is the relationship between this list and the proscribed list under the Defence Trade Controls Act?

**Mr Burgess:** I will share with you my perspective on the list. It's the latter list that we're talking about here, and I've spoken previously about this. It's incredibly important, in my mind, to explain to universities what technologies and research subjects would be sensitive to national interests, beyond the defence export controls, so that everyone has certainty in terms of areas that are potentially no-go areas or areas where conversations can be had. You can then assume that everything else is free to go. I've been suggesting that that is actually very useful and something that we should pursue, and that is being taken up by other departments.

**Senator KIM CARR:** You would be aware that researchers in this country are concerned about the issue of duplication, lack of clarity and the fact that no-one has seen this list, outside of ASIO and the department. When will they get to see this list of proscribed technologies, over and above what is contained in the current legal framework?

**Mr Burgess:** That's not a matter for ASIO.

**Senator KIM CARR:** I see. That's a matter for government, is it?

**Mr Burgess:** Yes.

**Senator KIM CARR:** Is it still the view of ASIO that it's not illegal to be a member of the Thousand Talents Program?

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

**Senator KIM CARR:** I'll ask you to take this on notice: are you aware of any breaches of the Defence Trade Controls Act or any breaches of the proscribed technologies listed as it currently operates?

**Mr Burgess:** I am not aware. Whether or not someone else in my agency is—I will take that question on notice.

**Senator KIM CARR:** Thank you. Ms Bennett, you've got a long involvement with a science agency, have you not?

**Ms Bennett:** I have.

**Senator KIM CARR:** That's the CSIRO, isn't it?

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

**Senator KIM CARR:** These grants that have been vetoed are all in areas in which the CSIRO has been actively involved in for some time, aren't they?

**Ms Bennett:** I don't have that list.

**Senator KIM CARR:** Fuel cells?

**Ms Bennett:** I am broadly aware of the nature of the research that may be on that list, noting I left CSIRO a number of years ago.

**Senator KIM CARR:** Yes. But you would be aware that each and every one of these areas has been an area in which the CSIRO has been engaged for some time.

**Ms Bennett:** In principle, you are probably correct in that, yes.

**Senator KIM CARR:** What is it that's so special about these particular grants that ASIO thinks should be denied to our researchers at these universities?

**Ms Bennett:** Senator, as the Director-General said, there are a number of factors that ASIO would look at, including the nature of the individuals, their history et cetera, not just the nature of the grant.

**Senator KIM CARR:** The individuals?

**Ms Bennett:** In terms of the threat that would be represented.

**Senator KIM CARR:** The individual researchers; is that what you're saying?

**Ms Bennett:** No. I'm suggesting that we would like holistically at the nature of the grant, so we would consider a range of factors, which would include the nature of the research, the nature of the arrangement. As you can appreciate, understanding research, some research can be done in a way in which it presents no threats, and in other instances then obviously it's a little bit more concerning. So we would rely on advice to make a decision.

**CHAIR:** Senator Carr, last question.

**Senator KIM CARR:** Mr Burgess, was it the Australian Research Council that sought your advice on this matter, or did you act independently?

**Mr Burgess:** We have had engagements with the Australian Research Council.

**Senator KIM CARR:** I'm talking about these five grants specifically.

**Mr Burgess:** We were asked to give advice. We gave advice to the Research Council and the department of education.

**Senator KIM CARR:** This was on the basis of the ASPI tracker, wasn't it? That's the real issue here, isn't it?

**Mr Burgess:** No, Senator. That's not correct.

**CHAIR:** Senator Carr, we will need to finish. Your time has gone over.

**Senator PATRICK:** Mr Burgess, in relation to some of the remarks you've made recently, you said:

Foreign spies are constantly seeking to penetrate government, defence, academia and business to steal classified information, military capabilities, policy plans and sensitive research.

I don't want to go into the detail of that but has there been any success in terms of foreign agents actually gaining access to this information?

**Mr Burgess:** Espionage and foreign interference is at an unacceptably high level. I won't discuss what we would consider classified matters in a public forum.

**Senator PATRICK:** You're happy to talk about someone successfully cultivating and recruiting an Australian government security holder who had access to sensitive details. You're happy to go to that level. At the very top level, I'm trying to understand. It's an 'are you doing your job properly' question. I'll take that back. Are you being successful in deterring and/or preventing this occurring, or has there been some success? That is the depth of the question.

**Mr Burgess:** Sure. I'm not offended by that question, Senator. It's appropriate to ask. We are having an effect. Obviously, as I've also said publicly, what I worry about the most are the things I don't know about. When you're coming up against foreign intelligence services that are actually well resourced and unconstrained by a whole range of things—laws and ethics—they can and will be successful. Our job is to identify that and deal with it when we find it. Sometimes we find it well ahead of damage being done. Occasionally—I can't promise you we're going to be 100 per cent—we will come to it after the fact. How damaging that is depends on the circumstances.

**Senator PATRICK:** Some of the line of questioning I have goes to the fact that my understanding is that you haven't prosecuted anyone. I think you said, 'We've confronted the foreign spies and quietly and professionally removed them from Australia.' I'm wondering why we're not having charges laid in respect of some of this activity that is occurring.

**Mr Burgess:** It's a good question. Again, it depends where we come and find it. In this case—that example I gave of the nest of spies, as I called it—we got them early and it was actually deemed to be more appropriate that we would ask those foreign intelligence agents to leave our country quietly, and they did. The task force is there. There is a charge that can be laid. That's preparation for foreign interference. So there could well be charges in future, but that depends on where we come and where we find things.

**Senator PATRICK:** Does the difficulty in laying charges ever relate to the fact that they may be embassy staff or consulate staff?

**Mr Burgess:** Well, yes. There's a whole range of things in terms of who is the spy that you find. If they're also diplomats, there's a range of things that the government would have to consider.

**Senator PATRICK:** If there's activity taking place, you've become aware of it and you're doing whatever job you do to combat that, in respect of prosecutions, is evidence from activities you carry out in combating this activity admissible in a court? Is there a problem in the context that you might do certain things that then don't permit prosecution because of the way in which the evidence might have been gathered?

**Mr Burgess:** Sure. Firstly, ASIO is a security intelligence service; we're not law enforcement. We collect information for intelligence purposes, but we're well practiced in the terrorism space and we're getting more practised in the espionage/foreign interference stage because we've worked closely with the Australian Federal Police, both separately and in the Counter Foreign Interference Taskforce, and we have good procedures in place so that, if we're collecting intelligence, that intelligence can be used to inform investigations where evidentiary based information is collected by the police for prosecution, if that's the path that is chosen to disrupt that particular threat.

**Senator PATRICK:** In 2019 the parliament looked at espionage laws. There was a significant update and upgrade to those laws. Have we seen any prosecutions in respect of espionage activities since those laws have come into effect?

**Mr Burgess:** No, but the espionage and foreign interference legislation primarily defined offences around acts in preparation for foreign interference and acts of foreign interference, as defined, which does include espionage, of course. There is one charge that has been laid by the Australian Federal Police in Victoria, in Melbourne, late last year. There are other investigations underway, so I wouldn't comment further in this forum.

**Senator PATRICK:** How much does the fact of the information you might obtain in conducting the counterespionage activities not necessarily being admissible weigh in in terms of prosecutions that aren't going ahead? Is it because it's easier to push these people out of the country? Is part of your consideration the fact that you don't have admissible evidence, or is it dominated by the fact that they may be diplomatic staff or something like that?

**Mr Burgess:** I am constrained what I can say in a public forum. But, yes, there can be an issue if we have something where we're protecting a human source or a technical capability. But that is good lead information that allows a law enforcement officer to do their job and get the appropriate warrants et cetera to get the information that's needed. Therefore we protect our sources and methods. So that's not a reason it's not getting through to prosecution. The task force has investigated well over 30 cases, and one has gone through to the laying of charges. That's now a matter before the courts, and others are well underway. Beyond that I can't say any more.

**Senator PATRICK:** In your address but also in your evidence just before, you talk about a 'nest of spies'. I note that a 'nest of traitors' was used in the Petrov affair, back in the 1950s. It's a collective noun. What does 'a nest' mean? It's not just plural. What are we talking about?

**Mr Burgess:** I think you have to allow me some poetic licence. That was more just to make the point that it was more than one.

**Senator PATRICK:** Okay. But you're saying it's increasing. I'm trying to get an understanding. To the extent that you're able to tell, how does this parliament understand whether it's, as you might say, a significant increase in activity? I'm just trying to get an understanding of the magnitude of the problem.

**Mr Burgess:** Sure. As I said, the levels are unacceptably high, and, as I also said last week, we have had a material impact. The actions of my agency and others have actually effectively removed or rendered inoperative a number of activities, and that is a double-figure number. I am unable to talk about that in an open forum. Of course we report fully to government on the effect of everything that we and our part in agencies do.

**Senator PATRICK:** My final question relates directly to Adelaide. Adelaide is opening a new consulate. The Chinese have 11 staff there—the nearest consulate to that is the Greek consulate, with two. The Chinese embassy, and this is on the public record, the last time I checked had about 140 consular and embassy staff. The United States had 108. I am confused as to why there are so many people in Adelaide. Does it not concern you, the large number of consular staff that we find, in particular, in the Chinese embassy?

**Mr Burgess:** If the consulate is approved and the number of diplomats there is approved through the Department of Foreign Affairs and Trade, then I have no concerns with any of that. I will say—and, again, this is not for me to comment on all of that—remember, some countries choose to not engage local staff; therefore, their numbers might be bigger than other countries, like our own, that engage local staff for certain functions in their embassy or consulates.

**Senator PATRICK:** That number of 11 doesn't include the support staff. That's even larger again.

**Mr Burgess:** Sure.

**Senator PATRICK:** Here's a more generic question. Surely, managing the collection of human and other intelligence is not linear between the number of staff you might have, and I'm not talking about any particular country here. If you have a staff level and you double the staff level, for you it's not a case of a linear response, surely, or is it?

**Mr Burgess:** No, we do pay attention to anyone who might be conducting espionage or foreign interference in this country, and where we find it we deal with it effectively.

**Senator FIERRAVANTI-WELLS:** Director-General, I read your annual threat assessment speech, and can I commend you on changing the language that you used to talk about violent threats that Australia needs to counter. I know that effecting change is never easy and I know you have had pushback, but I think history will judge you well for making this change. I thank you and your ASIO team for what you do to keep Australians safe. I note in his opening statement, this morning, AFP Commissioner Kershaw acknowledged that his organisation would be adopting the chain of language as well as the subsets of those categories. Will the change in terminology be rolled out by other security agencies?

**Mr Burgess:** Thank you for your comments, Senator. Yes, we engage widely with our partners, including law enforcement agencies in the states and territories. Whether or not they adopt it is a matter for them, but it has been well received and most of the feedback that I and my officers have seen is that they are very appreciative of the changes we've made.

**Senator FIERRAVANTI-WELLS:** Do you think that the change of language will assist in educating those like—and we heard it this morning, in the questioning—Senator Keneally, who do not know their history or do not want to admit that Nazis and National Socialism are not right wing? Any understanding of basic history is that National Socialism has its antecedence in communism. It is left wing in origin, and this has led to a lot of the misconception. I think as Margaret Thatcher correctly and succinctly put it, socialism and fascism are two sides of the same coin. Do you have any thoughts in relation to that, Director-General?

**Mr Burgess:** I think, perhaps, that highlights why our umbrella terms are as we now propose. I can agree with the former Prime Minister that the more extreme right you go you probably end up on the extreme left. We think taking the politics out of it actually helps. So these are umbrella terms. To be clear, we will continue to use the specific terms to call out those behaviours or anyone who's promoting violence in an attempt to deal with the problem and help others identify and for it to be dealt with.

**Senator FARUQI:** In your annual threat assessment last week, you said:

So-called right-wing extremism has been in ASIO's sights for many years, and last year I called out what we have been seeing. Since then, ideological extremism investigations have grown from around one-third of our priority counter-terrorism caseload, to around 40 per cent.

In September last year the ASIO Deputy Director-General, Heather Cook, said right-wing violent extremism now occupies between 30 and 40 per cent of your counterterrorism cases. It seems to me that almost all of what you are now calling ideological extremism is what you, only a few months ago, were calling right-wing extremism. Is that the case?

**Mr Burgess:** That's not entirely true. Again, that's why the term 'extreme right-wing' in the broad is unhelpful, because some of those ideologies that motivate people towards violent extremism come in all forms, not in what people have traditionally put under the generic catch-all of 'extreme right wing'. It is correct to say that those ideologically motivated violent extremists now represent 40 per cent of our priority counterterrorism case load. Ms Cook did not say 30 per cent of our entire counterterrorism case load. There is a difference.

**Senator FARUQI:** What proportion of ideologically motivated violent extremism is not far-Right extremism?

**Mr Burgess:** I wouldn't be able to give you that, because we're not breaking it out in that group and we don't specifically call out the individual groups when we're talking about the threats.

**Senator FARUQI:** But you did say that, when it was needed, you would actually call it what it was.

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

**Senator FARUQI:** So, if you don't know what it is, how are you going to call it what it is?

**Mr Burgess:** We know the breakdown of our priority terrorism case load, but I will not discuss that publicly.

**Senator FARUQI:** Why not?

**Mr Burgess:** For a number of reasons, including that ASIO officers put their lives on the line to understand this threat. I'm not going to expose their safety, their personal safety, by calling it out. You have to understand that, if I went down to, in minute detail, the specific individuals and groups, they might have a view to how we know about them. I need to protect my officers' safety.

**Senator FARUQI:** I'm not talking about individuals at all. I'm just wondering how not giving clarity with respect to what you're investigating—and the public decision-makers, for that matter—will impact the government response, for instance.

**Mr Burgess:** I'm not sure I understand the question. In private, we give classified reporting to the government. We share that information with our colleagues in the Department of Home Affairs, and that's how you get the full policy response of the Australian government.

**Senator FARUQI:** So you are not willing to let us know what percentage of that isn't far-Right extremism?

**Mr Burgess:** Isn't?

**Senator FARUQI:** Yes, that was my question.

**Mr Burgess:** Forty per cent of our priority counterterrorism case load is ideologically motivated, so 60 per cent is religiously motivated.

**Senator KENEALLY:** It might assist Senator Faruqi to have a reference to your previous evidence to this committee, where you said that 30 to 40 per cent of your counterterrorism case load was related to right-wing extremism.

**Senator FARUQI:** Yes.

**Senator KENEALLY:** What Senator Faruqi seems to be asking is: given that you've given that breakdown previously and specifically noted right-wing extremism, and you say that 40 per cent of your counterterrorism work is related to ideologically motivated extremism, can you break that down?

**Senator FARUQI:** I'm asking: how much of that is now not right-wing extremism.

**Mr Burgess:** I understand the question, but previously we ourselves were using that generic terminology, which we find unhelpful. Therefore we use that umbrella term. I won't go into this breakdown, for reasons I've explained.

**Senator FARUQI:** Last week you said:

Many of our Five-Eyes partners have changed their terminology for similar reasons.

Which countries have changed their terminology?

**Mr Burgess:** Canada, the United Kingdom, the United States and New Zealand.

**Senator FARUQI:** So all of the Five Eyes? Is that what you're saying?

**Mr Burgess:** Correct.

**Senator FARUQI:** Last week you also said:

... these are umbrella terms—and there may be circumstances where we need to call out a specific threat that sits underneath them ...

Why is the hard Right not a specific threat when we have white supremacists chanting at locals in the Grampians, a man with a swastika attacking a First Nations woman and her daughter with an improvised flamethrower in Perth, and a Neo-Nazi leader attacking a TV station security guard in broad daylight in Melbourne, amongst many other examples?

**Mr Burgess:** Sorry, Senator, but I've never said that these individuals are not a threat. We've been talking about this for many years.

**Senator FARUQI:** I am talking about a specific threat: the far-Right threat. Why wouldn't we call them a far-Right threat?

**Mr Burgess:** We will call them out through our umbrella terms. For more specific nationalist and racist ideologies, we will call them out as we see them. Yes, these are nationalist and racist ideologies.

**Senator FARUQI:** So would you agree that they are far Right threats?

**Mr Burgess:** Some of these are, yes. I just think it's far more helpful to society to call out what's nationalistic or racist. That helps people understand what we're dealing with here and is not just a political spectrum assignment.

**Senator FARUQI:** You do understand that the far Right is very closely associated with racism as well as authoritarianism, neofascism and Neo-Nazism?

**Mr Burgess:** Yes.

**CHAIR:** Senator Faruqi, could I ask you to ask questions—

**Senator FARUQI:** Yes, I will—

*Senator Fierravanti-Wells interjecting—*

**CHAIR:** Order! Senator Faruqi, could I ask you to ask questions only and not make commentary.

**Senator FARUQI:** I'm asking a question here, Senator Fierravanti-Wells.

**CHAIR:** Order!

**Senator FIERRAVANTI-WELLS:** If you knew your history, you wouldn't be asking such silly questions.

**Senator FARUQI:** I think you need to go and review your history.

**CHAIR:** Order, please!

**Senator FARUQI:** I'll move onto questions. Director-General—

**CHAIR:** Senator Faruqi, you have the call. I remind you to ask questions only and not make commentary.

**Senator FARUQI:** Thank you. Director-General, do you agree with the New Zealand royal commission's findings that said that the Christchurch terrorist was motivated by an extreme right-wing Islamophobic ideology?

**Mr Burgess:** Yes.

**Senator FARUQI:** Have you read the Christchurch royal commission report?

**Mr Burgess:** I've read the summary, not the full report.

**Senator FARUQI:** I listened with some alarm, I must say, to your recent interview with *The Guardian* Australia. You said that there were no direct lessons from Christchurch. You said it's 'an event that happened in another country'. You went on to say we:

... looked at the individual and what we knew about him at the time, but he was a young man when he left this country.

I am conscious that the royal commission report identified that the terrorist was physically in Australia in 2016, 2017 and 2018; was active on Australian far-right social media channels during those years; and posted numerous threatening hateful comments to Australian far-right Facebook pages. The royal commission report notes one message on Facebook which was allegedly reported to Australian police, but no action was taken. So I'm really disturbed that you can look at that report and then say that there are no direct lessons for national security agencies in Australia.

**CHAIR:** Senator Faruqi, please bear in mind that you must frame your questions as questions. Could you—

**Senator FARUQI:** Will you reconsider your stance on this?

**Mr Burgess:** No. I actually did say there are no direct lessons for ASIO, because the event didn't occur here. Let me also say that, if you're suggesting that we do not care about the threat, on behalf of my organisation, I do find that a little bit inappropriate and offensive. My staff work hard and they put their lives on the line to protect Australians, and there is certainly no blindness or bias away from these ideologies which we find abhorrent and totally inappropriate. My organisation, before I got here as the director-general and now as the director-general, have been calling out these threats and making them public so we can all inform ourselves to the nature of this problem to ensure Australians are protected from these people who may spin off into promoting violence. That event in New Zealand was abhorrent and terrible, but, in terms of direct lessons for ASIO, no, there are no direct lessons. We've been alive to these ideologies and the threat they present to Australians for many, many years. In recent years, we've been openly reporting that that case load and that problem is growing.

**Senator FARUQI:** Just to be clear—

**CHAIR:** Last question, Senator Faruqi.

**Senator FARUQI:** I did ask a question about no direct lessons. I didn't accuse ASIO of anything. I just find it quite alarming that there are no direct lessons—

**CHAIR:** Order! I ask you not to argue with the witness. If you have another question, could you please put your question.

**Senator FARUQI:** The royal commission report also found that another known Australian far-right group leader later contacted the terrorist online and asked him to join, which he declined, citing his upcoming move to New Zealand. Again, would you still say that there are no direct lessons for Australian national security agencies?

**Mr Burgess:** Sorry, what are you suggesting the lesson should be there?

**Senator FARUQI:** Obviously, the person was in contact with Australian far Right groups. He lived in Australia and was an Australian man. How are there no direct lessons for Australia here?

**Mr Burgess:** Let me be clear here: we do not live in a surveillance state, and ASIO is not all-seeing and all-knowing. So, if an individual in this country is in contact with others in other countries, or even in this country,



and is doing things which are abhorrent to all of us, you cannot expect there to be 100 per cent assurance. We work really hard to identify these threats, but there is the law that enables what we do and the law that binds and bounds what we do. So, if you're suggesting we should have some form of all-seeing, all-knowing apparatus, I would respectfully disagree.

**CHAIR:** Thank you very much, Senator Faruqi.

**Senator SCARR:** Mr Burgess, I wanted to follow up on the questions raised by Senator Keneally. In particular I note, and I congratulate everyone in your organisation associated with, the declaration of the Sonnenkrieg Division as a proscribed organisation. I've seen reports that that organisation is related to an organisation called the Atomwaffen Division in the United States, which itself has been known as the National Socialist Order, which invokes the actual full name of the Nazi Party. So, clearly, there are Neo-Nazi overtones et cetera. When you proscribe an organisation such as the Sonnenkrieg Division, to what extent do you look at its alliances and its connections with other organisations and consider whether or not, in the context of proscribing a particular organisation, there's actually a group of associated organisations, almost like subsidiaries and intermediate holding companies that come and go, to try to put a circle around the whole group and proscribe them as a group? To what extent does that come into your thinking?

**Mr Burgess:** It certainly does come into our thinking. If we see groups that have linkages to others—I will come back to how these groups form and disform. Atomwaffen Division is a group we know of, but we believe they're currently defunct.

**Senator SCARR:** You used that term before in relation to another organisation. I guess that begs the question. It may well be part of the strategy of some of these groups that they form under one name and then form under another name—

**Mr Burgess:** Frequently.

**Senator SCARR:** and so it goes on. What's the best way to approach that, from your perspective, when we're looking at this?

**Mr Burgess:** These individuals are smart, unfortunately, and they do operate and know how to operate within the law. We have groups here in Australia that we watch, actually, and we know that they plan to disband and reform in different groups. That's how they stay under the radar. This is something about these groups. They understand this well, unfortunately.

**Senator SCARR:** Thank you.

**CHAIR:** Thank you very much, Senator Scarr.

**Senator KENEALLY:** Thank you, Senator Scarr; they were actually quite helpful questions. Director-General, let me just pull up a quote from your annual threat assessment. You referenced that ASIO often seeks new powers, technologies and resources because the evolving threat environment requires them. In fact, you said, in reference to seeking new powers from the parliament—and you referenced the compulsory questioning warrants—that last year the parliament granted you new powers. You said that this is 'evidence that an evolving threat environment requires evolving capabilities—and that we don't ask for new powers or resources unless we need them'.

Now, this is Senate estimates, where a part of our job is to examine government expenditure. My interest was piqued by the reference to resources. I get the reference to powers. It is a matter that the parliament is regularly engaged in. But I wondered if you could expand here in this forum on the reference to resources. Are there resources that ASIO requires to combat evolving threats?

**Mr Burgess:** ASIO is resourced to combat evolving threats. We have a well-defined process of budget where we argue the case for our budget year by year, and that's the appropriate process, so, beyond being part of that process, I won't comment any further, other than to say a couple of points. That's a true statement; we don't ask for new powers or resources unless we're going to use them. Those new powers were granted. We've already used one of them and we're about to use another one. Our resource ask goes through the standard budgetary process. It's a matter of public records of where our budget sits—the year-on-year supplementation that we've received and again will be in that budget process.

**Senator KENEALLY:** In relation to your year-on-year budget allocation, was there any change in the last year's budget from the previous year's budget?

**Mr Burgess:** Yes, it was different.

**Ms Bennett:** Senator, there was some supplementation and there were some one-year funding measures.

**Senator KENEALLY:** One-year funding measures?

**Ms Bennett:** Correct, Senator.

**Senator KENEALLY:** So those would be coming to an end at this point?

**Ms Bennett:** Some of the measures are ceasing, yes. That's why there's the decline in the forwards.

**Senator KENEALLY:** Right. Therefore, the reference to resources when there's not so much—perhaps we should not read that as a plea for more, but rather a reminder that when ASIO does seek additional resources it is because they are required.

**Mr Burgess:** It's a given statement, and it's not a plea.

**Senator KENEALLY:** But it is a given statement that you do not seek those resources lightly.

**Mr Burgess:** Correct

**Senator KENEALLY:** Thank you. I want to pick up on Senator Scarr's questions regarding the Sonnenkrieg Division. I have read in open source reporting that the Sonnenkrieg Division does have links of some sort to an organisation in Australia called the Order of Nine Angles. Is that something you can comment on here?

**Mr Burgess:** I can say that we do see some interplay between these groups. Whether or not there's a link between Sonnenkrieg and the Order of Nine Angles, I'm happy to take that question on notice.

**Senator KENEALLY:** That would be useful, thank you. In relation to ideologically motivated extremism, you cited in your annual threat assessment, as an example of a group that does not neatly fit under an umbrella term of right-wing extremism, the involuntary celibate movement, with its extreme misogynistic and violent ideologies. Are there other examples you can provide to us that you are seeing emerge in Australia that fit under 'ideologically motivated' but do not fit neatly under 'right-wing extremism'?

**Mr Burgess:** Again, I'll be careful here. We focus on groups or ideologies that are going to promote violence. QAnon, we can have a conversation about them. Some people think they do; other countries may have a stronger view. It may well be the case, but that's another strange ideology. These individuals have some form of a conspiracy-theory-led ideology that is of concern. I'm not sure where you could put that on a political spectrum. Again, that's why we don't think the assignment there is helpful.

**Senator KENEALLY:** Thank you.

**Senator FIERRAVANTI-WELLS:** Director-General, following on from my previous comments, the reason for the change is basically that the current labels are no longer fit for purpose, and you outlined the need for this change given the proliferation of violent groups. You make that very clear. After Christchurch, doesn't the Tarrant example exemplify why you need the change? Immediately after Christchurch, he was branded right wing. Yet his manifesto clearly stated he was a communist, and then he was an anarchist, then a libertarian and then an ecofascist. How can all those political spectrums be described as right wing? It makes the case very much, and exemplifies why this change is necessary.

**Mr Burgess:** We definitely think just the simple political assignment as the catch-all is not helpful in this case. There are many ideologies and the ones that promote violence, such as that individual—

**Senator FIERRAVANTI-WELLS:** It's true, and you have emphasised this—I think it's really important for everyone who is focusing on this—that it's not the ideology that is of interest to ASIO; it's if it generates violence. I think that needs to be underscored, Director-General, and I'm glad that you've made that point repeatedly. I really do hope that people take it on board, that it's the violence that's the issue and is what triggers your involvement.

**Mr Burgess:** That's correct; it's the violence that actually concerns us. We're not going to investigate people for their politics or where they sit on the spectrum. It's the ideologies that promote violence that are of concern for us and are the trigger for our investigations.

**Senator FIERRAVANTI-WELLS:** Thank you, Director-General.

**CHAIR:** Thank you very much. That brings to an end the time allocated to the Australian Security Intelligence Organisation. Thank you so much, Mr Burgess, for your time and for providing evidence this morning and to your representatives.

#### **Office of the Special Investigator**

[14:49]

**CHAIR:** I now call on officers from the Office of the Special Investigator. Before we go to questions, do you have an opening statement?

**Mr Moraitis:** If I may, as this is the first time that I've been here in my new role and the fact that the office is pretty new. Least of all, I will introduce you to a new acronym as well, while we're at it. Thank you for the opportunity on behalf of the office. This is the first time, as I've said, that I am here as Director-General of this Office of the Special Investigator, the OSI, the acronym we've been assigned for this purpose. As committee members may recall, last November the Prime Minister announced the OSI would be established to address potential criminal matters raised in the Inspector-General of the Australian Defence Force's Afghanistan inquiry report. In a joint statement about the IGADF inquiry on 12 November last year, the Prime Minister made clear that the Australian Defence Force had served our nation in Afghanistan over a prolonged period and with great sacrifice while dealing with significant challenges. The Minister for Home Affairs also noted that, as with any allegations of serious and possibly criminal conduct, these matters need to be assessed, investigated and, where allegations are substantiated, prosecuted in court. The OSI will work very closely with the Australian Federal Police to investigate these potential criminal matters and, should they arise, any new allegations of criminal offences under Australian law by members of the Australian Defence Force in Afghanistan from 2005 to 2016. Where appropriate, we will develop and refer briefs of evidence to the Commonwealth DPP for consideration.

In my own role as the Director-General of the OSI, I'm responsible for strategic oversight and leadership of the organisation and I am accountable for matters of governance, budget and broader management. The Hon. Mark Weinberg AO QC has been appointed to the key role of special investigator. Mr Weinberg is a former judge of the Court of Appeal of the Supreme Court of Victoria and the Federal Court of Australia and is a former Commonwealth DPP. As special investigator, Mr Weinberg will oversee the investigations and make decisions on both case prioritisation and the referral of briefs of evidence to the Commonwealth Director of Public Prosecutions. Mr Ross Barnett, who is with us today, is the director of investigations. He's responsible for the conduct of these investigations. He was most recently Queensland's first Racing Integrity Commissioner and, prior to that, he was one of the most distinguished officers in the Queensland Police Service with a career of almost 40 years, including considerable criminal, investigative and major case experience. He has also served in senior roles in the National Crime Authority, the Australian Crime Commission and the Queensland Crime Commission, so I think we're well prepared to thoroughly and independently address the allegations of criminal offences by ADF personnel which fall within our remit.

In our work so far, since we started on 4 January—that is, 11 weeks ago—we've been focused on establishing the appropriate workforce, the structures, the systems and the protocol which all underpin our independence and our ability to conduct an impartial and rigorous process. We've made good progress to date in engaging experienced investigators as well as legal, governance and support staff as required. We're taking care to find people with the right skills and experience for this particular exercise. In particular, recruitment is currently underway for joint teams of suitably qualified investigators and analysts from the AFP as well as from state and territory police services. I think the several jurisdictions from around Australia who have indicated their willingness to provide some of their best to undertake this challenging work—and let me say, it will be challenging work, not least of all due to the legal complexities involved in this.

As the committee would be aware, and as clearly identified in the IGADF report itself, there are important differences between a statutory inquiry and a criminal investigation. For example, the IGADF inquiry used statutory powers to compel special forces members to provide information to the inquiry. But if a member is to be charged with criminal offences, that compels evidence and any other evidence derived from it will be inadmissible in the criminal proceedings against the individual who provided the evidence. An accused person also has other fundamental rights which do not apply in an IGADF inquiry, such as the privilege against self-incrimination and the broader right to silence which arises from the protections of the criminal justice system in Australia. Investigators and prosecutors must take care to respect these rights.

To ensure the integrity of any potential future prosecutions, I have engaged Mr Tim Begbie QC from the Australian Government Solicitor to perform the role of special counsel. This role is fundamental to the future work of the OSI. As special counsel, Mr Begbie will advise on the legal principles that will guide the OSI's access to the Afghanistan inquiry information. Mr Begbie and his team of lawyers at the Australian Government Solicitor will undertake a review of the inquiry report and any evidence obtained by the inquiry to advise us on the information that we should and should not receive from the inquiry. This process will help ensure investigators will only receive information they can lawfully obtain and use in criminal investigations and any future criminal proceedings. Given the size and complexity of the task, the review of this material by the special counsel is expected to take some time. As the work of the special counsel team progresses and information is made available to the OSI, it will be able to commence its investigations into specific allegations in the inquiry report.

As made clear by the Prime Minister, the OSI will exist as long as is needed to fulfil its functions. However, we are clear eyed on the need for our work to be undertaken as expeditiously as necessary caution allows. Indeed, given the time frame of the alleged activities—in many cases a decade ago—we are mindful that the complexity around evidence collection is likely to increase over time. While we are acutely conscious that we do not want to unnecessarily add to the burden for anyone impacted by the investigations, we must take the time needed to get this right. It is important that the OSI take this precautionary approach to its work. This is for two equally important reasons: first, so the potential suspects are afforded all the protections provided by the Australian criminal justice system, and, second, so that we can do all we can to ensure the integrity and robustness of our investigation and of any future prosecution processes.

As appropriate, we will build on the work of the IGADF inquiry. While we have been established to undertake our role independently, we are conscious that our role is one element of a broader response to the inquiry report. This includes the Department of Defence's proposed implementation plan to action the inspector-general's recommendations and the role of the independent Afghanistan Inquiry Implementation Oversight Panel.

We have to date established, obviously, very effective working relationships—first of all with the AFP, the Department of Defence and with the Commonwealth Director of Public Prosecutions, but also with the Department of Foreign Affairs and Trade and, of course, the Attorney-General's Department. The Department of Home Affairs has provided for our initial establishment needs and will provide us with ongoing corporate services. However, it will not in any way be involved in investigations or governance matters that may impact on our independence. We will continue to seek and welcome input from a range of stakeholders, including relevant domestic and international organisations. We've started on this complex path firm in the understanding that our success should not be judged by anything other than the Office of the Special Investigator ensuring a fair, impartial and independent process within Australia's robust legal system, and that is our objective. Thank you very much.

**CHAIR:** Thank you very much, Mr Moraitis. I would also like to acknowledge Senator the Hon. Amanda Stoker, who is sitting at the table, the Assistant Minister to the Attorney-General. I would now like to give the call to Senator Molan.

**Senator MOLAN:** Thank you, Chair. Director-General, are you able to give us any indications of the time line, going into the future, of when you may be able to take various steps? Even in the most general sense?

**Mr Moraitis:** I will be very, very general. I'm trying to adopt a methodology here, Senator, of giving you as much information as I can in the statement and then trying to be a bit more protective of processes.

**Senator MOLAN:** Sure.

**Mr Moraitis:** As I said, we have been, in the last 10 weeks, working closely with special counsel. The reason we set up special counsel—they are not part of the OSI; they're separately in AGS. I'm their client. They work to me, and their job is to engage with the IGADF to look at material. There's a lot of material there, as you would imagine, and I'm giving Mr Begbie the time he needs to go through that process and to quarantine the evidence, because the last thing I need or want is for us to receive evidence which is somehow not in accordance with well-established laws and procedures and which undermines or even taints the ultimate process.

What does that mean in practice? Put it this way: Mr Barnett and I are in the process of engaging investigators, and we are looking at doing that in the next one to three months. That involves them being sworn in as special members of the AFP, it involves at least three weeks induction and preparation, and it involves us also doing a few other things. So I wouldn't see us commencing investigations for at least a couple of months.

**Senator MOLAN:** That's commencing investigations for a couple of months, okay.

**Mr Moraitis:** What that 'couple' means, I can't tell you, and I don't want to give you a figure.

**Senator MOLAN:** Until we start seeing what washes out of the evidence.

**Mr Moraitis:** Yes. And when we do that, I'll be a bit more circumspect in what we're doing on investigations.

**Senator MOLAN:** Okay, and that's Mr Begbie's group, I take it?

**Mr Moraitis:** No. He is looking at the evidence.

**Senator MOLAN:** My apologies, you are right.

**Mr Moraitis:** Mr Barnett, the director of investigations, is recruiting investigators from around Australia. There will be a big corpus of AFP detectives joining us, and specialist skills that we need. We're trying to get that up and running as soon as we can. In fact, hopefully we're finalising EOI processes as we speak and getting the ball rolling there and setting up some other arrangements that we need with all the various stakeholders.

**Senator MOLAN:** Thank you. Can you clarify for me the numbers of people. There seem to be two sets of numbers that I frequently see—that is, those against whom allegations have been made and the alleged crimes themselves. Can you clarify those two numbers?

**Mr Moraitis:** Yes. The number that I have of, let's say, allegations against individuals is 19 individuals. There are about 38 acts. Given the fact that I have not had access—neither has anyone else in the OSI—to any primary evidence, we can't really give you a figure. I'm going on the basis of what is in the redacted version of the Brereton report. That's the basis on which we're operating. As I said, we're also open to looking at new allegations that emerge. That's based on what we know at the moment.

**CHAIR:** Senator Molan, could I interrupt and just remind you to exercise caution in relation to your questioning—

**Senator MOLAN:** Certainly.

**CHAIR:** particularly in relation to matters which may be prejudicial. I am not suggesting that you aren't being careful, but I am just forewarning that, obviously, these are sensitive matters.

**Mr Moraitis:** And I won't answer, if you say so.

**CHAIR:** Mr Moraitis, just in relation even to matters asserted in the question itself, I'm also giving rise to my concerns. I just wanted to make that point. You have the call, thanks, Senator Molan.

**Senator MOLAN:** Director-General, are the processes you are going through dependent in any way on what the Department of Defence are doing in their plan for what I would call administrative action?

**Mr Moraitis:** No.

**Senator MOLAN:** Thank you. The last question really comes from the comments that you made at the end of your opening statement to ensuring a fair, impartial and independent process within Australia's robust legal system. Do you have any concerns at all that there has been a denial of the principle of national justice or the presumption of innocence in what has been said or written so far in relation to this process?

**Mr Moraitis:** From the part of the OSI, whether we're—

**Senator MOLAN:** No, in general.

**Mr Moraitis:** All I can say is that the IGADF inquiry was pursued in accordance with relevant laws under the defence department systems. There is a statutory scheme there and there have been processes undertaken there. The Inspector-General produced a report, which has gone out, talking about credible allegations. I am trying to make the point that we will take over that material once it's been quarantined, and we will apply the normal criminal law justice system's presumption of innocence, all of those things, to our process. I can't comment or even control anything that's been said or done. It is what it is. The defence department and others have commented on this, and that's within their rights under that process. I think Judge Brereton was very clear in what he said in his report. He wasn't saying that there is proof of anything; he just says there are credible allegations, and that is the starting point for us. But I am trying to make the point here that it's not a straightforward case of me turning up on 4 January and going around to Defence and taking a couple of truckloads of evidence and starting the ball rolling. It's not going to work that way.

**Senator MOLAN:** That is good. Thank you.

**CHAIR:** Thank you very much, Senator Molan. I will now give the call to Senator Ciccone. I also just want to remind you, Senator Ciccone, to exercise the same care about that which I discussed with Senator Molan.

**Senator CICCONE:** Thank you, Chair. Director-General, it is good to see you in a different capacity. I just wanted to ask a few questions with regard to staffing. Have staff members been seconded to the office?

**Mr Moraitis:** Yes. It's a combination of secondments and engagements. I have staff seconded from the Department of Home Affairs, from the AFP at this stage and from the Attorney-General's Department, as it happens. That is the combination so far. We're starting from a low base, but we're building up. Also, as I said, we are going to second from state and territory police once we get through the process of engaging investigators.

**Senator CICCONE:** How long are these secondments?

**Mr Moraitis:** We are working on the basis of 12 to 18 months, and we are making it clear that we'd obviously consider extensions, depending on how things proceed.

**Senator CICCONE:** Out of all of those different agencies you just mentioned—I'm not sure if you can tell me—how many staff or people are from the different agencies?

**Mr Moraitis:** At the moment we have 19 staff that are working as of now, and we're engaging staff as we proceed in the weeks ahead. Of those, I would say seven or eight are from A-G's, four or five from Home Affairs, one from AFP and one even from Border Force.

**Senator CICCONE:** So only one federal AFP agent?

**Mr Moraitis:** That's a policy officer. We haven't actually got the AFP officers yet. We have an AFP legal officer from the civilian side, as it were—the non-sworn side.

**Senator CICCONE:** So there are no AFP agents?

**Mr Moraitis:** No, but we have one commander role we need to fill, and we have an understanding with the AFP about the numbers we'd like to get from the AFP. Obviously, they're going to be a critical part of this; this is a joint investigation exercising AFP powers.

**Senator CICCONE:** Out of all of those people, have any had experience working with a task force in the past?

**Mr Moraitis:** No-one has had much experience of doing war crimes investigations. I have—I think in 1992—given advice on the Yugoslav conflict when I was in DFAT, and I thought that was a really strange experience. Here I am 30 years later looking at this in this context. I have chosen individuals who have good policy skills and have experience of things like, for example, criminal law and legal policy. There are people who have been on various task forces, yes, I guess, but not in the nature of this. I have chosen people who can work as a team and collaborate across multidisciplinary types of roles. That's why I said we've have been very careful picking the people we have got to have for this. Obviously they need to have the right security clearances; that goes without saying. There are people who had, for example, experience working in the International Criminal Court. I have someone who's worked in the ICC under secondment and therefore understands how that system works, because that's another part of our future engagement with the International Criminal Court when that time comes.

**CHAIR:** Potentially.

**Mr Moraitis:** Well, I think it's the case that we will eventually need to have that relationship with them, but our view is that the Australian criminal system is more than robust enough to deal with this.

**Senator CICCONE:** Out of interest, are there any specialists with respect to Afghanistan?

**Mr Moraitis:** I have very good connections and colleagues from my DFAT days. The former ambassador from Afghanistan briefed our team three weeks ago about the situation. We have also met with the ingoing ambassador to Afghanistan, and even last Friday I spoke to the new first assistant secretary in DFAT about the situation in Afghanistan. So, yes, we are well connected there, and we are also trying to engage with other relevant interests.

**Senator CICCONE:** Many state police experts as well, you said?

**Mr Moraitis:** We're looking at starting off with up to 75 investigators from across the country.

**Senator CICCONE:** There has been recent media reporting that noted that your office potentially risks replicating steps already taken by the AFP, which was referred—

**CHAIR:** Senator Ciccone, could I just ask: do you have reference to that media report, and is it something that you could table, please?

**Senator CICCONE:** I do, and I believe it has been, but for the purposes of—

**CHAIR:** It's just important for the witness that he can have a look at that media report.

**Senator CICCONE:** Yes, that's fair enough. Thank you, Senator Keneally. It is from 25 February of this year, in *The Age* and *The Sydney Morning Herald*.

**CHAIR:** We will just provide a copy to you, Mr Moraitis.

**Senator CICCONE:** My question actually doesn't go to anything specific about the article itself, but it referred to war crimes allegations. What steps have been taken to safeguard investigations into allegations such as the one in that article, given that they're shifting to a newly created agency?

**Mr Moraitis:** There are cases that have been referred to the AFP. It's a matter of public record. We are working very closely with the AFP, and I'll give you an example: our special counsel is engaging directly with the AFP on those cases. Neither I nor anyone in my office is dealing directly with the AFP on those three cases, because they've been handled by the AFP. We want to ensure that nothing transpires through the process that would undermine the work that has been done by the AFP to date. I will leave it at that. Let me just say that we have had at least four or five engagements on this with the AFP in the last couple of months. So yes, that is covered.

**Senator CICCONE:** Thank you for that answer, Director-General. In his November report, Justice Brereton urged the Defence Force to consider their approach to whistleblowers. In that article, it reports small numbers of Special Forces soldiers have been issued termination notices. Is that correct?

**Mr Moraitis:** I don't know. I can't comment on that. That is a matter for Defence. That is not within my remit.

**Senator CICCONE:** Are you aware of whether any termination notices have been issued?

**Mr Moraitis:** No, I am not. You would have to ask Defence.

**Senator CICCONE:** Do you know if any support has been offered to those individuals?

**Mr Moraitis:** I wouldn't know, but I assume from what I have read in the media that there are support services provided as a matter of course.

**Senator CICCONE:** What measures is the office considering to protect those who honestly disclose any wrongdoing?

**Mr Moraitis:** That will be a matter that we are looking at through our own experience working with the AFP, but also working with the defence department and how they have managed those issues in the past and going forward. That is something that we are very acutely aware of.

**Senator CICCONE:** When you say 'working on', what? Protocols?

**Mr Moraitis:** Yes, exactly. I won't go into the details.

**Senator SCARR:** Director-General, I just have one question. It seems to me that you and your team have obviously got a huge task in front of you. You're in the process of gathering the evidence et cetera that was fed into the Brereton report. To what extent have you explored whether or not it is either appropriate or feasible to acquire the services, either on a seconded basis or some sort of contractual basis, of investigators who were involved in the Brereton report?

**Mr Moraitis:** I don't think we would do that, because they have been exposed to material that was adduced by the inquiry based on coercive powers. Were we to use those investigators, that would potentially be regarded as a tainting of our process.

**Senator SCARR:** I understand that. Your team has to be quarantined, if you like, from that process, therefore you have to be particularly careful in terms of the interaction between your team when it's actually compiling that evidence.

**Mr Moraitis:** Yes.

**Senator SCARR:** You can imagine that there are going to be all sorts of discussions occurring as that evidence is procured.

**Mr Moraitis:** Yes.

**Senator SCARR:** And one of the protocols that you're setting up is to make sure that that tainting doesn't occur in that interaction.

**Mr Moraitis:** That's exactly why we have a special council. That is probably the second thing I decided even before we set up, to have a person to do this. I had a discussion whether it should be located in the OSI. We agreed with AGS that Mr Begbie and his team would remain in the Australian Government Solicitor. It would be a client-lawyer relationship, so I can honestly say, and the record will show in the future, that we never had access before the quarantining by that special counsel to any evidence. In fact we are setting up arrangements to ensure that nothing else comes from left of field to us which is also potentially tainted from that process. When I say 'tainted' I don't use it in a pejorative sense; I just mean it has been affected by statutory powers which don't stand up in a court of law in future.

**Senator SCARR:** Excellent. Thank you.

**CHAIR:** That brings to a conclusion the evidence from the Office of the Special Investigator. Director-General, thank you very much for your time and for your evidence today.

#### **Proceedings suspended from 15:13 to 15:32**

#### **Department of Home Affairs**

**CHAIR:** It's my pleasure to call officers representing the Department of Home Affairs, including the Australian Border Force, in relation to cross-portfolio, corporate and general matters. Good afternoon, Secretary. Do you have an opening statement?

**Mr Pezzullo:** I do. The department and the portfolio of Home Affairs have been, in their modern configuration, in existence for over three years, having been re-established in December 2017. The establishment

phase, which was directed by the government, has been completed, and not before time, as the nation contends with parallel and concurrent strategic challenges, including but not limited to a global pandemic; extreme weather events; cyberattacks; ideologically and religiously motivated violent extremism; risks to supply chains, telecommunications and critical infrastructure; espionage and foreign interference; deliberate disinformation campaigns; and misinformation which races around the world before truth has even tied the laces of its runners.

The establishment of the modern department was never about operational and tactical coordination—for instance, in relation to counterterrorism operations, where ASIO and the AFP possess a deep reservoir of professional skill and expertise. It was always about long-term strategy and planning and strategic coordination across a range of issues which see an intersection of security, economic and/or social policy interests and where there is no clear departmental lead.

In the era of the grey zone between peace and war and of state competition which is below the threshold of confrontation and conflict, and where some non-state actors are increasingly taking on state-like features and capacities, democracies can either choose to have such a department in place or be forced into creating such a department by force of circumstance. These challenges have demanded versatility in response, such as we have seen in the establishment a year ago, in March of 2020, of the National Coordination Mechanism as an adjunct to the department's emergency management function to assist with the non-health response to COVID-19.

These challenges also have demanded innovation in organisational design, such as we have seen in the grouping together for the first time in July of last year, 2020, of the following functions in the interests of Australia's social cohesion: citizenship, multicultural engagement, countering foreign interference and countering violent extremism and terrorism, all of which now reside within a single group in the department.

To support the government's plan for Australia to become a world-leading digital economy over the next decade, Home Affairs is working with government agencies, businesses and the community to further enhance cybersecurity measures and to protect critical infrastructure. Specifically, the department is responsible for: the Surveillance Legislation Amendment (Identify and Disrupt) Bill 2020, which is now before the Parliamentary Joint Committee on Intelligence and Security and is focused on the security risks which arise from the increasingly pervasive use of anonymising technologies; the Security Legislation Amendment (Critical Infrastructure) Bill 2020, which is also before the joint committee, which includes reforms to protect critical infrastructure and to enable government assistance to industry in the context of the most serious likely cyberattacks on national systems; and the modernisation of the Surveillance Devices Act, the Telecommunications (Interception and Access) Act and those parts of the Australian Security Intelligence Organisation Act governing the use of computer access and surveillance device powers as recommended by the Richardson review, which was titled the Comprehensive Review of the Legal Framework of the National Intelligence Community.

Digital identities constitute an essential component of trust in online transactions. Home Affairs is working with the Digital Transformation Agency and other partner agencies to support the government's Digital Identity program. The program will make available trusted digital identities for use in accessing government services online. As one element of this work, the department is working with states and territories to complete the rollout of the face verification service, subject of course to the passage of the Identity-matching Services Bill 2019. This bill has also been referred to the aforementioned joint committee.

Immigration will be an important element of economic recovery with its capacity to stimulate economic growth, create jobs and attract investment. Attracting people with the skills and talents that Australia needs is a priority. The Global Business and Talent Attraction Taskforce is supporting the government's JobMaker blueprint for post-COVID economic recovery. The task force is targeting and attracting exceptionally talented individuals and international business entities with the potential to make large-scale, positive impacts on our national economy and create jobs. To ensure that Australia is competitive in attracting individuals and businesses, the task force is facilitating rapid and seamless integration into the Australian economy through tailored assistance programs and streamlined visa pathways.

The department is also, at the same time, focused on continuing to ensure that the integrity of our immigration program is maintained and, where necessary, enhanced. Since 2015-16, with changes in how the department applies intelligence discovery and analytical tools to the immigration program, the rate of refusal of visa applications has increased from 2.5 per cent in 2015-16 of all applications decided to now 4.5 per cent in 2019-20—that is, the 2019-20 financial year—which is a very significant increase in the refusal rate, which indicates that we are doing much better in terms of detecting and dealing with risk and fraud in the immigration program. Had we maintained our earlier less effective performance, the number of additional visas which would have been granted in high-risk or fraudulent cases would have been over 145,000 in 2019-20 alone. For more details on our



achievements in immigration and citizenship services, I refer the committee to the latest edition of the publication known as *The Administration of the Immigration and Citizenship Programs*, which is now available on the department's website.

Moving to emergency management: the department, through Emergency Management Australia, has been actively involved in the emergency response to natural disasters throughout the 2021 high-risk weather season, including the bushfires in Western Australia and the floods in South Australia and Queensland. The Australian government responded in November of last year, 2020, to the recommendations of the Royal Commission into National Natural Disaster Arrangements, supporting fully or supporting in principle all of the relevant recommendations as they apply to the Commonwealth. The Department of Home Affairs will lead the enhancements to EMA, or Emergency Management Australia, to increase our capacity to respond to the likely increased frequency and intensity of natural disasters. Home Affairs is also working in partnership with the Department of Prime Minister and Cabinet in the design and establishment of a new national resilience relief and recovery function, and we are working with that department—that is to say, PM&C—to establish a new end-to-end operating model for the national disaster management and recovery continuum as recommended by the royal commission.

The department is working with other agencies to counter disinformation, to provide factual information about COVID-19 and to promote Australian values in doing so. We have worked closely with the Department of Health to provide the public with factual information about COVID-19 and the vaccine rollout. This information is translated into 63 languages, published on our website, and provided to communities through our community liaison officer network. The department is also focused on strengthening Australia's social cohesion by promoting our inclusive national identity, citizenship and national values.

Before Australia Day 2021, we launched a new website and a number of social media channels promoting and celebrating Australian values. The channels host content and information in English as well as in the top three languages other than English spoken in Australia—which is to say, Chinese, Arabic and Vietnamese. On COVID, in parallel, we are engaging across government, business and internationally to prepare for international travel to resume at scale.

The resumption of international travel needs to be effectively managed through a comprehensive biosecure border framework. International collaboration on standards will strengthen governments' ability to implement biosecure borders. We are working with international partners to design ways to collect and validate a traveller's health and vaccine status. The aim would be to capture a person's recent travel history along with their visa and contact information digitally. This information will support effective contact tracing, quarantine management and individual health-risk evaluations. Home Affairs is also working closely with other agencies, including Services Australia, to develop specifications and standards for personal digital vaccination certificates as part of a biosecure border framework.

In the end, the government will, of course, take advice on this matter, including especially from public health experts, including the Commonwealth Chief Medical Officer and his colleagues on the Australian Health Protection Principal Committee, AHPPC. The role of Home Affairs is to support the government's consideration of this matter with expert advice on border management and relevant data exchange issues.

Finally, I take this opportunity to welcome the Office of the Special Investigator, OSI, to the Home Affairs portfolio as a new executive agency. You just took evidence from the Director-General, Mr Chris Moraitis, and that office was established on 4 January this year. It is an independent agency, which does receive corporate and enabling services support from the department.

**CHAIR:** Could you provide an update on the progress of the US resettlement arrangement?

**Mr Pezzullo:** Glad to. That does come up under outcome 1, but, Chair, I'll take your guidance as to when you wish to ask that question. I'll ask Mr Ablong to join me at the table.

**CHAIR:** Alright, thank you.

**Mr Pezzullo:** You are referring to the US free-resettlement arrangement, in relation to offshore illegal maritime arrivals?

**CHAIR:** That's exactly right.

**Mr Ablong:** We have continued to have people in Nauru, Papua New Guinea and Australia move to the United States after they received a positive approval from the US government. That continues. If you'll give me a minute, I'll give you the latest number, if you like.

**CHAIR:** Thank you so much.

**Mr Ablong:** As of 14 March, 929 transferees—419 from Papua New Guinea, 391 from Nauru and 119 from Australia—have resettled in the United States.

**CHAIR:** How many refugees on Manus and Nauru have received provisional approval and are awaiting departure?

**Mr Ablong:** Approximately—because the approvals, as you say, are just provisional at this point in time—265 transferees, around 10 from Papua New Guinea, around 15 from Nauru and around 240 from Australia, are provisionally approved to resettle.

**CHAIR:** Thank you so much. I will now hand over to Senator Keneally.

**Senator KENEALLY:** Thank you to the department for your attendance today. I'd like to ask some questions regarding advertising and communication spend. So, if you need additional people at the desk, they can have time to come up.

**Mr Pezzullo:** I might just hear the question first.

**Senator KENEALLY:** Sure. How much has the department spent on marketing and communications, including advertising, public relations, research and other marketing functions, in the year to date?

**Mr Pezzullo:** I will seek the assistance of the Chief Financial Officer, Ms Cargill, who I am sure will have relevant information in her folder or at her fingertips. I suspect she might be assisted by a clarification of terms. Oh—Ms Moy, the Chief Operating Officer, is joining us. Senator, would you be so kind to repeat the categories of the expenditure, please?

**Senator KENEALLY:** Sure.

**Mr Pezzullo:** Thank you.

**Senator KENEALLY:** How much has the department spent on marketing and communications? Within those umbrella terms, I'm including advertising, public relations, research and other marketing functions in the year to date?

**Ms Moy:** I don't have the details in the form that you have specifically asked for, so I'm happy to take those details on notice.

**Senator KENEALLY:** What details do you have that I might find useful?

**Ms Moy:** I have details primarily in regard to our media monitoring, rather than our spend in regard to—

**Senator KENEALLY:** I have some other questions, but I will take the media monitoring figure and I will have some other questions that might assist breaking that down.

**Ms Moy:** The media monitoring contract for the Department of Home Affairs to 31 January is \$281,448.86.

**Senator KENEALLY:** Do you break down advertising spend as well?

**Ms Moy:** I'd have to get the advertising numbers run, so I can take that for you on notice.

**Senator KENEALLY:** Thank you. Could you also take on notice—unless you have it to hand—how much was spent on advertising in the last financial year?

**Ms Moy:** Do you have any specific advertising in mind? We advertise jobs that are vacant, for example? Is that the sort of advertising you're talking about?

**Senator KENEALLY:** I have other questions that might elucidate it. I'm aware that the department is currently running a campaign on Australian values. Do you spend advertising money on that?

**Ms Moy:** So campaign advertising?

**Senator KENEALLY:** Campaigns, information.

**Mr Pezzullo:** It would fall under the rubric of communications.

**Senator KENEALLY:** Surely your budget is able to be broken down?

**Ms Moy:** I can take those on notice for you.

**Senator KENEALLY:** You don't have last year's financial figures here?

**Ms Moy:** I don't have them for the campaign.

**Senator KENEALLY:** For communications, full stop?

**Ms Moy:** Not at this point, no.

**Senator KENEALLY:** This is Senate estimates. I am asking—

**CHAIR:** Senator Keneally, please don't reflect on the witness.

**Senator KENEALLY:** No. I'm a little surprised that a department as significant as the Department of Home Affairs doesn't have last year's budget here.

**CHAIR:** Senator Keneally, I'd ask you to not reflect on the witness—

**Senator KENEALLY:** I'm not reflecting on her; I'm reflecting on the lack of information.

**CHAIR:** Senator, the witness has indicated she will take it on notice. Could you go to your next question, please.

**Senator KENEALLY:** Is there any capacity for someone to look that up? We are going to be here till 11 pm tonight.

**CHAIR:** Senator Keneally, the witness has indicated she will take that question on notice.

**Senator KENEALLY:** How many campaigns have been reviewed by the Independent Communications Committee in the financial year to date and in the previous year?

**Ms Moy:** I will also take that one on notice. I don't have the details about the reviews.

**Senator KENEALLY:** Have all advertising campaigns run this year by the Department of Home Affairs been reviewed by the Independent Communications Committee?

**Ms Moy:** I think that probably goes to the question about the reviews, so I'll add that in to the question on notice, Senator.

**Senator KENEALLY:** Another one on notice. Have there been any exemptions granted from the guidelines? That is, have there been exemptions granted from review by the Independent Communications Committee or have they granted any exemptions to your campaigns?

**Ms Moy:** I think that would also go to whether or not they have been reviewed. That would matter as to whether they've been exempted, so I'll add that to the question.

**Senator KENEALLY:** Thank you.

**CHAIR:** To clarify: you will add that as a question on notice?

**Ms Moy:** Yes.

**Senator KENEALLY:** Were any campaigns rejected by the ICC, the Independent Communications Committee, as not meeting appropriate guidelines?

**Ms Moy:** Again, I'll take that one on notice, Senator.

**Senator KENEALLY:** Have any of your campaigns involved research and market testing of messages?

**Ms Moy:** I'll take that on notice as well.

**Mr Pezzullo:** Ms Moy, I might just interject at that point. Senator, I think you might have a line of questions about the Australian values communications campaign. I think I can assist—

**Senator KENEALLY:** I do. I will have some specifics on that, but these are broader questions than just that.

**Mr Pezzullo:** I think I can assist, Madam Chair—

**CHAIR:** Yes, thank you, Mr Pezzullo.

**Mr Pezzullo:** hopefully to the committee's satisfaction. On the breakdown in relation to your original categories, we will take that on notice. Can I clarify one element? When you say 'research', given the line of your questioning I'm assuming that's connected to communications and what you termed 'advertising'. Research can also mean other things—

**Senator KENEALLY:** Understood.

**Mr Pezzullo:** when we engage with academic experts. I don't think you're referring to that.

**Senator KENEALLY:** No, I'm not.

**Mr Pezzullo:** I take that to mean the research that's related to public communication. We'll come back to you on notice with the general categories. We'll come back to you with the information about our engagement with that committee, because there are mandated thresholds that we have to meet in terms of government approvals. On the question of Australian values, because I'd like to—

**Senator KENEALLY:** If you wouldn't mind, I'd like to ask some specific questions about that.

**Mr Pezzullo:** On values? I did refer to it in my opener—

**Senator KENEALLY:** You did.

**Mr Pezzullo:** It does come under program 2.1: multicultural affairs and citizenship. It might give the officers time to be seized of the senator's interest to prepare to respond under 2.1. Ms Moy's job as the Chief Operating Officer obviously is to manage the budget. But, Senator, if you want to ask questions in relation to that program, the relevant officers will be here under 2.1.

**CHAIR:** I think that's correct. Senator Keneally, if you could hold your questions—

**Mr Pezzullo:** Madam Chair, sorry to interrupt. Just so I haven't misled—on the program known as Australian values, 2.1 would be the appropriate location.

**CHAIR:** That's right—outcome 2.1: multicultural affairs and citizenship.

**Senator KENEALLY:** Thank you. I am seeking to ask a broader range of questions here. I didn't indicate I want to ask about Australian values during cross-portfolio, but I will ask about them. This is a broader range of questions about the budget. This is Senate estimates, hence why I am putting them here in cross-portfolio.

**Mr Pezzullo:** Yes, understood.

**Senator KENEALLY:** Back to the last question you took on notice, Ms Moy—thank you. Have any of your campaigns involved research or market testing on messages? I want to ask a follow-up: which consultants have you used for that work?

**Ms Moy:** I'll take that on notice as well, Senator.

**Senator KENEALLY:** I have already asked a form of this question—how much money has the department spent on market research in the last financial year?

**Ms Moy:** That was part of the first question.

**Senator KENEALLY:** Yes, there are several questions on notice. That will be keeping you busy. Do you currently have contracts with JSW Research?

**Ms Moy:** I can get that checked probably before dinner.

**Mr Pezzullo:** Could you possibly be meaning JWS?

**Senator KENEALLY:** That was a misspeak on my part. It is JWS, you're correct.

**Mr Pezzullo:** We can come back to you within these proceedings.

**Senator KENEALLY:** How many contracts? What contracts did you have with them in 2019-20? What is the total value of those contracts? What work does JWS Research do for the department?

When you bring back some information about JWS, I have some further questions, but it may not be useful to pursue them here. While we are putting questions on notice, there two other contracts I wanted to ask about, and then I do have questions about labour hire, but we might need to come back to those. Who are IconInc and what do they provide for their \$3 million contract, which is CN3725375-A1?

**Ms Moy:** I shall see if I can find that for you prior to the close of sessions.

**Senator KENEALLY:** And who are World Service Australia? And what editorial and support services do they provide under their \$750,000 social media analysis contract, CN3675905-A2?

**CHAIR:** Senator Keneally, I will need to move now to Senator McKim, who has the call.

**Senator McKIM:** If I would start, Mr Pezzullo, please, by asking whether direction No. 65 under the Migration Act, which is in regard to visa refusal and cancellation under section 501 of the act, signed by now Prime Minister Mr Morrison when he was the relevant minister in 2014, is still alive and active.

**Mr Pezzullo:** There certainly is a direction with that number. Chair, if I can just gain clarity. It is going to be a function of who's here to assist.

**CHAIR:** Yes. I'm not sure this is a cross-portfolio matter.

**Mr Pezzullo:** It is technically a—

**CHAIR:** It's outcome 2.

**Mr Pezzullo:** It could be argued to be because it's to do with cancellation, which your predecessors have accepted under 1.1 and 1.2—

**CHAIR:** Yes.

**Mr Pezzullo:** I'm just seeking your guidance.

**CHAIR:** Or on outcome 2.3, but not in cross-portfolio. Senator McKim, are you able to hold your questions until outcome 1, which starts at—

**Senator McKIM:** No, I'm not, Chair. I'm just going to argue here—or state here—just to assist both you and the secretary, that I intend to ask about our compliance with the Convention on the Rights of the Child, which I would argue very clearly fits in cross-portfolio.

**CHAIR:** Senator McKim, I would respectfully disagree. This is cross-portfolio, corporate and general matters.

**Senator McKIM:** Well, legal advice has traditionally been dealt with under cross-portfolio.

**CHAIR:** Legal advice?

**Senator McKIM:** Yes. Whether or not the department has sought legal advice and whether the department's legal advisers have provided such advice, in all my time in this committee, have been dealt with as cross-portfolio.

**CHAIR:** Mr Pezzullo, do you have an objection to dealing with this question now?

**Mr Pezzullo:** No.

**CHAIR:** Are you able to deal with it now?

**Mr Pezzullo:** I'm here all night. It's just a question of others.

**CHAIR:** That's right. It's about facilitating other officers to make sure they are here to address the questions. If you're—

**Senator McKIM:** I appreciate that, Chair.

**CHAIR:** able to address that specific question.

**Senator McKIM:** I'm very happy to say to Mr Pezzullo that, if relevant officers are not here, I'll accept that at this time and we can address it later—

**CHAIR:** Senator McKim, bearing in mind that you really do need to confine your questions to cross-portfolio and corporate and general matters. Thank you.

**Senator McKIM:** Thank you. I will note, Chair, that you asked a question that actually belonged in a separate group. But you asked it yourself in cross-portfolio, so what's good for the goose should be good for the gander.

**CHAIR:** That's a matter for debate, and I take your point, Senator McKim.

**Senator McKIM:** Thank you. Mr Pezzullo, you would be aware that Australia is a signatory to the Convention on Rights of the Child?

**Mr Pezzullo:** Yes. We most certainly are.

**Senator McKIM:** Does the department comply—

**Mr Pezzullo:** I haven't dispensed with your question, though, on the ministerial direction. Are we going back to that?

**Senator McKIM:** We may. I'm just trying to comply with the chair's ruling, such as it was.

**Mr Pezzullo:** Thank you.

**Senator McKIM:** So does the department comply at all times with its obligations under the convention?

**Mr Pezzullo:** We most certainly seek to comply with all of our international obligations as codified in law and regulation. I might seek the assistance of both Mr Kefford, who runs our Immigration and Settlement Services program, and—while she won't be able to canvass privileged legal advice—the general counsel, Ms De Veau, who might also be able to assist.

**Senator McKIM:** I appreciate that. Thanks, Mr Pezzullo. The Convention on the Rights of the Child requires Australia, in all actions concerning children, to have as a primary consideration the best interests of the child.

**Mr Pezzullo:** Yes, it most certainly does.

**Senator McKIM:** You'd agree with that, wouldn't you?

**Mr Pezzullo:** The convention most certainly requires it, yes.

**Senator McKIM:** That ministerial direction 65 or any subsequent version thereof also requires decision-makers who are making decisions under section 501, the character cancellation provisions of the Migration Act, to make a determination—and the words are 'must' make a determination—about whether cancellation is or is not in the best interests of the child. Whether or not this is the particular direction in force at the moment, is it still the case that an officer considering cancelling a visa under the 501 provisions must make a determination about whether the cancellation is or is not in the best interests of the child?

**Mr Pezzullo:** Let's clarify the direction in force at the moment. Is it the 2014 direction? What's the latest version of direction 65?

**Mr Kefford:** I think the current version of the declaration to which you refer is No. 75. I'll just confirm that with my staff but, in terms of the provisions, they're consistent as you've described them, in terms of the general intent.

**Senator McKIM:** When the department recently deported a 15-year-old minor to New Zealand—that has been the subject of significant media comment in the recent days and weeks, particularly in New Zealand; I'm sure you're aware of that, Mr Pezzullo—did the department make a determination about whether the cancellation was or was not in the best interests of that particular child?

**Mr Pezzullo:** We would say that the determination was made lawfully. I understand the reference to extensive media coverage. I'll check with both the General Counsel and the Deputy Secretary—and this would be my practice in relation to all individual circumstances that are canvassed in this committee—the extent to which we've had consent or the extent to which we're not breaching the private privilege of any person, either the child themselves or their adopted or natural birth parents. I just want to clarify, Ms de Veau: what's your caution to both Mr Kefford and me about the extent to which either consent has been given or we wouldn't otherwise be transgressing significantly the privacy of the family, noting, of course, the privilege of the parliament?

**Ms de Veau:** That is understood, Secretary. Without going into any particulars that might invade their privacy, I can say that one of the things that was not in the press that distinguishes this case from general cancellations in perhaps two aspects is that there was a mandatory cancellation aspect of it under the operation of the law, because of offences and custodial sentences for the juvenile, but, secondly, the juvenile requested removal. So, while it was a mandatory cancellation, the request was what triggered, at this point in time, the removal. Obviously, a great deal of negotiation was then entered into in relation to family members in various countries and the like. I don't want to go into too much more detail, but it's probably useful to know, because that request aspect distinguishes it from what you would describe as a standard deportation case. Yes, there was a cancellation under law, and then the removal or return to New Zealand at this point in time involved the request of the young person.

**Senator McKIM:** Was the young person in immigration detention before being deported?

**Ms de Veau:** For a very short period of time—a matter of weeks—and that was negotiated when the young person came out of what was then some sort of juvenile detention regime. I think the arrangements were to put the young person immediately in an APOD, so I think special arrangements were made in anticipation of the arrangements that were being made to return him to New Zealand.

**Senator McKIM:** But an APOD is still detention, according to the department's definitions, is it not?

**Ms de Veau:** It is, but it wasn't a standard arrangement. I don't have the details here.

**Senator McKIM:** I'm not asking for that. You said that the child was detained for a matter of weeks prior to deportation. Was the child in detention when he or she agreed to be deported or asked, in your words, to be deported?

**Ms de Veau:** My recollection is that the request for deportation was made during the period of the juvenile detention aspect—the criminal aspect of it—but in anticipation that that was about to come to an end, so those arrangements were starting to be put in place.

**Senator McKIM:** When you say 'the criminal aspect', was the child then serving a custodial sentence or in immigration detention?

**Ms de Veau:** Originally a custodial sentence, which triggered the mandatory cancellation provisions.

**Senator McKIM:** Understood. But when the child made the request, which you've just spoken about, to be deported, was he or she in a custodial institution, or was he or she detained by the department in immigration detention?

**Ms de Veau:** I can confirm that for you, but my recollection was that it predated the movement into the temporary arrangements prior to—

**Senator McKIM:** Thanks. I'd appreciate it if you'd take that on notice. I have just one follow-up on—

**CHAIR:** One last question, Senator McKim.

**Senator McKIM:** this particular issue. I'm happy to put this to anyone at the table. It's potentially a question best addressed to the minister. Wouldn't you agree that a child is actually not capable of making an informed request to be sent to another country, particularly if that child has been coerced by being in some form of

detention? Did you seek legal advice on whether there was a coercive element that risked this apparent request being made under duress?

**Ms de Veau:** Absolutely. Not only was legal advice sought but advice not of a legal nature but as to the capacity of the child was obtained, and arrangements were made in relation to New Zealand guardianship to stay in the young person's shoes as well. So—

**Senator McKIM:** To what, sorry?

**Ms de Veau:** In addition to the capacities being explored and to the satisfaction of not only the legal advice but also the medical advice, arrangements were also made in relation to the young person's family and New Zealand guardianship arrangements all prior to the removal.

**CHAIR:** I'll now hand the call over to Senator Keneally.

**Senator KENEALLY:** Thank you. I'll probably need Ms Moy back. I have questions about labour hire and employment services.

**Mr Pezzullo:** Madam Chair, your test seems to be the comfort that I have with the convenience of the question. Effectively, given your own question and on the licence afforded to Senator McKim—and I'm in your hands—I'm happy to range over the whole program. It is a question of managing who's here.

**CHAIR:** I understand that will—

**Mr Pezzullo:** Labour hire would either be a matter of border enforcement—

**Senator KENEALLY:** It's expenditure.

**Mr Pezzullo:** Right.

**CHAIR:** Senator Keneally, let's establish whether you have any questions which pertain only to cross-portfolio corporate and general matters.

**Senator KENEALLY:** I would have thought corporate matters would include expenditure.

**CHAIR:** Everything is about expenditure. So do you have any questions which relate strictly to cross-portfolio corporate and general matters?

**Senator KENEALLY:** I would dare say that, with the greatest of respect to you and Senator McKim, I feel like my questions have been more germane to corporate matters than any other senator in this section.

**CHAIR:** What we might do is deal with these matters in order. So what I would like to do is deal with any cross-portfolio corporate and general matters first. If there are none then we could happily move on to outcome 1 and we could do so early.

**Senator KENEALLY:** I have questions about expenditure. I have questions about FOI, which I understand is a corporate matter.

**Mr Pezzullo:** Yes.

**Senator KENEALLY:** I would have thought employment services—

**CHAIR:** Let's deal with the cross-portfolio corporate and general matters first, and then we will move to outcome 1.

**Senator KENEALLY:** That's what I'm intending to do.

**CHAIR:** Thanks.

**Senator KENEALLY:** How much does the department spend on labour hire services?

**Mr Pezzullo:** For the performance—

**Senator KENEALLY:** My apologies—for the financial year to date and last year.

**Mr Pezzullo:** For the performance of our own functions?

**Senator KENEALLY:** Yes.

**Mr Pezzullo:** Ms Moy, can you assist?

**Ms Moy:** I might have to take it on notice. I'll see if I can get the figure for you before close. Labour hire is probably one of our lower employment types. We tend to employ people as either ongoing or non-ongoing but directly as casual employees. I can find out for you what the cost is year to date and see if I can come back to you before close.

**Mr Pezzullo:** That would have to be done through an intermediary, I assume. Can we classify that expansion?

**Ms Moy:** Yes, we'd have to go back to the specific types of contracts that we have.

**Senator KENEALLY:** What percentage of the department's workforce is employed through a labour hire firm?

**Ms Moy:** I can give you some basic figures. Our non-ongoing staff at the moment are 676 compared to our ongoing of 13,388.

**Senator KENEALLY:** Are you saying all 13,000 ongoing are not employed by labour hire?

**Ms Moy:** Yes. They are all directly employed as APS employees.

**Senator KENEALLY:** Of the 676, would they all be labour hire or would some be directly contracted on short-term contracts?

**Ms Moy:** The thing with labour hire is a percentage of those may be through labour hire. I suggest it would be quite small but I'll get the number for you. The other labour hire may be ICT contractors, for example, who come through contracting companies.

**Senator KENEALLY:** I would appreciate that information. Are any senior staff employed through labour hire employment service firms? I am trying to understand why the department uses labour hire firms and in what categories are they used. You mentioned ICT. I am aware that some departments have used labour hire to contract in more senior staff. So I am trying to understand the department's general approach and specifically how it is using labour hire firms.

**Ms Moy:** Our labour hire primarily would be ICT contractors because they are for a specific period, as a general rule, and with a specific skill set for a specific project, perhaps. You don't employ people in senior roles as contractors. For example, it would be very rare to have a senior executive service officer in the department who was in that category. Generally, contractors do not then supervise staff. They are generally not at the more senior levels; they are employed more for their skill set for a specific period of time.

**Senator KENEALLY:** I appreciate that you have taken that on notice. It would be very useful to get the information I have sought on notice. Thank you. I have some questions regarding freedom of information, which I understand sits under corporate matters.

**Mr Pezzullo:** It's certainly a corporate function. We just split the work a bit. Another deputy secretary will come to the table. You're very tightly framed questions certainly fall under this session. It's very corporate, small 'c' corporate. Ms Patterson runs our data function.

**Senator KENEALLY:** I try not to take a small 'c' Catholic approach to this area!

**Mr Pezzullo:** I'm not biting on that. Ms Patterson runs our data function, which includes amongst other things the FOI function.

**Senator KENEALLY:** Are you the department's information champion?

**Ms Patterson:** No, I'm not the information champion. The head of our data division, Dr Steve Davies, has been appointed as our information champion.

**Senator KENEALLY:** Is he here?

**Ms Patterson:** Yes.

**Senator KENEALLY:** How long has Dr Davies been in the role?

**Ms Patterson:** I think we appointed him in January off the back of our response to the report from the Information Commissioner.

**Mr Pezzullo:** His data function was pre-existing to the appointment.

**Senator KENEALLY:** What is the average time for an FOI request to be met by the department?

**Ms Patterson:** I'll just check if I have that, or I'll ask Dr Davies.

**Mr Pezzullo:** We might ask Dr Davies to the table. We have given evidence on this before. Senator Patrick has had an interest. We have typically broken it up to personal and non-personal categories.

**Senator KENEALLY:** Whatever information you have that you think would assist.

**Mr Pezzullo:** How ever aggregated?

**Senator KENEALLY:** Yes.

**Mr Davies:** I'm sorry, I don't have with me the average time for a request to be finalised. I will have to take that on notice.

**Senator KENEALLY:** Might I ask, politely and with respect, if that could be possibly supplied today? It doesn't seem to me to be a complex question.



**Mr Davies:** I'll see if I can supply it today.

**Mr Pezzullo:** We should try, Mr Davies. It was canvassed in the Information Commissioner's report, and we've responded constructively to the commissioner's report, so I don't see any reason why, in the next not-quite-seven hours, we can't generate that information.

**CHAIR:** Thank you very much, Mr Pezzullo.

**Senator KENEALLY:** Thank you, and in that—

**Mr Davies:** Sorry, Senator, if it's easier, later today I can provide the average timings for the past 13 weeks.

**Senator KENEALLY:** That would be very helpful, thank you. The Information Commissioner said that over the past four financial years more than 50 per cent of the FOI requests to Home Affairs for non-personal information were processed outside of the statutory processing period. So I would also like to ask, for those 13 weeks, for you to indicate also whether they had been met within the statutory time frames.

**Mr Davies:** I can give you statutory time frames for the year-to-date.

**Senator KENEALLY:** Right now, or later today?

**Mr Davies:** Right now. For non-personal requests in the year to date, 1,293 requests have been finalised this year and 901 have been finalised within the time frame, so 70 per cent.

**Senator KENEALLY:** Thank you. I note the Information Commissioner had a few very clear recommendations in the report into the department. Could I seek an update on the following: has the department prepared and implemented an operational manual for processing FOI requests for non-personal information?

**Mr Davies:** That's in progress, Senator.

**Senator KENEALLY:** Is there a time frame for when that will be completed?

**Mr Davies:** In April.

**Ms Patterson:** As per the request from the Information Commissioner that we do that within three months of our response to her report.

**Senator KENEALLY:** Has the department undertaken and completed training for FOI section staff and other staff, both decision-makers and the other staff who assist decision-makers?

**Mr Davies:** Yes, Senator. We undertake general awareness training and we have AGS training for authorised decision-makers. I can provide the numbers for the year to date, if you would like.

**Senator KENEALLY:** That would be helpful. I suppose what I am interested in is if the department completed the training that the Information Commissioner recommended.

**Mr Davies:** I believe the time frame for that was six months from her report. It is in the plan to do that.

**Ms Patterson:** In addition to providing the usual training, we are in the process of developing an online training tool that will be implemented within six months, as requested by the Information Commissioner.

**Senator KENEALLY:** Does the department have a target for how many of the non-personal FOI requests are completed within the statutory time frames? Does it have a target it's seeking to meet—100 per cent; 90 per cent; 70 per cent?

**Mr Davies:** I believe the obligation under the act is to meet 100 per cent, so the target for the department would be 100 per cent.

**Ms Patterson:** We're certainly looking at how we can increase the percentage that we do complete on time. We are starting to see improvements. Obviously they're off the back of some ongoing improvements that we had in place, but also they're taking into account the report from the Information Commissioner by putting additional staff on to non-personal, making sure that staff are trained, developing dashboards so that we can do better tracking and upward reporting to ensure that those matters get progressed more quickly.

**Senator KENEALLY:** Thank you. How long does it take the minister's office, on average, to sign off on freedom of information requests?

**Ms Patterson:** As I think is standard practice, we obviously notify the minister's office when a sensitive FOI or an FOI of broader public interest comes into the department so that they are aware of that. They are then notified once a decision has been made, so only after that decision has been made.

**Unidentified speaker:** There's no sign-off.

**Ms Patterson:** There's no sign-off, no.

**Senator KENEALLY:** Thank you. Chair, I have about five questions in relation to legal fees and expenditure.

**CHAIR:** What I propose to do is try to draw a line in the sand in relation to cross-portfolio, corporate and general matters. Senator McKim, do you have any matters to raise that are strictly within cross-portfolio? Or would you be happy if we—what I would like to do is offer Senator Keneally a little more time so that she can finish those questions.

**Senator McKIM:** Yes, I do have questions in cross-portfolio.

**CHAIR:** Alright, we'll go to you, Senator McKim, so you have the call.

**Senator McKIM:** Thanks. Mr Pezzullo, has your department, the Department of Home Affairs, engaged with the department of foreign affairs around the corrosive impact on the trans-Tasman relationship of 501 deportations to New Zealand? That is a word used by the New Zealand Prime Minister, Ms Ardern. She has said that these deportations are having a corrosive influence on the relationship. Has Home Affairs engaged in any way on that matter with the Australian department of foreign affairs?

**Mr Pezzullo:** Unlike Senator Keneally's questions, which are very 'corporatey'—

**CHAIR:** Yes, Senator McKim, I would question—

**Senator McKIM:** It's cross-portfolio.

**CHAIR:** I would question if these questions sit better—

**Senator McKIM:** It's cross-portfolio, Chair.

**CHAIR:** within cross-portfolio or in outcome 1. I would argue that they are very much questions pertaining to outcome 1.

**Senator McKIM:** Do you mean like your questions, Chair?

**CHAIR:** I accept the point you made, and I did give you some latitude, Senator McKim. Just to manage the business of the program as efficiently as we can, what I would like to do, if you don't have any strictly cross-portfolio questions, is give the call back to Senator Keneally to finish her five questions, and then we can move to outcome 1.

**Senator McKIM:** If I could ask for your clarification, Chair: in what way is that not a cross-portfolio question?

**CHAIR:** I would say it relates very much to program 1.1: Border Enforcement and program 1.2: Border Management.

**Mr Pezzullo:** And arguably program 1.3: Onshore Compliance and Detention.

**CHAIR:** Senator McKim, you will obviously have ample time. We'll probably have more time for outcome 1.

**Senator McKIM:** Let's just move on, rather than argue about it. Seriously, it's just a waste of time.

**CHAIR:** Thanks very much, Senator McKim. I'll give the call to Senator Keneally to finish her questions on cross-portfolio.

**Senator KENEALLY:** Thank you. Back to expenditure. How much has the department spent on legal services in the last financial year and in the year to date?

**Mr Pezzullo:** I will ask the general counsel to attend. She manages that budget. It's very 'corporatey', it's a very 'corporatey' question, but it does come up in another group. Ms de Veau runs the legal services group. It goes to your expenditure, Ms de Veau.

**Ms de Veau:** Was the question in relation to the last financial year, or the year to date?

**Senator KENEALLY:** Both.

**Ms de Veau:** The total department legal expenditure—that is, made up of external legal services and internal legal expenditure—for 2019-20 was \$112.4 million. The year-to-date spend, to the end of January this year, is \$68.1 million. I can break that up into various cohorts if that's of assistance, but the external legal expenditure covers approximately 15,000 active cases before the courts. The internal legal expenditure covers employees and overheads.

**Senator KENEALLY:** Thank you. How much is spent on legal services related to the legacy case load—on notice is fine, if you don't have that to hand.

**Ms de Veau:** I can break down the external litigation expenditure. That doesn't include our internal legal staffing. External litigation expenditure by program, looking at both migration and citizenship litigation, the subset of that, we have IMA litigation. Looking at the IMA litigation, in 2019-20 it was \$16.7 million; year-to-date, \$7.3 million—that's to the end of January. That is broken down into non-fast-track IMA litigation, including regional processing, medical transfer litigation and fast-track litigation.

**Senator KENEALLY:** That was my next question: is the offshore cohort within that IMA litigation figure?

**Ms de Veau:** I can break that down for you. The regional processing in the IMA litigation amounts to about \$100,000 in 2019-20 and I don't have a figure for year to date. The ones relating to medical transfer are \$1.8 million last financial year and \$400,000 this year, so the bulk of it is very much the fast-track litigation, which is now moving its way through post the IAA decision-making process and into the courts.

**Mr Pezzullo:** Typically, those in regional processing sites offshore either don't gain standing or there's no litigation that they're engaged in. It's typically transitory persons or other persons who are onshore.

**Senator KENEALLY:** Thank you. Thank you, Chair.

**CHAIR:** Can I just clarify that we have no other strictly cross-portfolio, corporate and general matters?

**Senator McKIM:** Could I ask for clarification from you, Chair? I don't want to get into a situation where, because of your rulings, we don't ask questions on a particular topic in overview and then get told later, which has happened to me before in this committee—not under your chairpersonship, I might add—that I should have asked them in overview. I'm going to ask, in general terms: would this be the correct place to raise matters regarding legal judgements around a person who is known as 'PWDL'? Those are in relation to Justice Flick's comments. Would this be the correct place to raise that or not?

**Mr Pezzullo:** I think the orthodox practice would be to ask it under the relevant program and—

**Senator McKIM:** Which program, Mr Pezzullo?

**Mr Pezzullo:** It's an onshore case, is it?

**CHAIR:** What's the nature of the legal judgement, Senator McKim?

**Mr Pezzullo:** It's an onshore case.

**Senator McKIM:** It's when Justice Flick accused the government minister of engaging in criminal conduct. It's that case, Chair.

**CHAIR:** I would suggest that that would be in outcome 1.

**Senator McKIM:** Alright, as long as you're telling me I can raise it in outcome 1, that's fine.

**CHAIR:** Are you happy with that, Mr Pezzullo?

**Senator McKIM:** But I just want to place on the record, I think it would be—

**CHAIR:** Sorry, Senator McKim: Mr Pezzullo, would you agree that's in outcome 1?

**Mr Pezzullo:** That certainly would be my preference. As we've discussed with your predecessors, it's just a function of when the commissioner is able to do his opening statement. The practice has been to break after cross-portfolio, corporate and general, hear from the commissioner so that when specific questions then come, which are departmental and ABF, the commissioner and I have both done our opening statements. That's been the practice. I can't recall the case where Senator McKim felt he was swindled; I don't remember that, but if we can do it under outcome 1, that would be preferable.

**Senator McKIM:** If I could indicate, Chair, first, I am happy to ask questions on that topic in outcome 1. But given we're now in a situation where your rulings are making it clear that you're going to be very strict around your interpretations, I think it would be most unfortunate, to say the least, if you then turned around and told senators they should have asked requests in overview—

**CHAIR:** Senator McKim—

**Senator McKIM:** so I'd ask you to take that into account in your future rulings today.

**CHAIR:** I think what I have shown is a fair bit of latitude. I appreciate the point that you've raised. There's no issue in relation to you raising any matter. We're just trying to manage the business and make sure that the right officials are at the table. If everyone is happy, we will now go to outcome 1, unless, Senator Keneally, do you have any other—

**Senator KENEALLY:** Point of order: I do have questions relating to the contracts for JWS Research, for IconInc, for World Service Australia, and I want to be sure that I will be able to ask them later, given that the department has committed to go away and try to secure some information. But I will have follow-up questions.

**CHAIR:** Yes, I think that's been taken on notice and I don't think that's an issue. The department has indicated they will come back—

**Mr Pezzullo:** Yes.

**CHAIR:** hopefully today with the response.

**Senator KENEALLY:** I suppose my point, Chair, is that I appreciate that they hopefully will come back today, but even if they don't, I would like to ask some further questions. I ceased because they said they would go away and try to come back today.

**CHAIR:** I don't think that will be an issue, Senator Keneally.

**Senator KENEALLY:** Thank you, Chair.

**CHAIR:** Thank you very much, everyone. We will now move to—

**Senator KENEALLY:** May I also clarify—I do apologise—that Australian values is in 2.1?

**CHAIR:** Yes, that's right; it's in outcome 2.

**Mr Pezzullo:** Yes.

[16:29]

**CHAIR:** We will now move to outcome 1. I would ask that officers from the Department of Home Affairs, in relation to outcome 1, come to the table.

**Mr Pezzullo:** Through you, Madam Chair, as has been the practice of your predecessors, this is the point at which your predecessors have invited the Commissioner of the Australian Border Force to provide an opening statement.

### **Australian Border Force**

[16:30]

**CHAIR:** Commissioner, welcome. Would you like to make an opening statement?

**Mr Outram:** Yes, please. Thank you for the opportunity to provide brief opening remarks. I will provide an update on the Australian Border Force's current priorities, challenges and the operating environment. Importantly, the Australian Border Force is continuing to perform a key role in Australia's response to the COVID-19 pandemic and supporting our economic recovery. The ABF has continued to support the non-health-related COVID measures at ports of departure and entry to facilitate the efficient and safe movement of travellers and essential goods across the border. We are working with Defence, Health and state colleagues to assist in managing emerging COVID-19 risks from Papua New Guinea, including increasing our presence in northern Queensland.

As Australia's customs service, we are collaborating across government and with international partners and key industry stakeholders, such as vaccine manufacturers, supply chain enablers and the World Customs Organization to facilitate shipments of COVID-19 vaccines, while ensuring border controls remain effective in identifying and intercepting any fake, counterfeit or illegitimate medicines. Due to their frontline roles at our border, many ABF officers have been amongst those in the phase 1a vaccine rollout. As part of this, 2,744 ABF officers—or about 80 per cent of officers identified for phase 1a—have already volunteered to be vaccinated, which is an important step that we can take towards the future reopening of Australian borders and to help our industry and government partners to revive tourism and boost economic recovery.

As at Friday 19 March 2021, 1,652 officers—or about 47 per cent of our staff in phase 1a—have received a COVID-19 vaccine. These officers work in the airports, seaports and enforcement and compliance areas across Australia and as part of our international network. To deliver our mission, our frontline officers are often required to work in inherently challenging conditions, whether working at an airport or seaport or at sea, or undertaking field and enforcement activity. The ABF recognises and is responding to the evolving and inherent risks in our operating environment—for example, the direct and indirect consequences of COVID-19. The ABF will continue to focus on workplace safety and wellbeing to ensure safe work practices.

As we progress through and eventually beyond the global pandemic, the ABF will remain focused on its operational delivery of services around the country in line with the expectations of government, industry partners and the community. It's now six months since we implemented the first phase of our new operating model, which has included relocating half of our assistant commissioners to Sydney, Brisbane, Melbourne and, in time, to Perth. A significant advantage of the new operating model is our increased ability to work with industry and to support our staff in major cities and regional locations, with closer support from members of our senior executive in the states and territories. I also wish to acknowledge the appointment of three new members of our senior executive team since I last appeared before the committee: Dwayne Freeman, Deputy Commissioner, Operational Strategy and Coordination; Malcolm Skene, General Manager, Industry and Border Systems; and Vanessa Holben, Group Manager and Deputy Comptroller-General, Customs.

As part of the new operating model, the Industry and Border Systems Group was established to focus on working across government and with industry to identify ways to simplify and modernise the pathways through which we regulate the movement of travellers and goods across our borders, and to support economic recovery. The ABF is working closely with partner agencies such as the Department of Agriculture, Water and the Environment and Austrade to create a whole-of-government approach to deregulation and modernisation at the border. A simplified trace system will improve processes and enable a better use of data to cut through inefficiencies, costs and delays at the border for Australia's 387,000 importers and 53,000 exporters. More efficient supply chains will lower logistics costs and likely grow the number of local small enterprises who export, improving the prospect of businesses of all sizes to employ more Australians.

Border agencies are also working together to streamline sea and air cargo processing in the future, evaluating the potential to adopt more accurate and automated contemporary border screening technologies. The simplified trade agenda supports our ongoing focus on customs and border reform. Our approach is to streamline border processes for traders as much as possible, while of course continuing to deliver on our responsibilities to collect revenue and manage risks.

Australia's borders have remained open to trade throughout the pandemic. The ABF has consistently demonstrated our ability to adapt to changing circumstances at our borders to keep trade flowing. COVID has seen a 97 per cent decrease in traveller numbers, but additional health and screening conditions are manual and labour intensive, which has required us to retain a material presence at airports and ports. In addition, we have been able to successfully redirect resources from traveller processing to targeting teams and cargo facilities. It has been highly effective, with a 70 per cent increase in drug detections at the border in the first seven months of this financial year compared with the same time last year. This includes an increase of 144 per cent in the overall weight of the drug detections.

Despite disruptions caused by COVID-19, the overall number of air cargo consignments increased substantially during the past year. In 2020, we processed 63.2 million air cargo consignments, up from 57.3 million in 2019. Port activity also remains strong, with redirected e-commerce resulting in a 140 per cent increase in the number of consignments arriving by sea during the past calendar year.

Our enforcement and compliance activities have continued, and we've been largely successful in navigating the operational difficulties presented by various state and territory COVID-19 responses. Earlier this month, the ABF-led Illicit Tobacco Taskforce destroyed its largest seizure ever: over 100 acres of illicit tobacco crop, worth an estimated \$84 million, across three locations in regional New South Wales and Victoria. We also led the government's effort to address the scourge of modern slavery in Australian supply chains. The release, on 9 December 2020, of the National Action Plan to Combat Modern Slavery 2020-25, and the first Commonwealth Modern Slavery Statement, demonstrates the government's commitment to leading by example. I am pleased that we've now published 673 statements from Australian businesses detailing their actions to address slavery risks in their operations.

I'm inspired by the dedication shown by our workforce, who, faced with the challenges of the last year or so, have continued to adapt to new ways of working and living. Because of our people, the ABF has been able to respond with agility and flexibility. Those traits will be required again and again in the coming months and years, as we play our part in getting our international system of travel open again—wherever and however that happens. With a resilient and committed workforce and through our strong operational performance, I have every reason to be confident that the ABF is well positioned and equipped to work through the coming challenges of COVID-19 and, whilst doing so, to help ensure a safe, secure and prosperous Australia.

**CHAIR:** Thank you very much, Commissioner. I give the call to Senator McKim.

**Senator McKIM:** I'm going to take up the line of questioning that I was running earlier in overview and refer you, Mr Pezzullo, back to the determination we were discussing and the recent deportation of a 15-year-old child from Australia to New Zealand. Did the decision-maker in this case make a determination about whether the cancellation of the child's visa was or was not in the best interests of the child?

**Mr Pezzullo:** The decision-maker would have taken all relevant factors into account, including the requirement which is expressed both in terms of our international covenant obligations and in terms of domestic statutory codification. I've got every confidence that they would have taken all relevant factors into account. Ms de Veau, can you shed light specifically on the rights of the child?

**Senator McKIM:** The question is: did they take the interests of the child into account?

**Mr Pezzullo:** Understood. Thank you.

**Ms de Veau:** I will confirm it shortly, but it was a mandatory cancellation triggered by the conviction. There wasn't a discretionary decision.

**Senator McKIM:** I understand that—

**Ms de Veau:** And we had not yet moved to a revocation. A decision in relation to the cancellation of a visa, if it's a mandatory cancellation, is not one where—

**Mr Pezzullo:** Is the senator perhaps asking about removal? Senator, can I just be clear? Cancellation of the visa is an operation-of-law matter under section 501.

**Senator McKIM:** Yes.

**Mr Pezzullo:** This parliament passed that law.

**Senator McKIM:** That's right.

**Mr Pezzullo:** Are you asking about the removal back to New Zealand?

**Senator McKIM:** No. In this specific question, I'm asking about the cancellation.

**Mr Pezzullo:** Right, thank you.

**Senator McKIM:** If I could pick up on something Ms de Veau said. Ms de Veau, I won't put words in your mouth; I'll ask it. Are you saying that there was no decision made because this was a mandatory cancellation, or do you accept that there was still a decision made?

**Ms de Veau:** That's my recollection, and there has not yet been a revocation decision. There may still be, but the removal decision was at the request of the young person. One of the things I omitted to add when I was before the table last time was that the young person was also represented by Legal Aid NSW. So all the discussions that were had in relation to the young person's decision to request removal to New Zealand at this particular point in time, as well as issues about capacity and family relations, were all done in consultation with his legal representatives as well.

**Senator McKIM:** Thank you. I appreciate that clarification, Ms de Veau. When you are able, you can provide that further information you said you were seeking. That would be appreciated. Can I ask for your confirmation that, given the cancellation was non-discretionary, that is what you've given evidence to the committee was the case? Is that right?

**Ms de Veau:** I will confirm that's the case.

**Senator McKIM:** If it was a non-discretionary cancellation, wouldn't that mean that, if the child had not asked or accepted transfer to New Zealand, they would have actually faced indefinite immigration detention in Australia?

**Ms de Veau:** I don't accept that, no.

**Senator McKIM:** Why don't you accept that?

**Ms de Veau:** Because it's yet to be explored whether the revocation decisions are active and what those considerations might enliven. And, if the young person had not requested to be removed, there would have then been the decisions about how the act applies to them in terms of removal.

**Senator McKIM:** They weren't going to have a visa, because it was an automatic cancellation. You've given evidence to that effect. If someone's in Australia without a visa, what happens to them?

**Ms de Veau:** They wouldn't have stayed in Australia. But there's—

**Senator McKIM:** They could have appealed a decision, for example.

**Ms de Veau:** I think your question was: would they have faced indefinite detention in Australia? And the answer is no. They would have been removed to New Zealand, where that was reasonable and practical to do so, and it would have been reasonable and practical to do so. That did not transpire in this case, because, before you get to that, under section 198(1), the young person had requested removal.

**Senator McKIM:** This child was in immigration detention before they were released. Is that correct or incorrect?

**Ms de Veau:** For about a week and a half—

**Senator McKIM:** No. They were in immigration detention before they were released, weren't they?

**Ms de Veau:** Yes.

**Senator McKIM:** Yes. And if they had not asked to go to New Zealand, they would have remained in immigration detention.

**Ms de Veau:** Until they were removed.

**Senator McKIM:** Or until legal processes in Australia had been concluded. Isn't that accurate?

**Ms de Veau:** Yes, but there were not any legal processes in Australia.

**Senator McKIM:** The child didn't launch legal action, because they asked to go. The argument I'm mounting here, Ms de Veau, is that any reasonable person would look at this case and make a decision that the child was actually coerced by the fact that they were in immigration detention and previously in a custodial detention regime and that, in fact, they were not capable of making an informed decision as a minor to be deported. Do you accept that or not?

**Mr Pezzullo:** If I could seek some guidance here, Madam Chair. The question of what would have transpired, hypothetically, had the minor not made the request they made, I'd be reluctant for Ms de Veau to explore that, and she's indicated her hesitancy in any event. In terms of any inference to be drawn about whether the minor felt subjectively coerced, compelled, under any form of duress—we would have done everything within our power to ensure that they were appropriately represented, that they were fully informed through their representatives as a minor. I don't accept the inference that's loaded into the senator's question. Senators can ask whatever questions they like, but I can respond in kind—

**CHAIR:** And, Mr Pezzullo, senators can ask hypothetical questions. I do believe that the question is in order.

**Mr Pezzullo:** I'm not questioning the orderliness of the question. I'm saying that we wouldn't respond to a hypothetical—point No. 1. In terms of the inference that the child was compelled and put into a situation of duress, we would contend to the contrary. So the inference that's loaded into the senator's question that one can only draw the conclusion that the child was compelled—I'll certainly ask Ms de Veau to add anything if she wishes—is not an inference that I can accept.

**CHAIR:** You reject that suggestion.

**Mr Pezzullo:** Yes, indeed.

**Senator Stoker:** May I also add that, on either of the constructions advocated for hypothetically by Senator McKim, whether that is the pursuit of legal processes onshore or deportation, both of those have an end point and therefore they are not indefinite detention, either way you cut it.

**Senator McKIM:** Which makes no difference at all to the central premise that I'm making—

**Senator Stoker:** Except to say, Senator McKim, that you had argued that it was indefinite.

**Senator McKIM:** Because they were facing a lengthy period.

**Senator Stoker:** You said indefinite. 'Indefinite' has an important legal meaning. This is not indefinite.

**Senator McKIM:** You can run a semantic argument all you like.

**Senator Stoker:** It's just a factual argument.

**Senator McKIM:** It's actually not.

**Senator McKIM:** Mate, if I need your assistance, I will pull the chain, I can assure you of that.

**CHAIR:** Senator McKim, if I could ask you to only ask questions of the witnesses, that would be appreciated.

**Senator McKIM:** Sure. Thank you. What advice did the department seek on the deportation of this child in regard to our obligations under the convention?

**Ms de Veau:** I'm not going to disclose what legal advice was sought.

**Senator McKIM:** So you did seek legal advice?

**Ms de Veau:** Legal advice was sought, and I already indicated that in my earlier responses to your questions. You asked about whether legal advice had been sought and I indicated it was. I'm not going to provide details of what the nature of the advice sought was or, indeed, the advice given. I can give you an assurance that the removal of the young person was done after extensive consideration of all of the legal considerations, both as to capacity and everything else, including someone's rights to request removal under section 198(1) of the act. And not only done in relation to his legal representatives here in Australia, but in relation to family members and also guardianship arrangements in New Zealand.

**Senator McKIM:** Is the department aware of any legal action that is underway in regard to this case?

**Ms de Veau:** I'm not aware of any. I will reserve whether there has been a revocation request, but of course that's not in relation to whether the young person remains in Australia or should have been otherwise returned to New Zealand.

**Senator McKIM:** Okay. Ms De Veau, you will still come back to the committee once you have that further advice on whether the decision-maker in this case did—

**CHAIR:** Last question, Senator McKim.

**Senator McKIM:** consider the interests of the child?

**Ms de Veau:** Yes. The two matters that I think I can take on notice for you, Senator, are whether it was a mandatory cancellation or whether there was a decision made, and also whether there's an active revocation request in.

**Senator McKIM:** Alright. Thanks. If possible, it would be good to have that in real time, but we'll see how we go.

**Ms de Veau:** Yes. I will attempt to do that for you.

**CHAIR:** Thank you very much, Senator McKim. I will now give the call to Senator Van.

**Senator VAN:** I have questions about the impacts of COVID-19 on onshore detention and removals. How many foreign criminals have you been able to deport from Australia throughout the pandemic?

**Mr Pezzullo:** I will see if the commissioner has got those statistics readily to hand.

**Mr Outram:** I have the statistics between 1 July 2020 and 31 January 2021. I can probably go back and get March; we may have that available. But 618 people were removed from Australia between 1 July 2020 and 31 January 2021.

**Senator VAN:** Thank you. To date, have there been any cases of COVID-19 within the onshore immigration detention network?

**Mr Outram:** Zero.

**Senator VAN:** Zero?

**Mr Outram:** Zero.

**Senator VAN:** How are you keeping it out of—

**Mr Outram:** There's been a herculean effort across our detention network by my officers, the Department of Home Affairs and service providers, working with state and territory chief medical officers and authorities, and implementing the CDNA guidelines, which is the Communicable Diseases Network of Australia Guidelines, to keep COVID-19 out, and that means we have had to establish social distancing and manage visits differently. We've had to create quarantining facilities. We've had to quarantine detainees when we've moved through them various states. We have had to quarantine Serco officers for removal operations. So it's been a herculean effort to keep it out of our detention centres to date.

**Senator VAN:** Can I congratulate you then, Commissioner; that's amazing. Can I ask why the detention facilities on Christmas Island were reopened?

**Mr Outram:** As a function really of the numbers in the onshore network. We only have a limited number of facilities and capacity in any event. COVID-19 really changed a lot of things for us—our inability to remove people to a lot of countries around the world, even some countries where the detainee wants to go home, is volunteering to go home; we're unable to remove them. There are some countries that won't accept people back, because of the COVID-19 pandemic. We've had to implement, as I just said, social distancing and quarantining measures and create capacity within the onshore network. The bottom line is we didn't have enough capacity onshore for the number of detainees we were holding. North West Point on Christmas Island is a standing facility. We maintain a high state of readiness anyway, and it has the capacity for, initially, 250 and even more should we require it. It was a matter of capacity.

**Senator VAN:** How many are currently being detained at North West Point?

**Mr Outram:** I believe it's a little bit over 230. I might just take that on notice. I do have the exact number somewhere.

**Senator VAN:** If you need to, sure.

**Mr Outram:** It's about 230 or 240 at this point in time.

**Senator VAN:** Did you say full capacity is 250?

**Mr Outram:** We've got authority from government to take it up to 250 if we need to, in a budget sense. The exact number is 229.

**Senator VAN:** Could you please describe the cohort that is being transferred to Christmas Island.



**Mr Outram:** Yes. The transferees are considered to be a risk to the Australian community. The majority, but not all of them, have been 501 cancellations. Many of them consist of those who have been convicted of crimes involving assault, sexual offences, drugs and other violent offences. They're detained for the purposes of removal from Australia. The other thing I would say is that we have also gone through a painstaking process in terms of identifying the cohort to be transferred. There are no volunteers. It's a difficult decision. Ideally, you wouldn't put people on Christmas Island, but we have to. So we've gone through a process and we've taken into account people's removal status pathway, legal proceedings, medical needs and community and family contacts as well.

**Senator VAN:** Is it safe to say they all have criminal convictions?

**Mr Outram:** Yes, or they're a risk to the community.

**Senator VAN:** I might move from there to strengthening the character test. How many visas have been cancelled under character provisions since 2014?

**Mr Outram:** I'd probably need to defer that—

**Mr Pezzullo:** We should ask Mr Kefford. The commissioner does a wonderful job once decisions have been made in terms of detention and management of detained persons—

**Senator VAN:** I was going back to you, thank you, Secretary.

**Mr Pezzullo:** but decision-making is a matter for the department.

**Senator VAN:** Would you like the question again, Mr Kefford?

**Mr Kefford:** Yes, please.

**Senator VAN:** How many visas have been cancelled under the character provisions since 2014?

**Mr Kefford:** In 2014 there were 516; in 2015-16 there were 986; in 2016-17 there were 1,278; in 2017-18 there were 904; in 2018-19 there were 943; in 2019-20 there were 1,020; and this year, to 31 January, there have been 624.

**Mr Pezzullo:** None of us have an abacus here.

**Mr Kefford:** In my folder that adds up to 6,271.

**Senator VAN:** In either aggregate or individual years, again, how many were cancelled between 2009 and 2013?

**Mr Kefford:** I don't have any earlier data than the 2014-15 year here with me. I'd need to take it on notice.

**Senator VAN:** If you wouldn't mind.

**Mr Pezzullo:** It's a question that we've answered previously on notice. I'm quite certain we've gone back to 2009, but we'll dig that out.

**Senator VAN:** Thank you. Regarding the Migration Amendment (Strengthening the Character Test) Bill 2019, which is currently before the Senate, how would these new powers work and what crimes would they cover?

**Mr Kefford:** The way in which the bill is designed, as it currently stands, not all people—non-citizens—convicted of serious criminal offences objectively fail the character test. This bill ensures that people who are convicted of a serious criminal offence and pose a risk to the community but receive less than a 12-month imprisonment for their crimes can be considered for cancellation.

**Senator VAN:** What is the process a department officer would undertake when considering a case under the proposed laws? And what are the sorts of things that they would consider?

**Mr Kefford:** There's an established process, all of it governed by the requirements of both the relevant sections of the Migration Act and the principles of proper administrative decision-making and natural justice and so on that apply to our decision-making. It's an ongoing process, clearly, given the numbers that I've just been talking about, but essentially the decision-maker would consider the material in front of them going to the seriousness of the offence, and this is the way in which it works now. Under the direction that Senator McKim was referring to in another context, if it weren't a mandatory cancellation they would consider the other factors that might weigh against cancellation and then would reach a decision that's recorded properly. And then there are opportunities for the individuals to make their case under the normal provisions of natural justice.

**Senator VAN:** But they would be effectively considering the seriousness of the crimes? They would be very serious crimes that they're looking at.

**Mr Kefford:** That's right. The considerations are the nature of the offending, the seriousness of the crime, as well as the potential risk to the Australian community.

**Senator VAN:** Thank you. Are you able to provide some examples—obviously, without identifying anyone—of people who wouldn't or don't objectively fail the character test, who now would under this new legislation?

**Mr Kefford:** Rather than lapse into hypotheticals or risk giving away personal information, the intention of this bill is essentially to—at the moment, the mandatory provisions apply where sentences of a particular length are ordered by a court. In this case, the bill would allow us to take into account the seriousness of the crime, even if a lesser sentence were applied. We might be able to provide some examples on notice of the sorts of circumstances where that would apply, but I'd rather not speculate at the table.

**Senator VAN:** Thank you.

**Senator KENEALLY:** I'd like to ask some questions in relation to the quarantine system and also then go on to some questions regarding the movement of people in and out of Australia during the pandemic. I will start, though, with the quarantine. Mr Pezzullo, what is the department's role in responding to the Halton report? Do you have a formal role as a department in responding to the Halton report?

**Mr Pezzullo:** Only potentially tangentially, to the extent that there might have been some insights there that the commissioner may wish to remark upon in terms of persons in held detention. There are similar sorts of considerations that go to communicable diseases, and he touched on those earlier. Otherwise, it's really a matter—flowing from the national cabinet—for our colleagues in the Department of Health federally, and of course, typically, state departments of health, police et cetera, because they actually manage on-the-ground day-to-day quarantine of the nature that Ms Halton investigated.

**Senator KENEALLY:** Did national cabinet seek any advice from the Department of Home Affairs or Australian Border Force in relation to the Halton report?

**Mr Pezzullo:** No. The Halton report went to national cabinet. It was a prepared document—

**Senator KENEALLY:** That was my question: did national cabinet ask for any advice?

**Mr Pezzullo:** She consulted widely, and her report stands on its own legs. You asked about whether we separately gave advice. The answer is no.

**Senator KENEALLY:** Did national cabinet seek any advice once they had received the Halton report?

**Mr Pezzullo:** No. Not from the department or the Border Force, no.

**Senator KENEALLY:** Did the Prime Minister's office seek any advice?

**Mr Pezzullo:** No, it wasn't material. We're not involved in domestic hotel quarantine or similar arrangements. You might ask me as to the constitutional basis of that. I suspect you might ask, because—

**Senator KENEALLY:** No, I'm not going to ask you—

**Mr Pezzullo:** Good!

**Senator KENEALLY:** but thanks for volunteering that you would be willing to answer it! We might leave the disagreement I have with the government there, because this is a set of questions I have to the department.

**Mr Pezzullo:** I refreshed myself on section 51 of the Constitution recently.

**Senator KENEALLY:** Great. Secretary, on 24 September you did say that the federal government will provide the states with 'whatever they need' to increase quarantine capacity. I note that Queensland Premier Anastacia Palaszczuk said on 29 January this year:

As we contend with the new unknowns of COVID-19, a national quarantine plan would mean proper Commonwealth funding as well as adequate Defence Force and Border Force resourcing.

Has there been any request to you from national cabinet to provide additional Border Force resourcing or Commonwealth funding for quarantine?

**Mr Pezzullo:** Not in respect of domestic quarantine over and above the early emergency arrangements that were put in place in relation to Howard Springs. I think the commissioner's given evidence on our early involvement. Once the initial crisis—I will use that term—of getting people out of Wuhan subsided, by a decision of national cabinet domestic quarantine was agreed by the political leadership of this nation to be a matter for the states and territories.

**Senator KENEALLY:** Again, we will put that aside, although WA premier Mark McGowan on 1 February said:

They—

the department and the Minister for Home Affairs—

have the responsibility for quarantine under the Constitution ... it has fallen to the states to perform the role—

**Mr Pezzullo:** You weren't going to ask me about the Constitution.

**Senator KENEALLY:** I wasn't, but you did raise that the political leadership of this country made a decision. I think that is a contestable point, given that a premier who is on the national cabinet says: 'They're not doing it. They refuse to do it, so therefore the states are doing it.' I think we can note that there is contention—

**CHAIR:** Senator Keneally, I just want to clarify: do you have a question?

**Senator KENEALLY:** I certainly do.

**CHAIR:** Excellent.

**Senator KENEALLY:** I think, Chair, you might appreciate that the secretary and I often have discursive conversations here at estimates. Do you have any advice as to when the Howard Springs facility, which the Commonwealth is supporting—

**Mr Pezzullo:** Through a partnership with the government of the Northern Territory.

**Senator KENEALLY:** will reach its new capacity?

**Mr Pezzullo:** That question is better posed to my colleagues in the Department of Health. They are managing the direct interaction with the Northern Territory government. They are managing both the intergovernmental negotiations and the provision of any Commonwealth support that might flow. Unless the commissioner—

**Senator KENEALLY:** Does the commissioner have any information? Has he been provided with any information as to when you should be prepared for more people to be entering to be quarantined at Howard Springs?

**Mr Outram:** Our state of preparedness and readiness relates to our role at the airport, when they arrive, and then we hand them over. So it is a matter for Health colleagues.

**Senator KENEALLY:** So you haven't been advised in terms of having to increase your state of readiness at airports where they arrive?

**Mr Outram:** We actually can accommodate an increase in capacity if we need to.

**Senator KENEALLY:** How long of a lead time do you need?

**Mr Outram:** Not very much. Probably just before the aeroplane takes off would be helpful.

**Senator KENEALLY:** Well, there you go! That's highly specific.

**Mr Outram:** To be honest with you, Senator, if you think about the process of how you separate passengers at an airport and how you process them through immigration and bags and on to buses—

**Senator KENEALLY:** Are you saying you could scale up your presence at an airport fairly quickly?

**Mr Outram:** Absolutely. We can scale up as needed.

**Mr Pezzullo:** To put it beyond doubt—I did refer the question to the Department of Health, but just to give you comfort and assurance—we are cited on the state of those discussions and both the secretary of Health and his officers keep us closely informed so that we can do the planning.

**Senator KENEALLY:** Has the agreement been signed yet? In the COVID committee about a week and a half ago, or maybe two weeks ago, we learned that the agreement had not been signed yet.

**Mr Pezzullo:** I would refer that question to the Department of Health.

**Senator KENEALLY:** Right. So you're not cited up to that level of detail.

**Mr Pezzullo:** I'm not saying that I am or not; I'm saying that evidence should be really given by the Department of Health. They are the lead for the intergovernmental agreement. I'm sure Dr Murphy and his officers will be anticipating your questions or similar questions at their hearings.

**Senator KENEALLY:** It is very tantalising, Secretary, to suggest you know something but don't want to tell us!

**Mr Pezzullo:** It's a straight matter of which department is leading, in the same way I'm sure that Professor Murphy would defer to my department for matters that fall principally to me.

**Senator KENEALLY:** I'm sure he would.

**Mr Pezzullo:** I'm returning the favour to him. It's really his responsibility to advise on where matters are. He is leading those discussions.

**Senator KENEALLY:** I only asked because you indicated you had some knowledge.

**Mr Pezzullo:** I said I'm cited.

**Senator KENEALLY:** This might be better addressed to the commissioner of the Border Force. How many non-citizens have arrived in Australia since 1 December 2020?

**Mr Outram:** I have total arrivals. Sorry, let me just get the right brief here, Senator. I was reading a brief just before I came in that I think goes to this. As at 28 February 2021, the total number of arrivals—are you asking for inwards exemptions?

**Senator KENEALLY:** No, noncitizens.

**Mr Outram:** Noncitizens, which are inwards exemptions. With the inwards exemptions, I only have to approve people who are not exempt. So those who are exempt are, of course, Australians and permanent residents who are not citizens and their immediately family.

**Senator KENEALLY:** So, let's make it people who are not citizens or permanent residents, for the sake of simplicity.

**Mr Outram:** As of 28 February, 38,589 had been approved to come.

**Senator KENEALLY:** Over what time period?

**Mr Outram:** That's going back, I am assuming, to the start of the measure last year. I'll get the exact date. This count starts from 1 August 2020, so from then there were 38,589 approved and 76,652 refused. I can give you a snapshot, for example, of the past 24 hours. This is taken for 21 March 2021, so this is a 24-hour snapshot. For inward travel exemptions we approved 44 and refused 161. That gives you a sense of the scale of the thing.

**Senator KENEALLY:** Yes. Chair, I know that we are running up against time.

**CHAIR:** I have just extended your time a little bit due to the commissioner finding those materials.

**Senator KENEALLY:** I just have one question that relates to this, and then I can come to a natural stopping point with this block of questions.

**CHAIR:** Just make this the last question, Senator Keneally.

**Senator KENEALLY:** On this section, yes, thank you. Commissioner, from that date, 1 August 2020, on the number you just gave me, 38,589—I'm happy for you to take this on notice—is that able to be broken down in terms of tourist visas, temporary work visas, significant investor visas and superyacht crew visas?

**Mr Kefford:** Senator, for those categories, we could take that on notice.

**Senator KENEALLY:** Thank you, Mr Kefford, I appreciate that.

**Mr Outram:** What I would say, Senator, in terms of your question is that we do keep an eye on the number of people returning, and about 80 to 85 per cent of people who are coming to Australia into quarantine are Australian citizens, permanent residents or immediate family.

**Senator KENEALLY:** Sure. That's helpful, thank you.

**CHAIR:** Thanks very much, Senator Keneally. I will now give the call to Senator McKim.

**Senator McKIM:** The topic is the same as previously. Firstly, could I just confirm that the department has taken on notice whether the child that was deported to New Zealand recently was in immigration detention or serving a custodial sentence when he requested—

**Mr Pezzullo:** Yes, that was taken on notice.

**Senator McKIM:** Thank you. Does the department accept that the child was facing ongoing immigration detention if he had remained in Australia?

**Ms de Veau:** There would have been ongoing immigration detention, but again we're getting into hypotheticals. I can confirm two things. Firstly, it was a mandatory cancellation under the provisions of section 501(3A). It was a juvenile custodial sentence of more than 12 months that triggered that provision. So there was no discretionary decision under that provision. That is a must. There was also a revocation application put in by the young person and his various advisers and representatives on 19 February. The mandatory cancellation occurred on 11 February. He was released from his juvenile criminal detention on 20 February. So he'd already sought a revocation. That revocation, I expect—

**Senator McKIM:** Sorry. When you say he'd sought a revocation, can you just explain what that means, please.

**Ms de Veau:** The mandatory provisions apply such that the visa is cancelled because of the sentence involved. A person, juvenile or otherwise, can seek a revocation of that decision.

**Senator McKIM:** Of that cancellation?

**Ms de Veau:** Of that cancellation. So there is a discretionary decision that's available at a later time. That takes into account all the various concerns that you have raised.

**Senator McKIM:** So the child made a revocation application on the 19th?

**Ms de Veau:** On the 19th, but he also still requested his removal to New Zealand.

**Senator McKIM:** So he requested that his visa not be cancelled, or that the decision to cancel his visa be revoked, but you're also saying he requested to be deported, to be sent back to New Zealand?

**Ms de Veau:** To go back to New Zealand. There's great inconsistency in that.

**Senator McKIM:** On the same day?

**Ms de Veau:** No, on different days. I think the requests to be removed to New Zealand occurred more than once, so they were fairly consistent. That, again, continued. We were speaking to Legal Aid NSW in relation to his understanding of the requests that he was making as well as interim guardianship arrangements in New Zealand and family in New Zealand. So all of those things were being considered.

**Senator McKIM:** Thank you.

**Ms de Veau:** I can also indicate that in the period for which he was in immigration detention, which spanned from 20 February to his removal on 10 March, he was at, I think, the Mantra in Parramatta and was supported by any number of appropriate arrangements because of his age.

**Senator McKIM:** Thank you for that. Do you have the—

**Mr Pezzullo:** I should add—sorry, Senator—something in relation to what on the surface might appear to be an inconsistency between 'remove me' and 'revoke the cancellation'. People are more familiar with adult cases, although this would be in the same genre. It's not unheard of for somebody to ask to be transferred back to New Zealand but for revocation action to remain on foot so that, for future travel purposes, a person can say, 'I'm back in New Zealand for whatever reason, but in future I'd like to re-enliven my ability to travel to Australia.'

**Senator McKIM:** Sure. Ms de Veau, I think you said there were multiple occasions on which this child had requested to be removed from Australia, taken back to New Zealand or sent back to New Zealand—whatever language you want to use. Do you have the dates of those requests there?

**Ms de Veau:** Not all of them. I can say that he signed a written request on, I think, the 23rd, and that was in consultation with—

**Senator McKIM:** The 23rd of which month?

**Ms de Veau:** Of February, and that was in consultation with his legal representatives.

**Senator McKIM:** So that was while he was in immigration detention?

**Ms de Veau:** Yes, but he made requests that predated that.

**Senator McKIM:** Right. And you've confirmed that the child was facing ongoing immigration detention if he had remained in Australia?

**Ms de Veau:** Subject to what might happen with his revocation.

**Senator McKIM:** Understood. But, absent a revocation of the decision to cancel his visa, he would have faced ongoing detention, would he not?

**Ms de Veau:** Yes. Of course, that doesn't take into account where family might be as well.

**Senator McKIM:** Thank you. Were the child's parents or parent involved in these matters, or was anyone acting as the legal guardian for the child?

**Ms de Veau:** Someone was acting as the legal guardian, as well as the parents being involved. Can I say that that is a particularly complex issue in relation to this case and that perhaps to go into that sort of detail in this forum might start, I think, to unduly trespass on the privacy of the young person.

**Senator McKIM:** Okay. Thank you.

**Ms de Veau:** But I can indicate that interim guardianship arrangements in New Zealand were made, as well as ensuring that there are family members who he is returning to.

**Senator McKIM:** Thank you, I appreciate that. My question related to the Australian end of what happened, not the New Zealand end—

**Ms de Veau:** And that's particularly complicated.

**Senator McKIM:** To be clear, I'll confirm your evidence that in Australia the child had a legal guardian. Is that correct?

**Ms de Veau:** Well, under Australian law that's particularly complicated. It's not a yes or no answer and, again, it will get into some particular details.

**Senator McKIM:** I appreciate your intention to provide privacy for this child, I genuinely do. I've got to say I'm concerned that the department is unable to answer that question with a straight yes.

**Ms de Veau:** It's got to do with the adoptive laws of another country and whether they're recognised in Australia under Australian law. That's why it is complicated. It genuinely is legally complicated.

**Senator McKIM:** Did the child have any Australian organisation that was acting as a legal guardian in this case?

**Ms de Veau:** He was represented by New South Wales Legal Aid.

**Senator McKIM:** They were his legal representatives. Were they his legal guardians? I'm very concerned about this—

**CHAIR:** Senator McKim, could I just stop you there for a moment. The department has indicated there are some particular issues in relation to this case and there is a general principle that the department does not speak about individual cases. The department has indicated that these matters do go to the privacy of the child—

**Senator McKIM:** I understand that, Chair.

**CHAIR:** so I would just ask you to perhaps continue your questioning please and accept that.

**Senator McKIM:** I will do that. I've indicated that I appreciate the department's concern for the privacy of the child. Ms de Veau, I'll simply ask you: is there anything else you'd like to add at this stage about this case?

**Ms de Veau:** No.

**Senator McKIM:** I will potentially come back to that, but I want to ask a couple of final questions on this issue. Firstly, was Home Affairs involved in briefing the New Zealand Children's Commissioner about this case? Because he has been briefed, or at least he said publicly that he had been briefed.

**Ms de Veau:** That I don't know. I can say that interim guardianship arrangements were made—

**Senator McKIM:** For New Zealand, Ms de Veau?

**Ms de Veau:** In New Zealand, yes.

**Senator McKIM:** Okay, we'll come to that in a minute. Judge Becroft who is the New Zealand Children's Commissioner, said that based on information provided to him in a briefing it appeared Australia has breached its international legal obligations under the UN Convention on the Rights of the Child. Are you disagreeing with Judge Becroft?

**Ms de Veau:** I haven't seen that comment.

**Mr Pezzullo:** I'm fairly certain that we would not have briefed that office holder in New Zealand against ourselves in those terms.

**Senator McKIM:** He said based on information he received—

**CHAIR:** Senator McKim, before you go on, could I ask you to table the document to which you refer where these comments have allegedly been made.

**Senator McKIM:** I can just say it. It's a media report from Ben Doherty in *The Guardian* dated yesterday.

**CHAIR:** Do you have a copy of that article?

**Senator McKIM:** I do, but it's got my notes all over it and, with the greatest of respect to all of the officers at the table, I don't intend to provide this particular copy.

**Mr Pezzullo:** You've done it before, Senator.

**Senator McKIM:** I know and I'm worried about the precedent that set.

**Mr Pezzullo:** That's very helpful. Next time you'll have to question us on this—

**Senator McKIM:** I'm sure the 80-plus departmental spin doctors are working hard to get that to Mr Pezzullo in real time. Judge Becroft—

**CHAIR:** Senator McKim could you please not refer to officials in that way? We need to refer to all with respect.

**Mr Pezzullo:** Thank you, Chair. He did say they were hard working. That helped soften the blow.

**CHAIR:** Mr Pezzullo, just before Senator McKim goes on, do you require a copy of this article to address the question Senator McKim is asking?

**Mr Pezzullo:** I'm happy to respond in general terms. It would be helpful to—

**Senator McKIM:** I'll park that for now Mr Pezzullo. I'm sure my office's—

**CHAIR:** Senator McKim, could you read out the title of the article, the publication and the date just so we can search for it.

**Senator McKIM:** Yesterday, *The Guardian*, Sunday, 21 March, the headline is: "'It starts with one child': white-hot anger in New Zealand as Australia deports 15-year-old.' The sub-head is:

Rising resentment over the treatment of New Zealanders only intensified when Peter Dutton called forced removals 'taking the trash out.'

**CHAIR:** Thank you. I think you've clarified the nature of the article.

**Senator McKIM:** I'm just trying to be helpful.

**Mr Pezzullo:** Sorry, was there a particular quote attributed to the commissioner?

**Senator McKIM:** There is, and I'll go to that now. There are two. You've responded to the first one already, but for the record I'll state it again:

The New Zealand children's commissioner, Judge Andrew Becroft, said based on the information provided to him in a briefing, it appeared Australia had breached its international legal obligations under the UN convention on the rights of the child.

**CHAIR:** Senator McKim, before Mr Pezzullo answers that question, could you agree to provide a copy of that article so we can have it tabled?

**Senator McKIM:** I will. I'm sure that my office—of course I'm prepared to do that. The second one, Mr Pezzullo, is:

Becroft said it appeared the child's interests were not considered pre-eminent in the decision to deport him, as the convention mandates.

Hence my earlier questions about the convention and the direction.

**Mr Pezzullo:** Just responding to the quotes you've read out, and without any other contextual information, we would respectfully disagree with His Honour. As to how he has formed that view, the article seems to indicate that he received a briefing. I can only assume that it would be from his own officers. I would respectfully contend that, whilst it is open to the commissioner to draw the conclusion that he has about, as he sees, Australia's international obligations, with all due respect I don't think that's he's an expert on Australia's compliance with its own international obligations. We've given evidence to the contrary to this committee.

**Senator McKIM:** New Zealand is a signatory to the convention as well, Mr Pezzullo—

**Mr Pezzullo:** They can deal—

**Senator McKIM:** and, given that he is the Children's Commissioner, perhaps he is an expert on the convention.

**Mr Pezzullo:** He might well be, but he can deal with—

**CHAIR:** Please don't argue. Senator McKim, please ask questions only, and there's to be no debating with the witness. If you have a final question, because you are over time, could you please ask that?

**Senator McKIM:** Yes. Does the department consider this child to be trash?

**Mr Pezzullo:** The department wouldn't consider any human being to be trash, but it's a rhetorical question and I'm not sure that—

**Senator McKIM:** It's actually not a rhetorical question; it's based on something Minister Dutton has said—

**CHAIR:** Senator McKim, please do not debate the answer with the witness.

**Senator McKIM:** I don't accept Mr Pezzullo's characterisation of that as rhetorical.

**CHAIR:** What you accept is irrelevant in these proceedings. Answering the question is a matter for the secretary or his officials.

**Mr Pezzullo:** All persons are dealt with under the law, whether it's the Migration Act or other acts, as individual human beings with dignity and rights, either international or domestic, and we treat all people on that basis.

**CHAIR:** Thank you very much, and thank you, Senator McKim.

**Ms de Veau:** Chair, just before you do leave this topic, can I indicate that, under the Convention on the Rights of the Child, the best interests of the child would also include the wishes of the child. As a 15-year-old who is said

to have the appropriate capacity, who was asking under the Migration Act to be removed to New Zealand, where there are family, that's a relevant consideration.

**Senator McKIM:** After being coerced, and facing ongoing immigration detention—

**CHAIR:** Senator McKim, you are out of order. Senator Scarr.

**Senator SCARR:** I wanted to ask some questions in relation to the escalating COVID-19 crisis in Papua New Guinea and, in particular, to any actions—or the actions—being taken by Border Force and Home Affairs in response to that. If I could start by asking about the existing arrangements that have been entered into in the Torres Strait. Commissioner, you'll be well aware that there are a number of Australian islands that are within seeing distance of Papua New Guinea and that fall within the treaty area which allows traditional visitation between those islands and Papua New Guinea, and vice versa. Could you please explain what the arrangements are at this point in time in response to the increasing COVID-19 emergency in Papua New Guinea?

**Mr Outram:** Indeed. In fact I visited those islands personally, so I know exactly what the lay of the land is up there. Operation Overarch was established by the Border Force on 19 March 2020 in response to the Prime Minister's announcement to close the Australian border with Papua New Guinea. Since that time, we've had a permanent presence on both Saibai and Boigu islands. We've worked very closely with the Queensland Police, Queensland Health and the AFP in relation to those islands, and we've bolstered our aerial surveillance and maritime presence. We've also worked with the Australian Defence Force. There has been a significant increase in presence up there.

But, as you just said, the lay of the land, or the water, is that there's not much space between the southern treaty villages—particularly on Boigu and Saibai—a couple are three miles apart. So we've put in place processes for when we see a boat coming across, because there has been traffic in that time. Since 22 March 2020, to give you a sense of the movement of people up there, we've had 132 boat arrivals, containing 779 people.

The vast majority of those are in relation to seeking medical treatment. We've had boats with children with snakebites—a whole range of treatments. We escort the boat to the shore. We escort one person, the injured person—and, if it's a child, the guardian—to the clinic, where they're treated by Queensland Health. All people are rapid tested for COVID—so far, they've all been negative—and then they're sent back to the treaty village on the water, unless it's a serious case, where they're obviously medevaced down to Cairns or where have you.

While 779 might seem like a lot of people coming and going, because of the pattern of life up there with the treaty villages—the familial ties and the routines that people have—unless you build literally a wall across that area of water, you're not going to be able to stop boats coming across. But there's been a downturn, since 2019, from, for example, 15,000-plus people coming across to Boigu and Saibai and into the Torres. We've got that down to 779, so that's quite significant.

Cognisant of what's happening now in PNG, we of course have been engaging with our colleagues in DFAT, Health and Queensland Health—I in fact spoke with the commissioner of the Queensland police only last week about this issue—and we're further bolstering our presence as we speak. We're putting further onwater assets up there—more people, more officers and more area flights, and that includes in relation to Thursday Island and the Northern Cape—as well as further people on Boigu and Saibai and more patrols. What I would say also is that we've worked with DFAT and with partners in PNG to bolster the capacity of the medical clinic at Mabudawan. That's made a big difference, because a lot of people were coming across with injuries and illnesses that didn't need treatment at Boigu or Saibai. There have been measures like that that have been taken. We'll continue to work with DFAT, Queensland Health and the Department of Health in relation to that. So from an operational point of view, we've got a significantly enhanced presence over and above what we had before March last year.

**Senator SCARR:** I just want to confirm that, up to this point in time, none of those visitors to Saibai and Boigu Island have been diagnosed with COVID-19?

**Mr Outram:** None. Of course, Queensland Health have started the vaccination rollout now in the Torres Strait as well. We'll all sleep a bit easier once the vaccination program has been rolled out in the Torres.

**Senator SCARR:** Correct. Is any institutional support being provided to the PNG immigration authorities, with respect to their handling of the COVID-19 crisis?

**Mr Outram:** Indeed. The secretary might want to talk to you about that. He's privy to more conversations than I am. The Department of Health and DFAT are probably the lead in that. But there's a significant amount of Australian support going into Papua New Guinea, particularly to help them deal with this latest outbreak of COVID-19.



**Mr Pezzullo:** Over and above the border arrangements that have been put in place that the commissioner has described, the Australian government has agreed on a whole-of-government support effort, including from our colleagues in the Department of Health. We've activated what's known as the AUSMAT process. Forward reconnaissance elements have gone forward to assist the Papua New Guinean authorities with scoping out what their detailed requirements might be. The Australian government of course stands ready—as a number of ministers, including the Prime Minister, have said—to render all reasonable assistance. There's a vaccination support program, including an initial urgent injection of shots, to supplement their resources. The Prime Minister has made clear that it would be the intention of the Australia government to provide more vaccines, particularly as the Australian domestic program comes online to address Australia's needs. This is one of those cases where helping your neighbour helps yourself. As Minister Payne, the Prime Minister and other ministers have made clear, helping Papua New Guinea not only is an act of quite decent and reasonable altruism but also is going to help ourselves in ensuring that any outbreak of COVID in any significant magnitude that occurs in PNG doesn't affect our communities in North Queensland.

**Senator SCARR:** I say on the benefit of having lived and worked in Papua New Guinea for over two years that the mining industry—the oil and gas industry in Papua New Guinea—is absolutely vital for that country's fiscal position. I think it constitutes something like 20 per cent of the gross domestic product of Papua New Guinea. There are a number of large operations which are dependent upon Australian specialists and Australian maintenance support in order to keep them going. Is the department giving some thought with respect to how to ensure that logistical support can continue?

**Mr Pezzullo:** When the series of decisions that I've just summarily described were taken, including in relation to flight exemptions that the commissioner might apply—he will speak to the specifics of how he is interpreting this guidance—particular regard was had to precisely that factor. Whilst the Australian government has placed a reduction on places, the commissioner has been asked, in exercising his discretion, to have regard to the urgency and the essentiality of the mining industry. So, Commissioner, how you've translated that guidance into practice is really a matter for you.

**Mr Outram:** Yes, indeed. The exemption regime really now requires the worker demonstrate the criticality of their role. Obviously we're having to take that case by case. Just to give an example of the volumes we're dealing with, requests on hand for exemptions between 19 March and 22 March was 29 inbound and 27 outbound. That gives you the sense of the volume and the scale of requests that we're dealing with. Of course, the issue here is around, particularly, charters. What we've done is really turn off non-essential charters other than medevacs, of course—they can still go. For me to approve somebody to go on a charter, I need to be assured it's a critical role they're performing.

**Senator SCARR:** How do you define in the context of, say, the Lihir gold mine, which produces millions of dollars of revenue for Papua New Guinea and if someone has a critical role from the mining operation's perspective—say, a general manager or a manager or a technical role that's highly specialised and necessary for the processing plant to keep operating? Are you assessing cases in terms of criticality in that context?

**Mr Outram:** We are, Senator. We engage with the companies themselves and the employees themselves to understand that. It's not an easy task because I'm not a miner. We have to take advice on the criticality of the roles. If it's safety critical, that makes it pretty easy and straightforward if their role is essential for the safe operation of the mine and the safety of workers and those sort of things. If it's an accountant, whilst it's an important job, I may take a different view. The intention here is really to reduce the amount of travel between PNG and northern Queensland to reduce the number of people coming back from PNG who are COVID-positive. That's what we've got our eye on.

**Senator SCARR:** But, in general terms, you are giving due consideration to the importance of that industry to keep operating—

**Mr Outram:** Absolutely.

**Senator SCARR:** in order to provide fiscal support to Papua New Guinea as it's going through this difficult time. Is that correct?

**Mr Outram:** Absolutely right. That's why the government and the Prime Minister were clear that whilst, for example, we have ceased flights into Cairns, cargo and freight and those sort of things that PNG needs must continue.

**Senator SCARR:** Thank you.

**Senator KENEALLY:** Commissioner, I like to ask you some questions. It may be ground we have covered in previous hearings, but just bear with me. Is it my recollection that Border Force's decisions about people who are

granted permission to leave Australia, or indeed people who are granted exemptions to enter Australia, who are not citizens or permanent residents—that is not factored in, or connected in any way, to decisions about what quarantine spots may be available down the track for the stranded Australians to come home?

**Mr Outram:** That's right. There's no direct relationship there. I'm not sort of measuring the amount of approvals for people to leave Australia based on the amount of seats and aeroplanes to come back. However, last year I became aware that, for example, we have a category of outward travel exemptions in the category of travelling overseas for at least three months. We approved 64,000 of those throughout 2020. That concerned me when I was aware, of course, that there are a lot of people trying to get back to Australia. We were messaging people saying, 'You're kind of taking a risk here because we can't guarantee you're going to get an aeroplane to come home.' I asked the decision-makers to seek a statutory declaration from those people to make sure we were satisfied that the claim they're making to be sure they're going more than three months is actually right, and seeking further and better documentary evidence of the fact they have got a placement, a job, accommodation and return ticket booked for more than three months time. That's seen a significant downturn in terms of the number of people seeking firstly and secondly to be permitted an exemption under that regime. So that's probably helping to reduce the pressure. I'm not looking at daily numbers because we don't know when people are going to return, so it's hard to actually manage it in that way.

**Senator KENEALLY:** Understood. Do you have any figures that show that downturn in people seeking that exemption to leave Australia.

**Mr Outram:** I do, from 8 January. So 8 January was when I provided the guidance to the decision-makers.

**Senator KENEALLY:** January this year?

**Mr Outram:** I provided that decision. That guidance around statutory declaration and seeking better and more evidence in relation to that. Prior to the changes on 8 January, the applications received under the three-month-plus category numbered, on average, 339 per day, and approvals were, on average, around 95 per cent. Since 12 January, we've received an average 314 applications per day, with approvals around 52 per cent. So there's been an overall reduction of about 55 per cent.

**Senator KENEALLY:** That is positive news and no doubt will be welcome by stranded Australians. When it comes to the entry of non-citizens or non-permanent residents to Australia, I asked, and Mr Kefford took on notice, the breakdown of the visa classes. Is there any consideration in those exemptions—forgive me, I haven't looked at the forms that people need to complete—as to how long they will be in Australia?

**Mr Outram:** How long?

**Senator KENEALLY:** I'm just trying to understand: is there perhaps a reverse of this process to say, 'You can't come into Australia for less than three months; you need a pretty darn good reason to be here.'

**Mr Outram:** There are some various categories. Compelling and compassionate would be one of those, where somebody might be coming for, say, the end of life of an immediate family member. That may not be for three months. The majority of people are coming in the category of critical skills, and the majority of those are in the medical category. About 25 per cent of all the critical skills were coming to work in medicine or delivery of medical services, and then mining, technology, agriculture and those other critical sectors that make up the rest, and that's the bulk of the inbound exemptions.

**Senator KENEALLY:** Maybe this question will be more relevant to ask when I have those other categories to the extent in which there are any temporary work visas, significant investors, superyacht crew or tourist visas that have been given any exemptions to enter. I hesitate always to go to specific cases of celebrities that have been in the media, but it is a thing that really does annoy stranded Australians. For example, Dylan Efron, the brother of Zac Efron, was granted an exemption to come in. He posted on social media his experience in quarantine, and it really set off a number of stranded Australians who couldn't get home to see dying relatives.

**Mr Outram:** Let me deal with this. We've had to bring people in where there's a case of significant economic benefit. I don't make that case myself. Significant economic benefit. We've had things, for example, like the Australian Open, the Indian cricket team, the Seasonal Worker Program and the World Surf League 2021. The starting point is that if a state or territory government supports that activity because of economic reasons, they need to say so in writing and, secondly, agree that that will not come out of the cap.

**Senator KENEALLY:** Can we go to the case of Dylan Efron, which seems to be emblematic.

**Mr Outram:** I'll read through that for you. He was granted an exemption to travel to Australia as he's the producer of a documentary series, *Down to Earth with Zac Efron*. It is estimated that this will inject approximately \$2 million into the Australian screen and film industry. The exemption was granted on the basis of

the applicant having critical skills and was supported by the New South Wales government. I'm not a judge of their view on this; they're the judge of the importance to their economy.

**Senator KENEALLY:** This is helpful information. Please continue.

**Mr Outram:** Mr Efron's arrival was not included in the New South Wales flight caps and therefore did not impact on the number of Australians able to return. Generally speaking, for things in those sorts of industries, that's a requirement that we require the state or territory to sign up to. The rugby league team that came over from New Zealand went to Tamworth. With the tennis and all of these things we seek an agreement from the state or territory that they won't eat into or chew into the caps.

**Senator KENEALLY:** So that we are clear, Mr Efron was supported by the New South Wales government—

**Mr Outram:** On economic grounds.

**Senator KENEALLY:** on economic grounds. And he did not take up a quarantine space?

**Mr Outram:** Not under the cap.

**Senator KENEALLY:** He didn't come under the cap, but he did take up a quarantine space?

**Mr Outram:** He would have been required to be quarantined, but how that occurred would be a matter for New South Wales Health.

**Senator KENEALLY:** From this social media post it does appear he is in a hotel room. So that would be a question for New South Wales Health, then, as to whether or not he took up a quarantine space?

**Mr Outram:** We seek that assurance in advance that they won't.

**Senator KENEALLY:** From the state governments?

**Mr Outram:** Yes.

**Senator KENEALLY:** That they won't take up a quarantine space?

**Mr Outram:** Yes.

**Senator KENEALLY:** Did you get one in the case of Dylan Efron?

**Mr Outram:** We seek everything in writing. With every request from a state or territory, particularly for the film industry, we require the support of the state or territory before I'll give an exemption.

**Senator KENEALLY:** Did they supply it? That's what I'm asking.

**Mr Outram:** I will take it on notice. The answer would be yes, but I need to take on notice the exact date and nature of that reply—but, yes. We require it in writing—that support from the state or territory.

**Senator VAN:** I assume other states have also signed off on these sort of entries?

**Mr Outram:** Certainly. There was Victoria with the tennis, absolutely.

**Senator KENEALLY:** I'm not disagreeing with that. It's just stranded Australians were very angry about Dylan Efron, and it was worth exploring that here to establish the facts around the case—as to whether he took a quarantine spot.

**Senator VAN:** Sure. I wanted to make sure it just wasn't one state.

**Senator KENEALLY:** I know we've covered this ground previously regarding former Prime Minister Tony Abbott. I also understand that the former foreign minister Alexander Downer—I think he has a current diplomatic position—has been in and out of Australia. When it comes to diplomatic positions, can you remind me?

**Mr Outram:** I'd probably have to refer to the *Hansard* in terms of the conversations we had about Mr Abbott.

**Senator KENEALLY:** What are the arrangements?

**Mr Outram:** There are various criteria that we apply, and—

**Senator KENEALLY:** Actually, does Mr Downer have a current diplomatic position?

**CHAIR:** Senator Keneally, could you just allow the commissioner to answer the question.

**Senator KENEALLY:** Actually, Chair, I don't know if you can assist me? I'm trying to remember if Mr Downer has a current position.

**Mr Outram:** Let me just remind you, Senator, travel restrictions for coming to Australia do not apply to certain classes of people, and travel restrictions for people departing Australia do not apply to certain people. Those categories of people are listed on the website. I've been through them, I think, at the COVID-19 select committee and at estimates. For example, with somebody coming to Australia, we've talked about Australian citizens, permanent residents and families; New Zealand citizens who are usually resident here and their

immediate family; a person who has been in New Zealand for 14 days or more immediately prior to arrival by air—because that's the green lane; a diplomat accredited to Australia, holding a subclass 995 visa; a traveller transiting Australia for 72 hours or less; airline crew—there's a whole—

**Senator KENEALLY:** Mr Downer is not a diplomat; he is a former diplomat. What I'm trying to understand here—and I'm happy for you to take it on notice—are the exemptions that were provided to Mr Downer. We previously covered the exemptions provided to Mr Abbott—that it was on 'government business'. It turns out it was the UK government, not the Australian government. I'm seeking to understand the exemptions that were provided to Mr Downer to leave the country.

**Mr Outram:** I'll take it on notice.

**Senator McKIM:** I have a couple of final questions on the issue of the deportation of this child. I want to be clear that I understand the situation correctly. The child was in immigration detention when he made his written request to be sent to New Zealand. He was facing ongoing immigration detention if he had not been sent to New Zealand. And the department is unable to assure the committee that he had a legal guardian throughout this process. Is that accurate?

**CHAIR:** Senator McKim, with respect, you have asked these questions before. Do you have another question that you have not yet asked?

**Senator McKIM:** No, I want that question answered. That's my question. The child was in immigration detention when he made—

**CHAIR:** Could you clearly state what your question is. It needs to be different to the questions that you have asked before.

**Senator McKIM:** What? I don't think that's in the standing orders, Chair. I'm just going to ask my question again.

**CHAIR:** You cannot ask the same question over and over, so—

**Senator McKIM:** Who says?

**CHAIR:** could I ask you to make it clear that you are asking another question in relation to this matter?

**Senator McKIM:** No, Chair, I'm not going to ask another question. This is my question: is it correct to say—

**CHAIR:** Senator McKim, if you are seeking to ask the same question again, I will rule that out of order. You have the call—

**Senator McKIM:** On what basis can you rule that out of order?

**CHAIR:** but could you please ensure that you don't ask the same question as you did before?

**Senator McKIM:** This is my question: do I understand this situation correctly? The child was in immigration detention when he made his written request to leave Australia. He was facing ongoing immigration detention if he had remained in Australia, and the department is not able to assure this committee that he had a legal guardian throughout this process.

**Ms de Veau:** I don't accept all of those propositions.

**Senator McKIM:** Which one don't you accept?

**Ms de Veau:** The last one.

**Senator McKIM:** So you can assure the committee that he had a legal guardian right throughout the process?

**Ms de Veau:** Yes. I do not accept that at any point in time he was not without a legal guardian.

**Senator McKIM:** I'm sorry, could you say that again, please?

**Ms de Veau:** I do not accept that he was at any time without a legal guardian.

**Senator McKIM:** Okay.

**Ms de Veau:** Legal guardianship was explored, and we were comfortable in relation to the fact that he had legal guardianship.

**Senator McKIM:** Who was his legal guardian?

**Ms de Veau:** That's where we get into some of these particularly difficult situations—

**Senator McKIM:** Alright, and you've got a privacy concern.

**Ms de Veau:** in relation to privacy.

**Senator McKIM:** Alright, thank you. In that case—

**CHAIR:** Senator McKim, this is particularly important. Obviously, it concerns a child and so these matters are—

**Senator McKIM:** That's why I'm asking these questions, Chair.

**CHAIR:** The privacy issues are incredibly important to observe.

**Senator McKIM:** Thank you, I appreciate that. This is why I've reinforced the question, Chair. I want to make sure that the evidence is clear and that the Senate's capacity to understand the evidence is clear. That's why I'm revisiting this issue. So then, Ms de Veau, is it—

**CHAIR:** It's fine to revisit these issues as you see fit, but not to be repetitive in your questioning.

**Senator McKIM:** Thanks, Chair, I'll take that on board. Is it accurate to say that the child was in immigration detention when he made his written request to leave Australia and was facing ongoing immigration detention if he had remained in Australia?

**Ms de Veau:** That's correct. Of course, that written request was not the first time he requested to be removed.

**Senator McKIM:** Understood.

**Ms de Veau:** He had consistently requested to be removed.

**Senator McKIM:** You've quite rightly, in my view, both you and Mr Pezzullo, raised privacy issues here. I've said that I appreciate the department's desire to respect privacy. Mr Pezzullo, you said in answer to my last question in the previous bracket—and I will paraphrase you, rather than quote you—something to the effect that the department regards no-one as trash, you regard all people as human beings that should be treated with dignity and have their privacy respected. Is that a reasonable—

**Mr Pezzullo:** And their legal rights.

**Senator McKIM:** And their legal rights, yes, so all of those things and their legal rights. Your primary minister, Mr Dutton, has described 501 cancellations and deportations to New Zealand as 'taking out the trash'. That's beyond question; he has done that. Has the department counselled him in relation to using that phrase?

**Mr Pezzullo:** Point 1, I don't see it in my remit to be a counsellor of ministers or senators or anyone else. My job is to administer the laws that you pass, and to do so objectively without fear or favour. As far as I'm concerned, we've acquitted our responsibilities. I'm not an expert in rhetoric and the deployment of rhetorical devices as part of advancing a public interest argument. I'm not an elected official. The minister at the table may wish to provide additional commentary, but—

**Senator McKIM:** I was just about to go there.

**Mr Pezzullo:** when you say, 'Have you counselled the minister?' there's an inference there that, (a), he's done something wrong, (b), I'm somehow the umpire of that and, (c), I get a role in penalising or—

**Senator McKIM:** He's certainly done something wrong.

**CHAIR:** Senator McKim, I ask you to ask questions only and no commentary, please.

**Senator McKIM:** Alright, thank you. Could I just ask, while Ms de Veau's at the—

**Mr Pezzullo:** I'm just a humble administrator. I just administer laws.

**CHAIR:** Yes, I've noticed that, Mr Pezzullo!

**Senator Stoker:** And as a representative of the minister I reject the premise of your question.

**Senator McKIM:** We'll come to you in a minute, Minister. Ms de Veau, we've spoken about the cancellation of this child's visa, and that's fine. Was the child deported from Australia under a section of the Migration Act?

**Ms de Veau:** I expect there would've been one. It was 198(1), which is the one that provides for a request for removal, given that there was a request for removal in this case.

**Senator McKIM:** Thank you for that. Minister, do you regard people who have had their visas cancelled under the character provisions in section 501 of the Migration Act and people that have subsequently been deported to New Zealand as 'trash'?

**CHAIR:** Senator McKim—

**Senator McKIM:** It's a direct quote from Minister Dutton.

**CHAIR:** I do say to you that that is not an appropriate question.

**Senator McKIM:** Why not? On what basis? You're just making that stuff up, Chair.

**CHAIR:** Senator McKim, I would ask you to rephrase that question, please.

**Senator KENEALLY:** On a point of order, under what standing order are you ruling that question out of order?

**Senator McKIM:** The made-up one.

**CHAIR:** No. Senator McKim, the respect that a senator is to show witnesses is mandatory, obviously, and I would ask you to just rephrase that question.

**Senator McKIM:** Chair, on a point of order, if you're suggesting that describing people as 'trash' is disrespectful, I could not agree more. That's the point I'm making. It's a direct quote from the primary minister for Home Affairs, the Minister for Home Affairs, the primary minister for this department, Minister Dutton. That makes it an entirely reasonable question for Senator Stoker.

**CHAIR:** Could I ask you to rephrase the question, please.

**Senator McKIM:** Senator Stoker, do you regard people who have had their visas cancelled under section 501 of the Migration Act and have been subsequently deported to New Zealand as 'trash'?

**Senator Stoker:** I don't think anybody regards people from any walk of life in that regard. I would suggest that the way in which you are quoting that there is taking the minister's comments out of context.

**Senator McKIM:** Minister, did you see the story on Channel 9 Brisbane on 8 March this year, when they aired a story about people—

**CHAIR:** Senator McKim, I would ask you to stop there. You're referring to quotes allegedly made by the minister. Are you able to table the report to which you are referring—

**Senator McKIM:** I'm not sure how I table a television story.

**CHAIR:** or a transcript so that we are able to inform the witnesses as to the content to which you're referring? Is there some way that you could provide appropriate information in relation to—

**Senator McKIM:** I'm simply asking the minister whether she's aware of or saw a particular television news story. That's all I'm doing.

**Senator Stoker:** And the answer is no. But, if you wanted to show me a transcript of it, I would be happy to answer any questions that you have about it.

**Senator McKIM:** Thank you. I appreciate that. Could I please ask either Mr Pezzullo or Commissioner Outram whether they are aware of that news story on 8 March this year, on Channel 9 Brisbane, about people being deported from Australia to New Zealand, which featured people being harassed and taunted by camera crews and journalists as they were being led across the tarmac to the plane.

**Mr Pezzullo:** I'm familiar with that story.

**Senator McKIM:** Was that you, Mr Pezzullo?

**Mr Pezzullo:** Yes.

**Senator McKIM:** Did you or anyone else in the department or the Border Force authorise those journalists to go onto the tarmac?

**Mr Pezzullo:** I'm not familiar with what engagement—

**Senator McKIM:** The journalists were on the tarmac harassing people.

**Mr Pezzullo:** I was going to say that I'm not sure what arrangements they entered into. You have to get authority to get airside.

**Senator McKIM:** That's the point I'm making.

**Mr Pezzullo:** Indeed. I noticed that. I'm just wondering whether the commissioner has any facts to hand.

**Mr Outram:** We do from time to time publicise removals from Australia, from a deterrence, public interest point of view. The community needs to know when criminals are being removed from Australia. On that occasion, a fairly inexperienced Border Force officer gave permission for the journalist to interview—they weren't harassed and tortured. There was one of the removees who I think was—

**Senator McKIM:** Taunted, not tortured.

**Mr Outram:** We reminded the Border Force officer and the media officer who were present that that's not the way we want to do business and we don't want that to occur again.

**Senator McKIM:** Okay. Do you accept that that was not treating people with dignity?

**Mr Outram:** I would say it was a one-off incident where a fairly inexperienced officer gave permission for something to happen that I would prefer had not happened.

**Senator McKIM:** I understand that.

**Mr Outram:** You characterise it the way you would prefer to characterise it, Senator. That is the way I would characterise it.

**Senator KENEALLY:** As a point of order, it might assist the committee to know that the secretariat does have the media report that directly quotes the minister as describing deporting these people as Australia 'taking out its trash'. It might assist the committee in its inquiries for that report to be tabled before we break for dinner.

**Senator McKIM:** Thanks.

**CHAIR:** Thank you very much, Senator Keneally. Last question to you, please, Senator McKim.

**Senator McKIM:** I will table that report if it is available, or seek leave to table it.

**CHAIR:** Thank you. Do you have a final question?

**Senator McKIM:** Yes, it's to Commissioner Outram. I'm sorry, Commissioner, but because of the way the timing has rolled, we'll have to come back to this after the dinner break. You've said that it's not the way that—I can't remember the exact words you used—not the way you want to do these things, or not the way Border Force wants to do these things. Do you accept that in fact that camera crew—and I really hesitate to describe him as a journalist, because I think he's just gutter trash, but I'll call him a journalist because that's probably how he self-identifies—do you accept that giving that camera crew and that journalist access to the tarmac to attempt to interview deportees who are still in your care at that time was a mistake?

**Senator Stoker:** Senator McKim, I notice that you're calling people trash now, too.

**Senator McKIM:** No, I'm calling the journalist trash. My word I am.

**Senator Stoker:** Yes.

**Senator McKIM:** But unlike you, I'm standing by it. I'm not asking you, Senator. Point of order, Chair.

**Senator Stoker:** I'm happy to acknowledge that no human being is trash, but apparently you are a little more selective.

**Senator McKIM:** That journalist is trash—absolutely is trash. Thank you. The question remains to Commissioner Outram.

**CHAIR:** Senator McKim, I would ask you to maintain order in relation to your questions.

**Senator McKIM:** Do you accept that that was a mistake, Commissioner?

**Mr Outram:** The way I characterise it is this: we film many, many Border Force operations all the time. We have media officers present, and in this case a decision was made that I prefer wasn't made. It was an error at the time, but I wouldn't characterise it any differently to that.

**Senator McKIM:** You would not say that it was a mistake?

**CHAIR:** I now give the call to Senator Ciccone.

**Senator Stoker:** I beg your pardon, Senator Ciccone, for slowing you down there. Now that I have this report in front of me, it's abundantly clear that Minister Dutton's language is not directed to the character of the 15-year-old.

**Senator McKIM:** No. I didn't say it was.

**Senator Stoker:** It speaks more generally to the conduct of people who commit crimes that lead to their deportation.

**Senator McKIM:** That is a strawman argument.

**Senator Stoker:** A reference to one's behaviour is very different to a reference to a person's character, and I wouldn't want Australians who are listening in to be misled by what you've said and to understand it as anything other than a reference to inappropriate behaviour rather than a reflection on the 15-year-old involved.

**Senator McKIM:** I never—point of order, Chair.

**CHAIR:** No, there is not point of order.

**Senator McKIM:** You haven't heard my point of order.

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

**Senator McKIM:** How do you know? I haven't even made it.

**CHAIR:** There is no point of order. You don't have the call.

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

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

**Senator McKIM:** How do you know? I haven't made it.

**CHAIR:** What is your point of order?

**Senator McKIM:** Thank you; I appreciate that. My point of order is that I never said that comment in relation to the 15-year-old child.

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

**Senator McKIM:** Yes. It's a good point, though.

**CHAIR:** That's not a point of order, and it's not a good point. Senator Ciccone has indicated that he would like to ask questions after the dinner break. It is almost six o'clock.

**Mr Outram:** Can I very quickly let Senator Keneally know that Mr Downer sought an exemption on 19 December 2020, but in fact he falls within a category that is auto-exempt: those being ordinarily resident in a country other than Australia.

**Senator KENEALLY:** So Mr Downer is ordinarily resident in a country other than Australia—

**Mr Outram:** He is resident in the UK as I understand it.

**Senator KENEALLY:** and that is the basis—is isn't that interesting?

**Mr Outram:** There's a category of people who are automatically exempt in the biosecurity determination.

**Senator KENEALLY:** Thank you.

**CHAIR:** Thank you very much, Commissioner.

#### **Proceedings suspended from 18:00 to 19:03**

**CHAIR:** We are now going to continue with outcome 1. Mr Pezzullo, I understand that you had some further information in relation to some answers—is that correct?

**Mr Pezzullo:** We do. It relates to matters that Senator Keneally raised.

**CHAIR:** So maybe as a courtesy, if someone could let Senator Keneally know, we'll wait until she returns.

**Mr Pezzullo:** We're happy to hold.

**Senator WATT:** Good evening Mr Pezzullo. I'm aware that officials from Emergency Management Australia are not available for estimates because of some other pretty pressing priorities involving floods.

**Mr Pezzullo:** The relevant acting deputy secretary is here. She can handle questions.

**Senator WATT:** Thanks. I was sort of assuming that the level of detail that some of my questions go to may require other EMA personnel who are not available today.

**Mr Pezzullo:** Possibly.

**Senator WATT:** Yes. I'm not sure what this committee's decided otherwise in terms of a spillover, but it might be that we have to get EMA officials back for a greater level of detail.

**Mr Pezzullo:** I've heard no discussion of a spillover day.

**Senator WATT:** But would your deputy secretary like to join us? We'll see how we go.

**Mr Pezzullo:** Let's see how Ms Zakharoff goes. Ms Zakharoff is acting in the position of Deputy Secretary, Emergency Management and Coordination. The Director-General of EMA reports to her in that capacity.

**Senator WATT:** Thanks.

**Mr Pezzullo:** So why don't we see how we go?

**Senator WATT:** Sure.

**Mr Pezzullo:** Then, depending on the granular detail of your questions, we might either take them on notice or otherwise.

**Senator WATT:** Yes. Obviously, everyone is very closely following the floods that are affecting lots of New South Wales and part of Queensland and possibly elsewhere at the moment. I thank your officers for the work that they're no doubt doing around the clock on that. In a related field, I just want to get a bit of an update on progress with the Emergency Response Fund. This was a \$4 billion fund announced nearly two years ago in the 2019 budget. Can I just confirm that at this point in time no money has been released from that fund?

**Mr Pezzullo:** That is correct.



**Senator WATT:** Thank you. We've obviously been through two disaster seasons since that fund was announced, but no funds have been released at this point in time?

**Mr Pezzullo:** That is correct. The minister has accepted advice from the director-general that there is a case in relation to flood mitigation works which cannot otherwise be funded as the legislation requires. I think we've had this discussion, because I've given evidence to that effect.

**Senator WATT:** Yes.

**Mr Pezzullo:** Senator, you'll have to forgive me. Either since the time we last met or perhaps on the eve of that time, Minister Littleproud made a decision based on advice that he should receive grant applications through the department, and those are currently being worked through.

**Senator WATT:** Thanks. That's for the flood mitigation program?

**Ms Zakharoff:** Yes.

**Mr Pezzullo:** It is, to the tune of \$50 million.

**Senator WATT:** I was actually thinking that the overall size of this fund has probably increased over the last two years, given it will have been invested and no expenditure has been made from it. Do you know what the current balance of that fund is?

**Mr Pezzullo:** We'd have to check that. The guardians, I think from memory, are the Future Fund.

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

**Mr Pezzullo:** Do you have a current sense of both the stock of the fund and how much has been earned in the last couple of years?

**Ms Zakharoff:** No, I don't, but I'm happy to take that on notice and work with our colleagues in Treasury.

**Senator WATT:** Thank you. As to the flood mitigation program, the \$50 million one, can you just remind me: is that a one-off, or is that expected to be an ongoing program?

**Ms Zakharoff:** It's a one-off at this stage. The program guidelines that we issued in December related to funding for this financial year.

**Senator WATT:** Thanks. There is no proposal at this stage to spend the \$150 million per annum that is allocated under that fund for disaster recovery, is there?

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

**Senator WATT:** It might be a bit too soon, but has there been any consideration of using any of that funding to pay for the inevitable repairs we're going to see needed after the current floods?

**Ms Zakharoff:** It's certainly way too soon. I'm not aware of any particular conversations other than, of course, that we are engaged with New South Wales in relation to the immediate response and, of course, already turning our minds to recovery and working on supporting New South Wales in that.

**Senator WATT:** Given the number of, natural disasters we've seen over the last two disaster seasons—whether we're talking about the Black Summer bushfires, these floods we're seeing now or other cyclones, floods and fires that there have obviously been over those two years as well—do you think it was a mistake, in retrospect, to not spend some of those mitigation funds that have been available for the last two years?

**Mr Pezzullo:** I'm not sure if you're asking me to express a judgement or an opinion. The law that this parliament passed is clear. It requires an assessment to be arrived at by the Director-General of Emergency Management. I think, from memory, the position is actually identified in legislation. In the absence of any other alternative source of funding—noting that the Australian government has spent considerable amounts of money in terms of drought mitigation, flood mitigation, the bushfire recovery authority that Mr Colvin heads, the authority that Mr Stone heads that pertains to flood and drought mitigation as well as the various recovery and mitigation funds that are released in the normal course—the officer who occupies the position of director-general has to make a judgement, under the law that this parliament has passed, that there are no other suitable available funds for various purposes.

**Senator WATT:** Just because we're short on time—you've given this explanation before—doesn't that beg the question: what other funds were available to be used that meant we didn't need to use these funds for mitigating the very disasters we're now seeing?

**Mr Pezzullo:** Well, it is an emergency response fund, so it's—

**Senator WATT:** And mitigation.

**Mr Pezzullo:** And mitigation, indeed, Senator. You quite rightly identify that. In terms of the available funds that are not limited to the sources that I've identified but also intrinsic to regional infrastructure programs, and obviously being prudent with public money, the judgement arrived at by the officer, which I support—it's a recommendation put through me, but the law requires that officer to come to a judgement—is that, in terms of the billions of dollars that are otherwise available, they should be prioritised and expended first before additional funds are drawn.

**Senator WATT:** But this is the point, isn't it? There aren't billions of dollars made available for mitigation. There are for response and recovery. When we have a disaster come through, we spend billions of dollars repairing things, but there aren't billions of dollars available for mitigation. That's what's unique about this fund.

**Mr Pezzullo:** I understand the point, but, when you recover and reconstruct—and we engage with states and territories, with local government authorities—you build back better and you do seek to use, so it's a cycle—

**Senator WATT:** Correct, but after the event.

**Mr Pezzullo:** Yes.

**Senator WATT:** And that's the beauty of these mitigation funds: you can use them before the event.

**Mr Pezzullo:** Indeed, and, as you are building back better and working through areas that have been impacted by storm, flood, fire, you are mitigating future risk—

**Senator WATT:** After a disaster has occurred.

**Mr Pezzullo:** In those cases, yes. If the proposition is that, with the need to engage in climate related risk adaptation and mitigation, the resilience that the nation will need to embed in its infrastructure is such that no other predictive or proactive—not quite the adjective that I'm seeking but that will have to do for the moment; it's getting late in the day—programs are available, then I'm sure this or any future director-general would turn their mind to that forward-looking mitigation approach. I've got no doubt about that at all.

**Senator WATT:** With the flood mitigation program that was announced a couple of months ago, applications have now closed. When can we expect announcements to be made from that fund?

**Ms Zakharoff:** We are currently evaluating the proposals that were put forward to us. We anticipate being able to provide some advice, going through the Director-General EMA, up to the minister for emergency management by the end of this month.

**Senator WATT:** The advice will be provided?

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

**Senator WATT:** How many applications have you received?

**Ms Zakharoff:** We've received 74 applications.

**Senator WATT:** Do you know the total value that's being sought?

**Ms Zakharoff:** My recollection—I'll have to confirm this—is that it's in the vicinity of \$250 million.

**Senator WATT:** So five times what's available, which again demonstrates the unmet need for these sorts of projects. You might have seen that there has been some press coverage of comments of mayors about the failure to use this fund. To take one example, the Mayor of Mackay, Mr Greg Williamson, said that Mackay's mitigation projects 'could have been completed already if we'd been given the money soon after it passed into legislation'. Again, do you not accept that the failure to use those funds which have been available for the last two years has left us ill prepared for the disasters that we've continued to see over the two years?

**Mr Pezzullo:** No. Well, it's verging on asking me to express an opinion, I suppose, on the efficacy of not just this program but the other programs. They all act in connection. The government has funded across infrastructure and across, as you say, response programs a very considerable amount of money and the Director-General is required by law to look at all of those interdependent funding sources and streams. If the parliament saw fit to perhaps release that brake on the Director-General's requirement, it might well be the case, to your point, that you could reach a position of saying, 'Here is the likely profile of future natural disaster risks. Here is the optimal, if you like, funding but also the programmatic profile to meet that risk mitigation requirement,' and then you could judge whether there was a gap between the two. As it stands, and I'm not speaking at all on the merits of the matter that's been raised by—did you say the mayor of Mackay?

**Senator WATT:** Yes.

**Mr Pezzullo:** I have no idea, and, sight unseen, I'd want to take advice on whether other regional infrastructure programs had been applied for and whether state and/or local government funds were otherwise

available. You've really got to go the particulars of each and every case in each and every locality before you turn your mind to whether this fund should be used.

**CHAIR:** Senator, you're over time.

**Senator WATT:** Could I just ask one question in relation to the—

**CHAIR:** Senator Watt, I'm sorry—every senator wants to ask questions.

**Senator WATT:** We may have to reconvene after all.

**CHAIR:** Senator Roberts has the call.

**Senator ROBERTS:** Thank you, Chair. Thank you for being here today. My questions are about the NDRRA and DRFA funds issues. Firstly, what are the intentions of the department to fully investigate the fraudulent misuse of the—

**Mr Pezzullo:** Sorry, Senator—which program?

**Senator ROBERTS:** National disaster relief and rejuvenation—are you aware of it—and its replacement, the DRFA. I'm not up to the acronyms yet. Firstly, what are the intentions of the department to fully investigate the fraudulent misuse of disaster relief moneys, which has now been made public in the *Brisbane Times*? What has been done?

**CHAIR:** Senator Roberts, could I ask that, before you direct that question to witnesses, you table a copy of that report, please?

**Senator ROBERTS:** It's a newspaper article from last Friday.

**CHAIR:** Do you have a copy of it?

**Senator ROBERTS:** I can get one.

**CHAIR:** We will need to circulate that report before the officials answer your question. Can you move on to another question in the meantime?

**Senator ROBERTS:** Certainly.

**CHAIR:** Perhaps you could arrange to obtain a copy of that newspaper report and distribute it for senators and witnesses, please.

**Senator ROBERTS:** Secondly, what real checking is done by this agency at ground level to see how Commonwealth disaster funds are used and to check that the funds have been put to correct use?

**Mr Pezzullo:** Ms Zakharoff, would you care to answer that in the general without speaking to the claims made in a report in the *Brisbane Times*?

**Senator ROBERTS:** I note, Mr Pezzullo, that we have seen evidence of corruption in some local government areas in Queensland and this article backs up what we've seen.

**Mr Pezzullo:** When you say 'we've seen', is that you and your office or some investigative authority? I'm just trying to anchor the claims and the question.

**Senator ROBERTS:** We've seen evidence from constituents in Queensland and in many areas of Queensland.

**Mr Pezzullo:** Understood.

**Senator ROBERTS:** I hasten to add that it's a—

**CHAIR:** Sorry, Senator Roberts—just for clarity, when you say 'we', are you talking about yourself or—

**Senator ROBERTS:** Myself and my office.

**CHAIR:** Yourself and a member of your staff?

**Senator ROBERTS:** Correct.

**CHAIR:** Thank you.

**Mr Pezzullo:** We might just answer the question in general terms, without presuming any materiality of corruption—in terms of the due diligence that's applied to expenditure of those funds.

**Senator ROBERTS:** That's all I'm after at the moment.

**Ms Zakharoff:** In broad terms, the arrangement is that Emergency Management Australia, through Home Affairs, doesn't directly investigate, but we have an assurance program with the relevant state and territory for accuracy and compliance within the principles, conditions and eligibility rules of the program. We work with them to validate invoices and claims.

**Senator ROBERTS:** So, if there was a problem with the state agency, that wouldn't be seen?

**Ms Zakharoff:** Not directly—no—unless there was another claim made.

**Senator ROBERTS:** Thank you. I appreciate your evidence. What has been done in response to the Australian National Audit Office's report and the Productivity Commission's separate damning reports in 2015 that identified false claims and fundamental failures of oversight and excessive expenditures on disaster activities eligible for reimbursement?

**CHAIR:** Senator Roberts, are you able to provide a reference to identify which part of the report you're referring to for the benefit of the witnesses?

**Senator ROBERTS:** Not here at the moment, but I can happily get that to them.

**CHAIR:** I just think it's a very difficult question to address without having that information to hand. Perhaps we could come back to it.

**Senator ROBERTS:** The next one is a specific claim, which I doubt you'll be able to answer given what we've just heard. What is being done by this agency to overview the financial debacle exposed in the former—and I emphasise 'former'—Livingstone Shire Council, where the \$15.8 million NDRRA funded Statue Bay project is still in financial dispute with unpaid contractors?

**Ms Zakharoff:** I have no information in relation to that particular example, but I'm happy to try and find out more information on notice.

**Senator ROBERTS:** Perhaps my office can get in touch with your department.

**Ms Zakharoff:** Certainly.

**Senator ROBERTS:** Is a 40 per cent profit margin to some councils—

**CHAIR:** Sorry, just to clarify, Senator Roberts: when the department take a question on notice, they will provide it in accordance with the committee's procedures. It won't require any further action by your office.

**Senator ROBERTS:** Thank you, Chair. Is a 40 per cent profit margin to some councils—and I emphasise 'some councils'—and project managers and contractors for NDRRA projects considered reasonable?

**Ms Zakharoff:** Senator, I apologise. I've got no basis on which to respond to that question. But again, in the context of taking the general inquiry on notice, I can determine what's appropriate.

**Senator ROBERTS:** Thank you. What happened to the \$1.2 million paid to the former—and I emphasise 'former'—Charters Towers Regional Council for repairs to a road that were never done? As we understand, this has happened now several times: repairs have been claimed but never done.

**CHAIR:** Senator Roberts, I'm respectfully going to pull you up there. Are you able to provide the witnesses with any information at all in relation to the claim that you're making?

**Senator ROBERTS:** Yes, I have discussed that.

**CHAIR:** Do you have any report—

**Senator ROBERTS:** Not with me.

**CHAIR:** or any other material that the witnesses can consider prior to answering your question?

**Senator ROBERTS:** No.

**CHAIR:** Perhaps that might be one that you can put on notice with the accompanying material.

**Senator ROBERTS:** Sure.

**CHAIR:** Thank you.

**Senator ROBERTS:** When this roting has been extensive in just a few councils across Queensland, and the projects involved in these frauds have cost taxpayers millions of dollars more than they should, why have so few people been charged?

**Mr Pezzullo:** Senator, the line of questioning presumes things which the officer has indicated she needs to take on notice, and I support her in that. These programs—whether under the former acronym that you used in your very first question, which has been changed to the Disaster Recovery Funding Arrangements—

**Senator ROBERTS:** DRFA.

**Mr Pezzullo:** The programs are typically—and I'll have to check this in the case of the state of Queensland—co-managed with the relevant state reconstruction authority. It's a federal funding source; there's no question about that. I'm not resiling from that, Senator. But, in terms of the deployment of the funds, the certification of works and the checking of invoicing, we would need to work our way through the governance arrangements that have been established state by state. In this case, I presume it would be the QRA, the Queensland Reconstruction

Authority. I'll need to satisfy myself of what governance arrangements have been put in place, where whistleblowers go to, to whom they report and so on and so forth. It certainly is a federal funding program but co-delivered, typically—and I'll check my facts before I'm definitive with you—with the relevant state instrumentality.

**Senator ROBERTS:** That's my understanding too.

**Mr Pezzullo:** We don't engage with the road excavator and the road layer and the person who puts the bitumen down.

**Senator ROBERTS:** No, I understand that.

**Mr Pezzullo:** That would be a huge overhead and a waste of resources—

**Senator ROBERTS:** I accept that.

**Mr Pezzullo:** which you and I are both concerned about. So we fund the programs. I think we should come back comprehensively on notice. The questions all seem to be related to Queensland, your home state.

**Senator ROBERTS:** Correct.

**Mr Pezzullo:** You're a senator for Queensland. Why don't we come back on notice in general terms? Then, to the extent that we can add anything on the record, we'll go to the specific claims.

**Senator ROBERTS:** I'm asking questions on behalf of constituents.

**Mr Pezzullo:** Understood.

**Senator ROBERTS:** I'm also asking questions on behalf of myself as someone responsible for the expenditure of federal money, or the oversight of it.

**Mr Pezzullo:** Indeed.

**Senator ROBERTS:** I'm also asking in response to the Australian National Audit Office's report and the Productivity Commission's separate reports in 2015.

**Mr Pezzullo:** We'll give you a comprehensive answer accordingly.

**Senator ROBERTS:** I would like to know: if any money has been stolen, has it been reimbursed, and has this agency provided good governance for the billions of dollars of disaster relief money that's gone out since, I think, 2011?

**Mr Pezzullo:** We will reacquaint ourselves, or acquaint ourselves in the first instance, with the relevant facts, and we'll come back to you on notice.

**Senator ROBERTS:** Thank you. I note—you're probably aware of this—that 90 per cent of the disaster relief money goes to the state that I represent.

**Mr Pezzullo:** It's very heavily weighted towards Queensland, and that reflects the field reality.

**Senator ROBERTS:** The reality is that we need to keep this money going.

**CHAIR:** Senator Roberts, I'm sorry. I'm going to have to end your time and also just remind senators that the job of senators is to ask questions and the witnesses will respond.

**Senator ROBERTS:** Yes. I need to make it clear that this is not just a Queensland issue. It's a federal issue because, if Queensland drains the fund, there's less for other states.

**CHAIR:** Yes. Thank you very much, Senator Roberts. We'll now move to Senator McKim.

**Senator McKIM:** Commissioner Outram, before dinner we were discussing the Channel 9 Brisbane story, and in regard to that story you sheeted home responsibility to someone who I think you described as a junior, inexperienced media officer. Is that right?

**Mr Outram:** There were a media officer and an inexperienced Border Force officer there. As I said, I would prefer it to have been done differently and not in the way it was done. I don't have any in-principle objection to people being interviewed, but I would rather it were done differently.

**Senator McKIM:** Okay. There are a few issues there. Firstly, did you say it was an ABF media officer?

**Mr Outram:** I will take on notice who was there, but my understanding is that there was a media officer from the department and a Border Force officer.

**Senator McKIM:** So it was a Home Affairs media officer?

**Mr Outram:** Well, the media team provides support for Border Force and the Department of Home Affairs.

**Senator McKIM:** Understood. But they're not in ABF; they are actually in the department—is that right?

**Mr Outram:** I'll just say it was a media officer, and I'll come back to you on notice with exactly what team they were from et cetera.

**Senator McKIM:** Thanks. Did you say 'an inexperienced ABF officer'?

**Mr Outram:** Inexperienced in relation to handling media matters, I would suggest. But again I'll come back to you on notice as to exactly what level the officer was.

**Senator McKIM:** The issue here is that the journalist and his crew were actually planeside. So you're not suggesting that a media officer—

**Mr Outram:** Well, we have the authority—

**Senator McKIM:** Let me finish my questions, please, Commissioner. Are you suggesting that a media officer has the authority to clear a television crew planeside onto the tarmac of an international airport? Is that what you're suggesting?

**Mr Outram:** Border Force officers have the authority to do that, and a Border Force officer was present.

**Senator McKIM:** What seniority in rank does a Border Force officer need to attain before they have authority to clear people airside onto the tarmac at an international airport?

**Mr Outram:** I'll come back to you on notice, but I think most Border Force officer who work at airports are authorised to do that.

**Senator McKIM:** Most Border Force officers?

**Mr Outram:** I'll come back to you on notice with exactly who—

**Senator McKIM:** Okay. Considering that I'm across this, I'm just going to put a series of questions to you and ask you either to respond now or to take them on notice. What rank was the Border Force officer?

**Mr Outram:** I'll take that on notice.

**Senator McKIM:** Thank you. Was the Border Force officer who was interviewed and named on the Channel 9 Brisbane show the responsible officer?

**Mr Outram:** I'll take that on notice.

**Senator McKIM:** Thank you. Who gave the journalist the names of the people which were published in that story?

**Mr Outram:** I'm not aware of that. I'll take that on notice.

**Senator McKIM:** Is it acceptable that the names of people, and images of them that were not de-identified, were published in this television story?

**Mr Outram:** Well, I'm not going to make commentary, Senator.

**Senator McKIM:** Well, in fact, that's the question I'm asking.

**Mr Outram:** The filming of the removal of detainees is perfectly legitimate. That's a public interest issue. It also provides a deterrent, and I absolutely support using our media teams to publicise the work that we do that keeps our country safe. So that's our point first.

Secondly, in relation to them being airside, that's not unusual. We take journalist teams with us on search warrants, and we do all those sorts of things. So that would have been done properly, but I'll come back to you on notice in relation to the process that was invoked there.

In relation to how the journalist got names, I'm not aware of that, so I'll have to take that on notice. Whether or not I can answer that question I don't know. As to whether it was Border Force who provided names or not, I'll take that on notice.

**Senator McKIM:** The names were published, Commissioner, as part of this television news story.

**CHAIR:** Senator McKim, I just remind you—

**Mr Outram:** Again, Senator I'll come back to you on notice with exactly what we'll provide.

**Senator McKIM:** Thank you. I appreciate you taking that on notice, but my question to you wasn't 'how did the names get provided' in the first instance. That's my follow-up question, and you've agreed to take that on notice. My first question was: do you think it acceptable that names were provided and that images of these people that were not de-identified were published in the Channel 9 television news story. Do you think that's acceptable?

**Mr Outram:** It's not really for me to judge—

**Senator McKIM:** Well, it is.

**Mr Outram:** the acceptability or otherwise of publishing names. My situation is—

**Senator McKenzie:** Point of order, Chair. It's not Senator McKim's job to ask officials their opinion. That's a matter for government policy, surely.

**Senator McKIM:** Alright. I'll phrase it another way.

**CHAIR:** Yes, that is correct. Thank you very much, Senator McKenzie. If you could please rephrase the question, Senator McKim—

**Senator McKIM:** I will.

**CHAIR:** and please refrain from asking officials about matters of opinion.

**Senator McKIM:** Do you agree, Commissioner, that the privacy of these individuals was compromised? And I refer you to Secretary Pezzullo's comments from less than two hours ago, when he said the department absolutely respects people's privacy; the department doesn't want to see people's privacy breached. We regularly hear that as a reason for questions not to be answered at these committees. In that context, do you accept that the journalist publishing the names of these people and images of them that were not de-identified compromises those people's privacy?

**Mr Outram:** I don't know how the journalist got the names. I've taken that on notice.

**Senator McKIM:** Well, how else were they going to get the names except from the ABF?

**CHAIR:** Senator McKim.

**Mr Outram:** Again, I'm not going to speculate on that.

**CHAIR:** Senator McKim, the commissioner has indicated he will take that question on notice. Do you have another question?

**Senator McKIM:** Yes, I've got plenty on this.

**CHAIR:** You've got about four minutes.

**Senator McKIM:** We can always come back to it, Chair. So you've taken on notice whether the journalist was provided with a list of the passengers on that plane.

**Mr Outram:** I've taken on notice what information the ABF provided to the journalist.

**Senator McKIM:** And who provided it to them?

**Mr Outram:** Yes, indeed—the means by which it was released.

**Senator McKIM:** Thank you. Were the people asked if they were willing to be identified in this program?

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

**Senator McKIM:** Of course you will! Were the people who were harassed and taunted by the journalist asked whether they were prepared to be interviewed by this journalist?

**Mr Outram:** I'll ignore the first part of your statement. The question part of your statement I'll take on notice.

**Senator McKIM:** Alright. Have you seen the program that I'm referring to, Commissioner?

**Mr Outram:** No. I've heard about it and I've read reports about it.

**Senator McKIM:** Could I please ask you to watch it before you come back on notice?

**CHAIR:** Senator McKim, I'm not sure that that question is in order. If you would like to provide—

**Senator McKIM:** It's just a simple request.

**CHAIR:** Senator McKim! And I would ask, in fact, given the focus on this television program, if you could please agree to provide a transcript of the television news report—

**Senator McKIM:** I'll do that as soon as I've got it. I've requested it.

**CHAIR:** Thank you very much, because that's obviously essential. But it's out of—

**Senator McKIM:** I didn't think—

**CHAIR:** Senator McKim, it's out of order to ask the commissioner to watch a television program at some point.

**Senator McKIM:** I didn't think there was anything particularly controversial about it. But, anyway, let's move on. So can I come to the Christmas Island detention centre with a camera crew to interview the family from Biloela if they give their permission, Commissioner Outram?

**Mr Outram:** I'm sorry, I'm not aware of the incident you're referring to.

**Senator McKIM:** The family from Biloela that you currently have detained on Christmas Island.

**Mr Outram:** Yes, I'm aware of the family—

**Senator McKIM:** Can I come with a television crew and interview them?

**Mr Outram:** Which event are you referring to now, Senator?

**Senator McKIM:** I've got a desire to come to the Christmas Island detention centre with a film crew and interview that family. If they give me permission, will you organise it?

**Mr Outram:** There's a means by which you can seek permission to do that, and we'll give you, obviously, our decision in writing.

**Senator McKIM:** I think that we all know what the response to that would be! In that story, as I said earlier, Minister Dutton referred to 'taking the trash out'. Now, I've asked Mr Pezzullo about this, but I now want to ask you about it, Commissioner. Does the Australian Border Force regard people who have their visas cancelled under section 501 and who are deported from Australia as trash?

**Mr Outram:** Senator, we're an operational agency. We—

**CHAIR:** Senator McKim.

**Senator McKIM:** Are you just running interference for him, are you?

**Senator KENEALLY:** Point of order, Chair. The witness was answering.

**CHAIR:** Excuse me. I am ruling on—

**Senator McKENZIE:** Please respect the chair.

**Senator McKIM:** I asked if that's how they referred to them.

*Unidentified speaker interjecting—*

**Senator McKIM:** No, it's not. It's a fact.

**CHAIR:** Excuse me, Senator McKim.

**Unidentified speaker:** It's an opinion.

**CHAIR:** Senator McKim. If I could just please ask all senators to be quiet while I make the point again that all witnesses must be asked questions with respect and courtesy. That's a fundamental obligation of senators.

**Senator McKIM:** As I did.

**CHAIR:** Senator McKim, could you please rephrase that question so that you are asking it in a way which is respectful of the commissioner?

**Senator McKIM:** I believe I did. Just for the avoidance of doubt, I will ask the question again. Given that Minister Dutton, in this program, referred to the practice of cancelling visas under section 501 of the act and then deporting people as, and I quote directly from him, 'taking out the trash', is that a reflection of the way Australian Border Force regards these people?

**CHAIR:** Senator McKim, you are asking for an opinion.

**Senator McKIM:** The commissioner can just say no and we can move on. I would expect that he would.

**CHAIR:** You are asking for an opinion from the commissioner.

**Senator McKENZIE:** That's right.

**Senator McKIM:** That's not an opinion.

**CHAIR:** Yes, it is.

**Senator McKENZIE:** You're asking him to reflect. That's actually a direct quote, what you just asked.

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

**CHAIR:** No, excuse me, Senator McKim. There is no point of order.

**Senator McKIM:** It's not an opinion.

**CHAIR:** You are asking for the commissioner to give his opinion—

**Senator McKIM:** No, I'm not.

**Senator McKENZIE:** You asked him to reflect.

**CHAIR:** on the so-called statement made by the minister. That is out of order. You are now out of time. In fact, you've got 30 seconds, Senator McKim, so could you just ask your last question?



**Senator McKIM:** Commissioner, just for the avoidance of doubt, I'm not asking you for your opinion. I am asking you if the organisation that you run—

**CHAIR:** Senator McKim, that question is out of order. Next question please, or you will no longer have the call.

**Senator McKIM:** You don't know what question I'm going to ask.

**CHAIR:** Do you have another question?

**Senator McKIM:** I was trying to ask it.

**Senator Stoker:** Chair, it might be something of a circuit-breaker if I might be able to put this on the record. Senator McKim has quoted this piece quite a lot, and the reference to 'the trash' is a reference to the behaviour of people who come to Australia and who decide to break its laws. The government is quite proud of its record—

**Senator McKIM:** No, no. It's really not.

**Senator Stoker:** of deporting visa holders who commit serious crimes. This is about keeping Australians safe. If you come to this country and you break its laws when you are a guest in this country, you can expect to be deported.

**Senator THORPE:** Point of order!

**Senator Stoker:** We have strengthened the character test for a reason—

**Senator THORPE:** Does that include the invaders?

**CHAIR:** Excuse me, Senator Thorpe. Could you please allow the minister to finish answering the question.

**Senator THORPE:** I called a point of order.

**CHAIR:** There is no point of order. You have the call, Minister.

**Senator Stoker:** So, for clarity, we in 2014 strengthened the character test in relation to the Migration Act—

**Senator McKIM:** Point of order, Chair!

**Senator Stoker:** and we have cancelled more than 6,300 visas on this basis.

**Senator McKIM:** Point of order, Chair. Chair, point of order, please.

**CHAIR:** Please allow—

**Senator McKIM:** No, point of order, Chair.

**CHAIR:** Could you please, first of all, state your point of order, Senator McKim?

**Senator McKIM:** Thank you. The point of order is relevance. I have not asked—

**CHAIR:** No, there is no point of order. The answer that the minister is giving is relevant. Minister, please finish your answer.

**Senator McKIM:** It's not relevant.

**Senator Stoker:** Senator McKim has obviously got concerns about the way that the policy of deporting people under section 501 operates, but the government is very—

**Senator McKIM:** I've got concerns about the minister calling them 'trash'.

**Senator Stoker:** Respectfully, Senator McKim, you're calling lots of other people 'trash' in the course of this, when the government has never called any particular person 'trash'.

**Senator McKIM:** In fact, the minister did call a whole group of people 'trash'.

**Senator Stoker:** It has referred to particular behaviours.

**CHAIR:** Assistant Minister, have you completed your answer?

**Senator Stoker:** I have almost completed my answer, if that's okay. There have been 1,076 cancellations of visas for people who have been convicted and served sentences for assault: 444 for armed robbery, 207 for domestic violence related offences, and 617 for child sex and child sexual exploitation offences.

**Senator McKENZIE:** Right—so that's who you're worried about. That's actually who you're here to ask Senate estimates questions on behalf of.

**Senator Stoker:** And that kind of behaviour is regarded by the government as unacceptable behaviour and—

**Senator McKENZIE:** It's outrageous.

**Senator Stoker:** it is not to be tolerated, and we stand by that every day of the week.

**Senator THORPE:** What about your ancestors over there—

**Senator McKENZIE:** My ancestors? What are they responsible for?

**CHAIR:** Thank you very much, Assistant Minister. I will now—order!

**Senator THORPE:** Murder, rape—

**CHAIR:** Order!

**Senator McKENZIE:** Are you calling my ancestors murderers and rapists?

**CHAIR:** Order!

**Senator McKENZIE:** Is that what you're doing right now?

**CHAIR:** Order! We're going to suspend.

**Proceedings suspended from 19:38 to 19:43**

**CHAIR:** We will now resume the hearing, and I give the call to Senator McKenzie.

**Senator McKENZIE:** Thank you, Chair. Mr Pezzullo, I would like to go to some questions I asked you at our last Senate estimates, when you helpfully suggested you personally would take my questions on notice, you personally would look into what had happened on COVID related firearm matters and you'd come back on notice through the Department of Home Affairs. And your department helpfully came back to say that everything from national cabinet can't be spoken about in terms of their proceedings, decisions or documentations and that I should go to PM&C, who've also helpfully said that they can't provide me the details of the questions I asked at last Senate estimates. I've written to the Victorian minister, who has replied; I've written to the Western Australian minister, who has helpfully replied; and I've written to the minister from Queensland because, as you may recall, it was Labor states—

**Mr Pezzullo:** I'm just trying to recall what I was being specifically helpful about.

**Senator McKENZIE:** I know you've had a lot on your plate. This is very small fry in terms of what you deal with day in, day out.

**Mr Pezzullo:** No, I don't want to diminish any issue; I just—

**Senator McKENZIE:** But there are over a million Australians that care about this stuff. They are the law-abiding firearm owners of this country.

**Mr Pezzullo:** I'm just trying to recall the line of questioning.

**Senator McKENZIE:** There was a move by Labor states, under COVID, to restrict trading in ammunition and to prevent firearm small businesses, mostly in small country towns, from dealing. I want to understand why this small-business cohort was treated differently to other small-business cohorts. As you would appreciate, there's a lot of rumour and innuendo about why various jurisdictions made the decisions they did. I sought some clarification both through PM&C and through your department, as the department overseeing the jurisdictions in this particular policy area. I am still keen to understand the research, the data, the evidence and the reasoning behind the national cabinet making this decision that, somehow, jurisdictions are able to single out that particular small-business cohort for special treatment under COVID rules.

**Mr Pezzullo:** I will ask Ms Patterson to join me at the table. Thank you so much for filling in so many pieces of my memory that had failed me!

**Senator McKENZIE:** You're a busy man.

**Mr Pezzullo:** There's a decision of the national cabinet that pertains to this.

**Senator McKENZIE:** This is what I'm trying to understand. There was a police minister—

**Mr Pezzullo:** We responded on notice to the effect that we couldn't say—

**Senator McKENZIE:** So—

**CHAIR:** Sorry, Senator McKenzie, just allow Mr Pezzullo to answer the question.

**Mr Pezzullo:** I'm just trying to understand. Did we come back on notice saying we couldn't answer the question because of the national cabinet?

**Senator McKENZIE:** And that further questions regarding national cabinet proceedings, decisions or documentation should be directed to PM&C.

**Mr Pezzullo:** To the extent that the matters reflect—

**Senator McKENZIE:** 'All proceedings and documentation of the national cabinet remain strictly confidential'.

**Mr Pezzullo:** Yes. I'm on grid now. As you know, the national cabinet, by way of collective decision of the nine sovereign governments—you've heard the Prime Minister, Mr Gaetjens and others speak about this—has decided to encase its deliberations, if that's the right verb, within a cabinet process that is administered by the Department of the Prime Minister and Cabinet—hence that referral to the other department. As to the public aspects of the announced decision, Ms Patterson might be able to help you in terms of what's been announced. If you're asking about deliberations—

**Senator McKENZIE:** My understanding was that nothing was announced by our Prime Minister. A state minister said the decision for them to restrict the business operations of firearm stores and ammunition stores was a decision of the national cabinet. All I've been trying to seek is: was it a decision, because it wasn't in the communicate specifically; and, if it was a decision, what research was it based on? I think that is a fair question, given we had one cohort of small businesses being told: 'Sorry, you guys don't get to operate in your normal manner. Everyone else does.'

**Mr Pezzullo:** I'm on grid. To the extent there's a communicated decision, perhaps we can assist in relation to the work we do with jurisdictions on firearms policy. To the extent there's an uncommunicated decision, I'm not sure how we can help. Ms Patterson, do you have a view on this? Can you assist?

**Ms Patterson:** The Commonwealth's role in relation to firearms is in relation to import licences in relation to firearms. I would need to take on notice whether our department provided any input.

**Senator McKENZIE:** That's what I requested last time: what advice and information your department provided the national cabinet and the Prime Minister, who sits in that cabinet on our behalf, around these matters—not a decision per se but what sorts of discussions were held and what information was provided. I'm guessing that, after being very helpful face to face at last estimates, you went home and had a look at the handbook, 14th edition, and that all proceedings and documentation of the national cabinet remain strictly confidential and you can't help me in any way.

**Mr Pezzullo:** That would apply to any committee of the cabinet and the cabinet itself. For all intents and purposes the national cabinet is an extension of the Australian cabinet process. It's something that I'd ultimately need to consult with ministers on in any event, about what advice we have provided. What I'm slightly stumped about is: I'm not sure I'm familiar with any communicated or uncommunicated decisions.

**Senator McKENZIE:** You know when the national cabinet meets?

**Mr Pezzullo:** Yes.

**Senator McKENZIE:** And they had their communique.

**Mr Pezzullo:** I'm very well aware of that.

**Senator McKENZIE:** Absolutely—their little announcement. We had an announcement that didn't talk about a specific measure for firearm small businesses. But, subsequent to that, Queensland, WA and Victoria—three Labor states—took this as an opportunity, it looks like, to restrict firearm and ammunition activity under the guise of COVID. The Victorian minister, at the time, as I mentioned—

**CHAIR:** Senator McKenzie, could you clarify—

**Senator McKENZIE:** I feel like I'm repeating myself from last estimates.

**CHAIR:** the question you are putting to the witnesses, please?

**Senator McKENZIE:** What information did Home Affairs provide to the national cabinet to result in the Victorian minister, specifically, and three other Labor jurisdictions making a similar decision, although not laying it at the feet of a decision of the national cabinet? Lisa Neville came out and said that this was a decision of the national cabinet.

**Mr Pezzullo:** I'll have to take that on notice. I don't want to dispute the Victorian minister's characterisation.

**Senator McKENZIE:** You can't; it's on the public record.

**Mr Pezzullo:** Her characterisation is on the public record, it would seem, given the correspondence in front of you. I'm just not sure it accords with the decisions of the national cabinet that I'm familiar with.

**CHAIR:** Another minute, Senator McKenzie.

**Senator McKENZIE:** No, that's okay. I'm as frustrated as an opposition senator right now!

**CHAIR:** Sorry, Mr Pezzullo, did you have something further to add?

**Mr Pezzullo:** I don't want the senator to go away frustrated.

**Senator McKENZIE:** I am!

**Mr Pezzullo:** I will helpfully try to establish what I can further say on notice. If there's no decision of the national cabinet, I will resolve as best as I can—

**Senator McKENZIE:** What advice, what research, determined these other jurisdictions to make the decisions they did out of a national cabinet decision? The rumour is that that is what was provided. There was a whole discussion on firearm owners and firearm stores, there was some sort of data presented that suggested there was a risk, and, therefore, Labor states took certain decisions. That is the actual rumour out there. I'm seeking to dispel that—very unsuccessfully, it would seem.

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

**Senator CICCONE:** I've got a few quick questions with respect to the contract between the department and Canstruct International. In schedule 7 of the contract there's a provision for welfare services on Nauru. There's a template for a performance guarantee. Has any individual or entity entered into a performance guarantee to guarantee Canstruct's performance under the contract? If so, who?

**Mr Pezzullo:** Mr Ablong will attempt to assist, as the lead for our offshore regional processing contract arrangements.

**Mr Ablong:** The answer is no.

**Senator CICCONE:** Senator Watt recently asked the department on notice how much money the department had paid to Canstruct each month since November 2017. I think the department was helpful in providing a response and information. The question number was 2997. Can you just clarify whether the amounts that were provided actually include GST or exclude GST?

**Mr Ablong:** I may have to take that question on notice and come back to you.

**Senator CICCONE:** Thank you. I just want to also turn quickly to the Safer Communities Fund. I want to run through some processes regarding the sign-off on these round 3 safer community grants. When did the department commence shortlisting the applications?

**Mr Pezzullo:** Ms Patterson has the relevant timeline.

**Ms Patterson:** The shortlisting is actually done by the Business Grants Hub, which is in the department of industry. I can certainly let you know when the round opened and closed, and then at that point the applications are considered by the Business Grants Hub, which is run by the department of industry.

**Senator CICCONE:** Do you mean the commencement of the shortlisting?

**Ms Patterson:** Yes. The round closed on 25 September and after that point the shortlisting—

**Mr Pezzullo:** Sorry, you should be clear about the calendar year.

**Ms Patterson:** 2018.

**Senator CICCONE:** You'll provide an answer as to when the department commenced shortlisting the applications.

**Ms Patterson:** We would need to seek that advice.

**Senator CICCONE:** You don't have that with you today.

**Ms Patterson:** No, because that was undertaken by a separate department. We'll seek from them the date they actually commenced the shortlisting.

**Senator CICCONE:** Could you also seek some advice on how the department went about shortlisting each of those applications?

**Ms Patterson:** Yes. I'll tell you what I can and, obviously, if there is further detail, I will provide that on notice. The grants hub is required to assess those applications to see whether they're eligible against a set of eligibility criteria, which is set out in the guidelines, and also to assess the merit of those applications against the merit criteria.

**Senator CICCONE:** They receive a ranking out 100—is that correct?

**Ms Patterson:** Yes.

**Senator CICCONE:** How does the department determine if someone is successful?

**Ms Patterson:** In terms of your meaning of successful—

**Senator CICCONE:** I think successful is pretty obvious. You either receive the funding or you don't.

**Ms Patterson:** The final decision is the decision of the minister, but the grants hub makes an assessment of whether something is eligible and then whether something is suitable for funding. It's suitable for funding if it gets more than 50 per cent against each of the three merit criteria.

**Senator CICCONE:** Does the department then develop a series of lists?

**Ms Patterson:** The grants hub provides to the Department of Home Affairs, essentially, a series of lists, yes, which is a ranking of the applications that have been rated as eligible and suitable. There's obviously then a list of grants that are eligible but unsuitable, because they didn't get a high enough ranking against the 50 per cent score, and then there would be a list of applications which were deemed to be ineligible for not meeting the eligibility criteria.

**Senator CICCONE:** Why does the department provide a list of not approved applications to the minister as part of its briefings?

**Ms Patterson:** A list that includes all of the applications is provided to the minister, but they are distinguished against each of those rankings in terms of eligibility and suitability.

**Senator CICCONE:** Surely, if they're not eligible, you wouldn't put them up for consideration.

**Ms Patterson:** As standard practice, they are provided but with very clear advice to the minister that they have been not rated as suitable.

**Senator CICCONE:** Because their rating is less than 50 out of 100.

**Ms Patterson:** Ineligible means that they weren't eligible. Suitable is whether they have a ranking above 50 per cent against each of the criteria.

**Senator CICCONE:** So there wasn't a specific request for a reserve list or a list that had applications below 50.

**Ms Patterson:** No, but it's provided as standard practice.

**Senator CICCONE:** I specifically make mention of sub MS19-000488.

**Ms Patterson:** Your question in relation to that submission?

**Senator CICCONE:** That was requested on that particular sub for a reserved list.

**Ms Patterson:** The reserved list goes to the fact that these applications are ranked by the grants hub against those criteria. But, because of the way this funding is allocated, because there's a certain amount of funding that's available, which is standard for most grant processes, we need to make sure that a sufficient number of grants are selected so that the amount that's been allocated for that program can be expended. In the case of that particular submission, what can happen is that a certain amount will have been sought. Sometimes, when the negotiations are taking place with the applicant, it may turn out that there may be some issues around whether the full amount is granted. If there is some additional funding left over, that is when a minister can choose things from a reserve list to ensure that the full amount for the program is expended.

**Senator CICCONE:** That's interesting. I understand there was also specific timing that was agreed with a person by the name of Sandy Landers. Do you know who Sandy is?

**Ms Patterson:** I understand that Sandy is a staff member in the office. My reading of that document—and this is standard practice across the department—is that where a submission needs to go to a minister with a shorter than normal turnaround time, that request is made to the office for that to happen, and that is recorded on the document to indicate to the people processing it that approval for that submission has been sought to be lodged.

**Senator CICCONE:** Was that the reason a request was put in, in terms of the timing?

**Ms Patterson:** I'd need to take that on notice. That was before my time.

**Senator CICCONE:** Okay.

**CHAIR:** Just one more minute, Senator Ciccone.

**Senator CICCONE:** Was there an email or other communication about the format of the grants table?

**Ms Patterson:** I'd need to take that on notice.

**Senator CICCONE:** Did the department receive any request from an adviser or any other staff member in the minister's office to change information about the list of grants provided to the office?

**Ms Patterson:** I'd need to take that on notice.

**Senator CICCONE:** Did the minister's office request that the brief and recommendations be provided in a certain format?

**Ms Patterson:** This is in relation to the original sub that went up with the list of all of the assessed applications? Is that—

**Senator CICCONE:** For round 3.

**Ms Patterson:** I'd need to take that on notice.

**Senator CICCONE:** Did the minister ask you or the department to provide any electorate information with the grants list?

**CHAIR:** This is your last question, Senator Ciccone.

**Ms Patterson:** I will obviously confirm on notice, but it is certainly not something that the department would provide as part of that process. It is not relevant to the assessment of whether something is eligible or whether it is suitable.

**Senator CICCONE:** Are you referring to the minister or their office—

**CHAIR:** Thank you very much, Senator Ciccone. We will need to leave it there. I'm sorry, Senator Ciccone; we have reached the end of your time.

**Senator CICCONE:** Chair, I've still got a few more questions.

**CHAIR:** That's fine. We can come back to you.

**Senator CICCONE:** You've been very accommodating to everyone else.

**CHAIR:** Absolutely. We can come back to you. For everyone's benefit, we have now moved into the time allocated for—

**Senator CICCONE:** It is not a very good look, Chair, to be shutting someone down in the middle of a line of questions. I've literally got three more questions to go.

**CHAIR:** Senator Ciccone, please do not reflect on the chair in that way. I am not shutting you down. I've made it clear that you are very welcome to continue your questioning, but we are sharing the call. Senator Thorpe has the call next. For the benefit of everyone here and listening, we have moved into the time allocated for outcome 2, but I'm proposing that we continue on outcome 1 until senators have completed their questioning because it appears that there are fewer questions from senators for outcome 2. Senator Thorpe, you have the call.

**Senator THORPE:** Thank you, Chair. My questions are around section 501. How many Aboriginal people are being held in immigration detention after the High Court decision that Aboriginal people are not aliens for the purpose of the Constitution and cannot be deported?

**Mr Pezzullo:** It's a question of the claim made, and then the assessment is made against the limbs of the tests set out by the High Court. It's not a straightforward statistical answer. It depends on each individual detainee advancing a relevant claim that is then assessed against the three-limb test set out by the High Court. But we do have a number of active matters under consideration, I can assure you. Ms de Veau.

**Ms de Veau:** The secretary is correct in saying that the issue is whether someone's evidence meets the tripartite test as set out in the Mabo No. 2 case and as articulated, we say, by the Justice Nettle judgement in the High Court case of Love and Thoms. Immediately following the decisions early last year, people who were in detention who were claiming that they met that tripartite test were all assessed. I don't know that we have anyone currently in detention who is being considered against that test, but I will take it on notice. If they are, and they are actively making a claim that they meet that test, that would be under active consideration.

**Senator THORPE:** I understand that there are 25 Aboriginal people imprisoned for no reason at all who have met the three-part test that you have talked about. Could you please explain the process around the three-part test. Could you also tell me what authority the government has, once the three-part test is proven, to continue to detain these people.

**CHAIR:** Senator Thorpe, to help the witnesses could I ask you to provide the source of your information in relation to the 25 Aboriginal people who've been jailed. That will assist the witnesses in understanding what you are referring to.

**Senator THORPE:** Sure.

**CHAIR:** Are you able to provide any more information about that?

**Senator THORPE:** I will get that information.

**CHAIR:** Maybe we could just confine your question to the latter half of it. If you could repeat that, that would be helpful.

**Senator THORPE:** Could you detail the three-part process and explain why those people, who have met the three-part process, are still being detained.

**Ms de Veau:** I would not accept that there is anyone in detention who has met, in an evidentiary way, the three limbs. If they had met in an evidentiary way the three limbs, they would not be in detention. On your earlier reference to imprisonment: no-one is imprisoned under the Migration Act; they will be in immigration detention, which is different to criminal custodial detention. If there are people in immigration detention who have a claim in relation to a Love and Thoms case then, if the evidence satisfactorily discharges the three limbs, they will be released from detention. So I don't accept the proposition that there are 25 people who have met the evidentiary test who are still in immigration detention. I would be happy to accept the names, out of session, in a way that we can look at the ones you have indicated. But, on the three limbs you speak of, first of all the person has to self-identify as being an Indigenous person. The second limb is that they are recognised by a community. The third limb is that they have some ongoing continual connection to country. So those are the three limbs: self-identification, recognition by a community, and the ongoing connection to country that grounds it to the pre-1900 connection.

**Senator THORPE:** Hypothetically, if there are 25 Aboriginal men imprisoned—I don't know the difference between detention and prison; when you lock someone up, they are locked up, and you can brand it whatever—how many of them have met the test?

**Ms de Veau:** This is what I don't accept. I don't accept—

**Senator THORPE:** How many have been released for meeting the test?

**Ms de Veau:** Alright, that's a different issue. I suspect that about 25 people have probably been released between the Love and Thoms decision earlier, in 2020, and having provided evidence and having met the test and having been released from detention. There are probably about 25 of them. But there aren't 25 people currently in detention who have met the test.

**Senator THORPE:** If there are people in these prisons to meet the three requirements, hypothetically they would be released immediately?

**Ms de Veau:** Yes.

**Senator THORPE:** Given that Minister Dutton has discriminated against anyone who doesn't look like him—

**CHAIR:** Order! It's against the standing orders to reflect on another senator or member—

**Senator THORPE:** Okay, I'll take that back.

**CHAIR:** so could you rephrase the question in a way that doesn't do that.

**Senator THORPE:** Sure. May I ask whether Minister Dutton has undertaken any racism awareness training?

**CHAIR:** That is coming very close to being out of order.

**Senator THORPE:** It's a relevant, legitimate question.

**Mr Pezzullo :** In any event, Madam Chair, it's not a matter for the department what cultural or other training members and senators have in the performance of their duties or otherwise.

**CHAIR:** That's right. To be clear, the secretary is right: it is out of order because it is not relevant to this inquiry and this hearing.

**Senator THORPE:** Okay, can I rephrase my question. Does your department undertake any racism awareness training so that their decisions are made appropriately?

**Mr Pezzullo :** Our officers, whether they work in immigration detention or citizenship areas, are highly trained. I might just ask Ms Moy to come to the table and speak to the cultural diversity and other training that is made available to our officers, which would comprehend the question of racism.

**Senator Stoker:** While Ms Moy is getting settled, I'd like to say for the record that I wholly reject the assumption in the earlier question that the minister's decisions are made on any basis other than the merits of each individual case.

**CHAIR:** Thank you, Assistant Minister.

**Senator THORPE:** Could I respond to that please and talk about systemic racism? We know that this country is guilty of that.

**CHAIR:** No, Senator Thorpe. I would just remind senators again that it is the duty of senators to ask questions and witnesses to respond. This is not the forum to make statements. There are other forums, as we know, Senator Thorpe. Ms Moy.

**Ms Moy:** The department undertakes cultural diversity training across multicultural, Indigenous, Torres Strait and all across the entire diversity spectrum—so LGBTQI. We have an ongoing program and mandatory training specifically around Indigenous training and we place a lot of emphasis on our cultural diversity. We have Indigenous champions. We have diversity champions. We have training for understanding people with disability. So it is quite a comprehensive program throughout the department and there is access for all staff at all levels.

**CHAIR:** Last question, Senator Thorpe.

**Senator THORPE:** My question was about racism awareness. Cultural awareness is us talking about how wonderful our culture is and getting white people to understand where we come from and whose land you're actually living on. But racism awareness is something different. It's not about culture, it's about racism.

**CHAIR:** Senator Thorpe, just to clarify: you're asking a question in relation to racism awareness?

**Senator THORPE:** Yes.

**CHAIR:** Can we focus on the questions to witnesses.

**Senator THORPE:** I just want to differentiate the difference.

**CHAIR:** Thank you very much.

**Senator THORPE:** Thank you.

**Ms Moy:** Within our cultural training, that is part of the actual training. So it's not just about understanding other people's cultures; it's about accepting diversity and how you work with people, how you treat clients, how you treat colleagues, how you treat everyone that you deal with. Of course, it goes intrinsically to the Public Service values of nondiscrimination.

**Senator THORPE:** Could I just get—

**CHAIR:** Thank you very much, Ms Moy. Senator Thorpe, as I indicated—

**Senator THORPE:** Could I just get the information about that on notice?

**CHAIR:** No, Senator Thorpe. Your time has ended.

**Senator THORPE:** I just want to follow up on the answer. Take it on notice. I want to see it, that's all.

**CHAIR:** Just to clarify: what do you wish to take on notice?

**Senator THORPE:** I would like to see where this department, and its minister, actually learns what racism is—not culture but racism.

**CHAIR:** I think Ms Moy has answered the question. If there is anything further that you wish to add to your answer, Ms Moy, could you take that on notice.

**Senator THORPE:** Could I see it?

**CHAIR:** Thank you very much, Senator Thorpe. I will now give the call to Senator Ciccone.

**Senator CICCONE:** Thank you.

**CHAIR:** Opening up the door for you, Senator Ciccone.

**Senator Stoker:** At the risk of being rude to you, Senator Ciccone—I beg your pardon—can I get an indication of how much longer we expect to be in outcome 1?

**CHAIR:** We're anticipating outcome 1 will be around about another half an hour. I've had very little indication from senators that they wish to ask questions in outcome 2, so the proposal is that we will extend into the time allocated to outcome 2, but I hope that we can move to outcome 2 within about half an hour.

**Senator Stoker:** Thank you, and my apologies, Senator Ciccone.

**Senator CICCONE:** That's okay. I won't be long, because I suspect there's a change of guard later on, but I will just keep going with my questions. Following on from my earlier questions on Safer Communities, did the minister's office ask to provide any electorate information with the grants list, Ms Patterson?

**Ms Patterson:** I did answer that. Certainly electorate information was not provided to the minister approving.

**Senator CICCONE:** So there was no breakdown by federal seats?

**Ms Patterson:** No.

**Senator KENEALLY:** By the department.

**Ms Patterson:** By the department, yes.

**Senator CICCONE:** Do you know if the minister or his office spoke to some of the recipients directly?

**Ms Patterson:** I'd need to take that on notice.



**Senator CICCONE:** Did the minister or his office pass on grant information to local MPs and/or senators for them to promote and announce and approach, including congratulating the organisations that were successful?

**Ms Patterson:** My colleague may be able to answer that question—whether that information was provided after the minister's decision had been made.

**Mr Coles:** Just to be clear, your question is: did we provide information about electoral distribution to the minister?

**Senator CICCONE:** No. My question was: did the minister or his office pass on grant information to local MPs and/or senators, for them to promote, announce or approach, which may include congratulating organisations that were successful?

**CHAIR:** I'm not sure that the officials can answer—

**Senator CICCONE:** I think they're deliberating about the answer.

**CHAIR:** on behalf of what the minister may or may not have done, but, if you would like to direct the question to the officials, please—

**Mr Coles:** I would have to take on notice whether that happened in this specific instance in relation to round 3. What I can say, drawing on the evidence that Ms Patterson has already given, is that it's after the fact—after the decisions had been made about grant allocation and the recipients, it's quite common for us to provide the office or the minister with advice about the recipients and the relevant local members, so that local members can be approached to talk to recipients in their electorates.

**Senator CICCONE:** So information—such as what? Take details?

**Mr Coles:** Basically the metadata about the grant—that, as a matter of fact, a grant has been awarded, this is the recipient organisation and, as a matter of fact, that organisation is located in this specific electorate.

**Senator CICCONE:** Did the department prepare any shell media releases or any other material to promote the grants?

**Mr Coles:** I would have to take that on notice.

**Senator CICCONE:** Alright. Thank you. I just want to briefly touch on the Tasmanian projects under this program. I think there were two in Tassie. One was Waratah Wynyard, which scored 49.25 out of 100, and Burnie City Council, which scored 50.5 out of 100. These projects were deemed not suitable for funding; however, the minister chose to select the two projects anyway. Is that a usual process for a minister to approve such projects as being successful?

**Ms Patterson:** A minister can approve a project in circumstances where it has been—as in this case—rated eligible but not suitable. But advice is provided to the minister in relation to his requirements. In that case, a grant like that is deemed to be not recommended by the department, but, under the Commonwealth Grants Rules and Guidelines, the minister can make that decision, but he must provide advice that he has made a decision against the recommendation of the department.

**Senator CICCONE:** Are you able to provide stats on how many projects have been approved by the minister that were not recommended by the department and that were in the not eligible category as well as the suitable category? If you could provide that information to the committee, that would be great.

**Ms Patterson:** I'll take that on notice.

**Senator CICCONE:** The department specifically referenced these two applications in the submission. I understand it was with respect to briefing MS18-002657. I was curious as to why those two were specifically pulled out?

**Ms Patterson:** In relation to 2657, that was to provide advice on how those two councils could apply for round 3.

**Senator CICCONE:** How they could apply—not that they had applied, but how they could?

**Ms Patterson:** How they could apply, yes.

**Senator CICCONE:** Did you know the significance of these projects? Was the department aware of how significant they were?

**Ms Patterson:** I wasn't at the time, but I understand the department certainly would have been aware of the background in relation to those projects.

**Senator CICCONE:** I say that because my understanding was that they were announced in a by-election by the minister.

**Ms Patterson:** The minister, yes, had made an announcement in relation to their funding. The department provided advice about how those two councils could then apply, and those two councils then did apply formally, as did many other councils, through that process.

**Senator CICCONE:** And then they went on to become successful?

**Ms Patterson:** Yes.

**Senator Stoker:** Thank you very much, Chair and Senator Ciccone. It might be helpful for me to add at this point that, as with the other grants that have been made under the Safer Communities Fund, decisions on the ones you've discussed have been made consistent with the relevant rules and guidelines. The applications from the Burnie and Waratah-Wynyard councils were assessed as eligible for funding under the Safer Communities Fund. The funding enabled those councils to install CCTV cameras to address criminal and antisocial behaviour. Put simply, the funding has made these communities safer. In circumstances where the allocation of funding pursuant to this program has been split almost evenly between coalition and Labor and independent seats, at 51.4 per cent to 48.6 per cent, there is an endorsement, almost inherent in those numbers, that it has been handled by the book.

**Senator PATRICK:** I have questions about the confiscated assets funds. I want to know what the current total is for that fund. The second thing I'd like to know is whether the rules associated with grants and programs that can be funded under the confiscated assets fund can actually be used in relation to domestic violence remedies.

**Ms Patterson:** Your first question in relation to current commitments in relation to the—

**Senator PATRICK:** Not so much current commitments. I think last time there was \$129 million in the fund. I'm wondering what the current amount is in the fund?

**Ms Patterson:** I will caveat this by noting that these figures are from Australian Financial Security Authority, which is responsible for that fund. As at 31 January 2021, \$67.457 million was available for distribution made up of \$112.7 million, which is the balance of the confiscated assets account, less \$40.3 to meet commitments and \$5 million as a nominal buffer.

**Senator PATRICK:** It's good that the fund is being used now; it wasn't a couple of years ago. In relation to the criteria for funding out of that fund, is there scope for that to include victims of domestic violence?

**Ms Patterson:** I'll need to take that on notice or I can see if my colleague is able to—

**Senator PATRICK:** My understanding is there is not, but it might be being considered.

**Mr Pezzullo:** I'm not sure if its necessarily victims. It's for law enforcement—

**Ms Patterson:** Capability, yes.

**Mr Pezzullo:** Which is not to say it couldn't be focused on law enforcement efforts, but I'm not sure—did your question go to victims?

**Senator PATRICK:** Yes, assisting victims.

**Ms Patterson:** Section 298 of the act allows for expenditure for purposes relating to crime prevention measures, law enforcement measures, measures relating to treatment of drug addiction or diversionary measures relating to illegal use of drugs.

**Senator PATRICK:** My point is if you have someone who is the subject of domestic violence, removing them from that environment can actually avoid further crime. It can prevent further crime. That's the context of the question and whether or not that is being considered.

**Mr Pezzullo:** I understand the point. We'd be very sensitive to those sorts of cases and there are, of course, heartbreaking cases known, I suspect, to everyone listening to these proceedings. But I'm not sure that the definition would stretch that far as opposed to say a law enforcement campaign targeting the protection of victims at a general level.

**Senator PATRICK:** Could you take it on notice and come back?

**Ms Patterson:** We'll take that on notice.

**Mr Pezzullo:** Whether it's available to support the removal of an individual from a particular place of harm or risk?

**Senator PATRICK:** To prevent further domestic violence.

**Mr Pezzullo:** Understood. We'll take that on notice.

**Senator PATRICK:** Thank you. To airport security—

**Mr Pezzullo:** Ms Patterson's scored a quinella there. She has to get another folder she told me. I think that's a bingo moment! How many folders have you got, Ms Patterson? This is the question.

**Ms Patterson:** Too many, clearly!

**Senator PATRICK:** You're overworking her, Secretary.

**Mr Pezzullo:** She's got great capacity, Senator, as I'm sure you're about to see demonstrated.

**Senator PATRICK:** I'm wondering where we're up to. This is about making sure that the people of Whyalla don't pay \$52 per flight to cover security cost. There was an arrangement the government was entering into and I wonder how far we've progressed in respect of that arrangement?

**Ms Patterson:** Senator, thanks for your question. We are continuing to work, as I think I mentioned last time I appeared before you, to come up with that sustainable funding model. Obviously at the moment we're working very closely with Infrastructure recognising that we've had our funding program which is the RASCF, which was \$50.1 million. The department of infrastructure then had RASI, their regional airport screening infrastructure—some of that didn't start until quite late last year and that money is still going out the door. There's a further announcement that was made on 11 March—

**Senator PATRICK:** That was \$90 million or something.

**Ms Patterson:** for some further support. We're working closely with Infrastructure to make sure that we don't design something that inserts itself in the midst of these other programs, but we are working to make sure that we will have something in place to flow off the back of these other funding streams that are coming through.

**Senator PATRICK:** So one way or another, whether it is through the current funding or the change, I can reliably inform people in Whyalla they won't be paying \$52 or anything near that on any ticket in the future?

**Ms Patterson:** I can't give you a precise figure, Senator, but we are certainly looking to find a sustainable funding model for airport screening at regional airports.

**Senator PATRICK:** Thank you very much. I'll now flick quickly to Global Switch.

**Mr Pezzullo:** Ms Patterson was very keen to score a trifecta, but no cigar on this occasion. Is Mr Milford in the house? I'm just here all the time.

**Senator CICCONE:** You're on a quaddie!

**Senator PATRICK:** Is the person in the room? So we're just waiting for someone—is that right?

**Mr Pezzullo:** Mr Milford. He is 30 minutes away. I will try my meagre best.

**Senator PATRICK:** Thank you, Mr Secretary. I know you're across most of the detail. My understanding is that Home Affairs has shifted any data storage away from Global Switch in Ultimo.

**Mr Pezzullo:** We're in the process of so doing.

**Senator PATRICK:** So there's still some data—

**Mr Pezzullo:** We've got some safeguards. I defer the specifics of the program to Mr Milford. If this evidence needs to be corrected or modified, we'll do so in the normal manner.

**Senator PATRICK:** Thank you.

**Mr Pezzullo:** We're funded to undertake a remediation program of removal. Pending removal, we've put in some additional safeguards and capabilities that I wouldn't want to describe publicly because they can be potentially be defeated by adversaries who might be seeking to access that data.

**Senator PATRICK:** Sure.

**Mr Pezzullo:** We currently have a program that's underway. That relates to Home Affairs data, and we're also coordinating with a number of other agencies in relation to protected information. You might be leading up to asking about Defence's program.

**Senator PATRICK:** I'm going to ask some questions of Defence, who appear not to have moved on. So what was the maximum security classification of the data that was stored in Ultimo?

**Mr Pezzullo:** All of our internet-facing and protected information is held in one reservoir, some of which was in the GSU, Global Switch Ultimo. My understanding—and I'll check with Mr Milford—is that there was no secret or top secret data.

**Senator PATRICK:** What's the cost of shifting it to another location, and is that new location completely Australian owned?

**Mr Pezzullo:** It's an appropriated item, so I'd have to refresh my memory, and I'll consult with Mr Milford. There is a price tag, of course, attached to it. I'll just need to take that on notice.

**Senator PATRICK:** Thank you.

**Mr Pezzullo:** We're removing it to an Australian location, yes.

**Senator PATRICK:** Well, it was already in a physical location that was Australian.

**Mr Pezzullo:** Yes.

**Senator PATRICK:** I presume the problem was foreign ownership and that was the reason for the shift—is that correct?

**Mr Pezzullo:** I've got Mr Milford's brief to hand, so let's see how we go. The GSU data centre is no longer an approved data centre provider for Australian government agencies under the Data Centre Facilities Supplies Panel. All government agencies with assets in the facility are progressing plans to exit. Home Affairs runs the multiagency program management office to coordinate the exit from that facility by Home Affairs, ASIC, the Australian Digital Health Agency and ACMA, the Australian Communications and Media Authority. Agreements have been reached with each participating agency to enable exit by the end of financial 2021-22, but I know for a fact that mitigations have been put in place by each agency. You can put certain sensors and other safeguards in place; I don't want to particularise. We're currently in the process of—

**CHAIR:** We need to finish up, Senator Patrick. Sorry, Mr Pezzullo. I'm just letting Senator Patrick know that he's almost at the end of his time.

**Mr Pezzullo:** While we are in the process of finalising a contract with a particular provider, I won't name the provider, simply because I'm not sure that we've announced it as the preferred target data centre for the exit. They would be Australian owned, Australian controlled and Australian located. This selection is being based on a robust risk based assessment to ensure continuity of the data and data sovereignty and supply chain integrity.

**Senator PATRICK:** My understanding, from what you've just said, is that the issue with Global Switch Ultimo was that it didn't meet those three criteria you mentioned: Australian owned, Australian located and Australian controlled.

**Mr Pezzullo:** Yes. It was a function of a foreign investment decision which then cascaded through to these changes.

**Senator PATRICK:** I understand that. Where I was going is this: to avoid the same thing happening in the future—noting that I wouldn't have thought this sort of change of ownership would trigger an FIRB review—I'm just wondering what risk mitigation you have in place to avoid having to swap again in the event of a sale, a change of control or—

**Mr Pezzullo:** It's a twin-track approach. There is the regime under the Foreign Acquisitions and Takeovers Act, the specifics of which you should direct to the Treasury. They've been tightened in this area. But more particularly, should the parliament see fit to pass a piece of legislation known as the Security of Critical Infrastructure Act, or SOCI Act, data processing and data storage will be designated as one of the 11 sectors from 1 July this coming year. So we're going to have a belts and braces defence, both on the foreign acquisition and capital flow side and in terms of the obligations that would be put on any owner or any controller under SOCI. The second of those is, of course, contingent on the bill passing into law.

**Senator PATRICK:** Thank you.

**CHAIR:** Thank you very much, Senator Patrick. I will now hand over to Senator Roberts.

**Senator ROBERTS:** Thank you Chair. This is about counterterrorism. Recent public statements from ASIO indicate ongoing issues of spying by foreign nationals in Australia. How many identified spies are being monitored in Australia right now?

**Mr Pezzullo:** To the extent that the Director-General of Security would want to answer that question in any precise way, that's really a matter for him. My department does not conduct security intelligence operations; that's a matter for ASIO under its act. Our job is to assist the government with response, which could involve legislative change, engagement with relevant communities, and outreach to civil society and other sectors. But, in terms of how many persons are being monitored, surveilled and investigated, to the extent that the director-general would wish to expand on that, that's really a matter for him, and I doubt that he'd want to say much in any event.

**Senator PATRICK:** I did ask some questions on this—if it helps, Senator Roberts—when ASIO were here, and the words he used were 'nest of spies'.

**CHAIR:** Thank you for your help, Senator Patrick. Senator Roberts, you have the call.

**Mr Pezzullo:** I think the nest was in relation to foreign espionage, whereas I think the senator is asking about terror.

**Senator ROBERTS:** Correct—spies in particular, espionage.

**Mr Pezzullo:** Well, is it terror or spies?

**Senator ROBERTS:** Spies.

**Mr Pezzullo:** Sorry. I'm not trying to be cute. The Criminal Code identifies politically motivated violence and terrorism as a set of offences, and it separately identifies, in relation to espionage, the modernised offences that came in in 2018. Espionage, formerly known as spying, is a separate set of offences.

**Senator ROBERTS:** Okay. I'm interested in spying.

**Mr Pezzullo:** Espionage?

**Senator ROBERTS:** Yes.

**Mr Pezzullo:** Right.

**Senator ROBERTS:** Anything to distract the topic!

**Mr Pezzullo:** I refer you to the director-general's threat assessment that he published last week, and I refer you to his evidence early today.

**Senator ROBERTS:** So you're not able to say how big the threat is or how many spies are involved?

**Senator PATRICK:** He said it was a nest.

**Mr Pezzullo:** It's a matter for the Director-General of Security. He's characterised it. If I can paraphrase him—I was in the room when he said it—he no longer says that it's unprecedented, but it's now at an unacceptable level. I think I even got the hand motion pretty much right! This is going to be a challenge for Hansard!

**Senator ROBERTS:** I'm not taking the photos from here! Are the identified risks serious? In order to inform the government, you will have to understand the risks.

**Mr Pezzullo:** Of course, yes.

**Senator ROBERTS:** So are the identified risks serious and, if so, what are they?

**Mr Pezzullo:** Most serious. Really, this is within the director-general's statutory remit, but it's a matter of public record, and he and I work very closely together. As a matter of public record, whether it's strictly espionage—which relates to gaining access to, effectively, secrets of state, whether it's defence technology, deliberations of government, or trading agreements—or whether it's in the sibling area or related area of foreign interference—which is covert or clandestine interference in our democracy so as to shape, influence or, through some other disguise, fashion decisions of our democratic leaders—as the Director-General said, both the espionage and the foreign interference have to be guarded against, and it requires a whole-of-nation effort because it goes directly to your sovereignty. It goes both to our ability to lock down classified information which is critical to the defence of the nation or similar and, of course, to the vitality of our democracy.

**Senator ROBERTS:** Is there any specific age group who are being monitored?

**Mr Pezzullo:** I've paraphrased what the director-general has said in general terms. Specifics like that I'll refer to him.

**Senator ROBERTS:** Are you able to say how many identified persons, apart from those deported, will be tried in court?

**Mr Pezzullo:** As the director-general said, a number of matters have been referred to the Federal Police, which is the criminal investigative authority for espionage. As is publicly known, a number of matters are on foot in our courts. But, again, I wouldn't want to speak about future action.

**Senator ROBERTS:** Are there any trends identified in the origins of those non-Australian-origin spies?

**Mr Pezzullo:** I would again refer you to the threat assessment issued by the director-general last week, as well as his evidence earlier today.

**Senator ROBERTS:** That would be something you'd be on top of, though, wouldn't it, if you're advising the government?

**Mr Pezzullo:** Yes. If you're asking me about my state of knowledge, the director-general and indeed the commissioner of the Federal Police, who undertakes the criminal investigations, keep me generally briefed on all the relevant cases, yes.

**Senator ROBERTS:** Are there any trends in the origins?

**Mr Pezzullo:** They brief me so that I can do my job, which is to advise on policy legislation and risk mitigation. I'm not sure—and I'll seek some guidance from you, Madam Chair—that it would be wise or sensible for me to interpolate their classified briefings of me to give my own public ruminations on trends. That's really a

matter for the director-general. If he chooses to put that information into his threat assessment, annual or otherwise, or his evidence, I will leave that to him.

**CHAIR:** Senator Roberts, I refer to you to the extensive evidence given by the director-general of ASIO earlier today, which will inform you as to a lot of these questions.

**Senator ROBERTS:** Thank you, Chair. What percentage of those identified as spies are homegrown Australians?

**Mr Pezzullo:** I refer to the evidence I have just given. In substance it's a matter for the Director-General of Security, and in terms of public transparency it's really a matter for him as to what he decides to put onto the public record.

**Senator ROBERTS:** I will take note of the chair's comments.

**CHAIR:** The director-general of ASIO did indicate that ASIO does not discuss these matters, including the break-up or the identification of the types of staff working for ASIO. The director-general put that on the record earlier today.

**Senator ROBERTS:** As someone in charge of security and Home Affairs, can you say: what can everyday Australians do to remain safe from spying in Australia or maybe to help against the spying network?

**Mr Pezzullo:** The most important message for all is that it's a very different risk from the risk of terror, on which you initially started your line of questioning. If the general citizenry see something suspicious—a bag left on a train platform—please report it. This is a very different type of both crime and national security risk because, by definition, it's clandestine. It's veiled. My advice to you, Senator, and to this committee more generally, as we work through, sector by sector, Australian business, universities, political parties—and the director-general is very active in giving briefings to political parties about what they can do to best protect themselves—is that all sectors of Australian society should listen very carefully to what the director-general and his staff say in those briefings and to act accordingly.

**Senator KENEALLY:** I'd like to go back to some information the department said earlier in the day it would look to supply.

**CHAIR:** Yes. Secretary, you indicated that you had some information that was relevant to Senator Keneally's earlier questions.

**Mr Pezzullo:** Yes, we were ready after the dinner break.

**Senator KENEALLY:** My apologies.

**Mr Pezzullo:** No, just as a matter of courtesy we awaited your return.

**CHAIR:** We decided we would hold off until you were back here.

**Senator KENEALLY:** Thank you. I appreciate that.

**Mr Pezzullo:** Ms Moy, you have an update for the senator.

**Ms Moy:** I do. There were a couple of issues. One was in regard to the contractors and labour hire. We actually don't break up our numbers in terms of whether the contractors are from a labour hire company. In terms of the number of contractors currently, as at 31 January there are 1,138, or just under seven per cent of staffing numbers. I think you also asked for some details about what they do.

**Senator KENEALLY:** Yes.

**Ms Moy:** Regarding those contractors, for project and program support we have seven. We have 159 in development and programming. We have 119 in testing; 93 in program and project management; 73 in business process, analysis and design; 51 in system analysis and design; 35 in procurement; 41 as services contractors; 39 in ICT architecture; 44 in project management; 39 in ICT security; 36 in systems administration; 16 in change management; and 15 in contract management. Most of those are in the ICT space. Then we have 20 in call contact and smart centres; 47 in program management; 43 in facilities management; one in infrastructure and facilities; 16 in professional accounting; 12 as business analysts; 18 in databases; 12 as general medical practitioners; 13 legal officers; 12 in systems integration; seven data scientists; eight in financial analysis policy and planning; nine organisation and methods analysts; seven in program management in policy; and seven workforce strategists.

**Senator KENEALLY:** Thank you, Ms Moy. Were you able to get any information regarding JWS Research?

**Ms Moy:** In terms of the first question you asked in regard to advertising campaigns, one of the things I'd also point you to is on page 229 of the previous annual report. That will give you the previous figures for last year, for 2019-20. In terms of the contracts that you specifically asked about, JWS Research contracts, we have two in terms of research services, one as market research and one as social research services. So, there are four different

parts to the contracts that we have with JWS. The first one is \$311,740, in terms of the contract value. Expenditure for the previous year was \$280,336.25. The next one, for the research services, was \$968,000, with \$880,000 being expended in 2019-20. The one for social research services was \$1.385 million, and there was no expenditure in 2019-20. The expenditure in the year to date is \$307,409. And the one for market research was \$100,000, with \$90,909.09 expended in 2019-20.

**Senator KENEALLY:** Do any of those three contracts relate to the Australian values campaign?

**Ms Moy:** I'd have to pass to the program area that is looking after the—

**Senator KENEALLY:** I'll save that for outcome 2.1. Were all of these contracts awarded through an open tender?

**Ms Moy:** I'll check to see. They're either from an open tender or through panels. I'll check that and come back to you with those on notice.

**Senator KENEALLY:** Could you also then advise me if JWS is listed for panels? Let's say this one went through open tender, but do you have a list of providers?

**Ms Moy:** I'll see if they're on our panel. They may be on some other department's panel that we may have taken them from. I will check to see if they were on a panel.

**Senator KENEALLY:** That would be useful. Thank you. I refer to CN3683514, which states that JWS Research received a million dollars last year—which I think is one that you referred to—for two months work, from the end of March to the end of May, for government communication on COVID-19. It seems to me that a million dollars for two-months work at the start of the pandemic is a large contract. What exactly was that contract? What was the government getting for that money?

**Ms Moy:** I'll have to ask the program area to respond to the detail of how they used the contract.

**Senator KENEALLY:** I note that the project CN number I quoted is marked as 'confidential'. Why is it confidential?

**Ms Moy:** I will take the confidential piece on notice.

**Senator KENEALLY:** Thank you. I will leave that there for the moment. I also asked about the Icon.Inc. That was a \$3 million contract.

**Ms Moy:** That's correct. It was for strategic communication activities. The contract value is \$2.97 million, and \$947,000 has been spent, year to date, this financial year, and none in the previous financial year.

**Senator KENEALLY:** That procurement method says 'open tender'. I do note, with JWS Research, the two I have here both say 'open tender'. Did you say there were only two?

**Ms Moy:** No. For JWS I read out four.

**Senator KENEALLY:** I thought you had. The two that I have here say they're open tender. I'm asking you to confirm if all four were open tender or were a panel. The Icon.Inc one said it was for graphic design work. It's under the category 'graphic design'. Can you confirm that? What project was that supporting?

**Ms Moy:** I will have to get the program owner to cover those details. I have it as 'strategic communication activities'.

**Senator KENEALLY:** I'm just trying to understand. They just seem like large amounts for very short periods of time. It seems like a lot of graphic design. Who are World Service Australia?

**Ms Moy:** We have a contract with World Service Australia for social media analysis. That was a contract value of \$750,470, and \$122,500 has been expended year to date, while \$500,000 was expended in 2019-20.

**Senator KENEALLY:** They were selected under a limited tender due to 'extreme urgency' as the tender document says. Can you provide some insight into what the extreme urgency was? What is the work that they do?

**Ms Moy:** I have social media analysis, but I will take it on notice in terms of why it was a limited tender.

**CHAIR:** We have reached your time, Senator Keneally. We can return to you, if you want to continue asking questions after Senator McKim. Just for everyone's benefit, we are still in outcome 1. From a time management point of view, we don't anticipate too many questions in outcome 2. I give the call to Senator McKim.

**Senator McKIM:** Mr Pezzullo, I'll tidy up a quick one from the last bracket of questions from Senator Thorpe. She attempted to ask right at the end whether the department would provide on notice all full details of the cultural awareness training, specifically the anti-racism component of that training that Ms Moy issued. Would you provide that on notice?

**Mr Pezzullo:** We took that on notice, yes.

**Senator McKIM:** I just wanted to make sure that that had been done. Thank you. Commissioner Outram, I have just a couple more questions, and then I hope we can move on. This is in regard to the Channel 9 story we were discussing earlier. Does the ABF refer to people who have their visas cancelled under section 501 and are then deported as 'trash'?

**Mr Outram:** We just focus on the operational task we have at hand. We don't, obviously, engage in commentary around that, other than worrying about the operational task at hand and doing it as professionally and diligently as we can.

**Senator McKIM:** I thought the answer would be no. I'll just put it to you again: does the ABF refer to people who have their visas cancelled under section 501 and who are then deported as 'trash'?

**Mr Outram:** Refer to where?

**Senator McKIM:** Anywhere. Has the department ever done that?

**Mr Outram:** No, we don't. We simply get on with the job.

**Senator McKIM:** Thank you. I didn't think that was a controversial question, but we got there in the end. I accept that you've taken a series of my questions on this matter on notice, so I would ask you to also take on notice: did the people who were identified by name and by image in that program have their privacy compromised?

**CHAIR:** Senator McKim, you have already asked that question.

**Senator McKIM:** Can you just confirm you will take it on notice?

**Mr Outram:** We'll take it on notice. A number of them had a media profile, and that will go to the same question, so we'll come back to you on notice with all of those.

**Senator McKIM:** Thank you. This is the last one. I guess this is for you rather than the department, but please feel free to flick it to Mr Pezzullo. I'm aware of figures on people deported from Australia up until the end of last financial year. Could you please provide the committee with figures of how many people have been deported—unless you've got them now, in which case: how many people have been deported in the current financial year, broken down by countries to which they were deported?

**Mr Outram:** I will take that on notice. I did read out a number on the record earlier on, but I don't think it was perfectly aligned to the financial year. It was 608 since sometime in 2020, but I'll take it on notice.

**Senator McKIM:** Are able to break that down by country?

**Mr Outram:** I imagine we will be able to, because it is pretty hard to get people back to their country of origin at the moment.

**Senator McKIM:** Thanks very much. I think this will be either to the minister or to Mr Pezzullo; in any event, I'm pretty sure it's not to Commissioner Outram. It's in regard to the US arrangement that you were answering questions from the chair on before. Mr Pezzullo, if I say 'the offshore cohort', do we have a common understanding that that would refer to everyone who arrived in Australia by boat post July 2013 and was sent either to Manus Island or to Nauru?

**Mr Pezzullo:** I'm happy to operate under that working definition. Of course, people did arrive before July 2013, but I understand.

**Senator McKIM:** That's right. That would be 'legacy case load'?

**Mr Pezzullo:** The legacy case load. You and I are well versed in the distinction.

**Senator McKIM:** Of the offshore cohort, are you able, either now or on notice, to provide details to the committee of how many people have been resettled to which countries, not including the US, because you've already provided that information?

**Mr Pezzullo:** Yes, we can address that.

**Senator McKIM:** You will take that on notice?

**Mr Pezzullo:** Yes. For the abundance of caution and clarity, I will take resettlement to include 'returned to country of origin'—or are you not including that?

**Senator McKIM:** If possible, could you provide both with and without?

**Mr Pezzullo:** Right. So persons who have been determined to be refugees or otherwise resettled in a third country?

**Senator McKIM:** I'm talking about everyone in the offshore cohort here. Some of them, as you would know, were not found to be refugees. Most were, but some weren't.



**Mr Pezzullo:** Yes.

**Senator McKIM:** I'm after the figures for the whole cohort: firstly, people who were resettled in third countries; secondly, people who were returned to their country of origin.

**Mr Pezzullo:** Yes.

**Mr Outram:** Senator, I can give the answers to your question earlier.

**Senator McKIM:** Thank you. I was wrong: it is a matter for Commissioner Outram!

**CHAIR:** To which question are you responding?

**Mr Outram:** This is on removals from Australia from offshore detention.

**Senator McKIM:** Thank you, Commissioner.

**Mr Outram:** There were 618 in the financial year to 31 January 2021. There were 239 to New Zealand, 94 to Vietnam, 43 to Malaysia, 41 to China, 22 to Hong Kong and 179 to other countries. I would also say that 97 per cent of those were voluntary removals.

**Senator McKIM:** Thank you. I didn't quite hear the New Zealand figure there.

**Mr Outram:** It was 239.

**Senator McKIM:** So, by a comfortable margin, the largest number went to New Zealand.

**Mr Outram:** Yes.

**Senator McKIM:** Thank you. Mr Pezzullo, if I correctly transcribed the answers to the chair by one of your officers earlier, in regard to the US resettlement, there was 929 people who went to the US, and there are 265 in the pipeline, if we can call it that. I think those numbers are accurate, and one of your officers will correct me if they're not.

**Mr Pezzullo:** Potentially. Subject to final US determinations, they're potentially available to be resettled in the US, yes.

**Senator McKIM:** That's fine. So that's just under 1,200. How many people would that leave, out of the offshore detention cohort.

**Mr Pezzullo:** If all of these persons—

**Senator McKIM:** Yes, if all of those persons, hypothetically, went to the US.

**Mr Pezzullo:** There are three elements to the answer—perhaps more for the benefit of others than for you, because I think you understand these categories better than most, if not all. There are those on Nauru, there are those on PNG—or in PNG, I should say—and then there is the transitory group, which is the legal definition that we use under the Migration Act and which is inclusive of children who have been born since their parents' arrival. It is in the order of 1,200 in Australia—is that right, Mr Ablong?

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

**Senator McKIM:** So there is Nauru, there's PNG and then there's Australia.

**Mr Pezzullo:** Yes.

**Senator McKIM:** The critical point there is the policy announced by the Australian government in July 2013: 'Thou shalt not settle in Australia.' That creates a legal bar, so even persons transferred here from that group for medical treatment have no pathway to any form of residency.

**Mr Pezzullo:** I understand that.

**Senator McKIM:** In summary, Nauru is about 140?

**Mr Ablong:** At the moment, as of 14 March, Nauru is 110.

**Senator McKIM:** PNG?

**Mr Ablong:** PNG, 130.

**Senator McKIM:** And transitory persons?

**Mr Ablong:** Here in Australia, 1,223.

**Senator McKIM:** Thank you. My question, if you recall, was: following the US process, how many would that leave?

**Mr Pezzullo:** Assuming all 200-plus went to the US.

**Mr Ablong:** Just under 1,000. Four under 1,000: 996.

**Senator McKIM:** Are you able to break them down by their current locations?

**Mr Ablong:** Only in very general terms.

**Senator McKIM:** I just mean Nauru, PNG and Australia.

**Mr Ablong:** As I said, there are 110 in Nauru at the moment, and we expect that around 15 of those, who are provisionally approved for the United States, will continue.

**Senator McKIM:** So about 95.

**Mr Ablong:** About 95. In Papua New Guinea, of the 130 that are there at the moment, around 10. So that will leave 120. From Australia, of the 1,223, 240.

**Senator McKIM:** My maths on the fly has let me down here. Anyone?

**Mr Ablong:** Which bits of maths?

**Senator McKIM:** The number currently in Australia minus the number in Australia that are going to the US, if they're all accepted.

**Mr Ablong:** The number in Australia is 1,223. If 240 went, that would leave—

**Senator McKIM:** Just under 1,000, right?

**Mr Ablong:** Just under 1,000.

**Senator McKIM:** I'll do the maths later.

**CHAIR:** Senator McKim, your time is up. We will return to you. I know you have more questions. I now give the call to Senator Keneally.

**Senator KENEALLY:** I have a quick question for the Australian Border Force commissioner. I'm just confirming that, if dual citizens are here in Australia and they are seeking to leave, they need to get an exemption from Border Force.

**Mr Outram:** If they're Australian citizens, yes.

**Senator KENEALLY:** Regardless of whether they have citizenship of another country?

**Mr Outram:** Yes. If there is Australian citizenship, they're captured by the travel ban.

**Senator KENEALLY:** Are there any processes in place, when Border Force is deciding whether to grant an exemption, where it checks with the Australian Federal Police as to whether or not the person is a person of interest in any ongoing criminal investigation?

**Mr Outram:** There's a separate process. So there are people who are of interest to the police, whether it be the Australian Federal Police or the state police. If they're of significant concern, they can put them on an alert, and so, when they leave the country, then we would pick them up at the airports. It's a different process, so we don't need to check, because, if they're of interest, the police will flag it. If somebody's the matter of an investigation, it wouldn't necessarily be the case that they're on alert—

**Senator KENEALLY:** They might have information about an ongoing investigation—

**Mr Outram:** It's a matter for the police.

**Senator KENEALLY:** It's a matter for police. So the process would be police would put them on an alert—

**Mr Outram:** Yes.

**Senator KENEALLY:** When would that then—

**Mr Outram:** We'd pick them up when they go outbound through the airport.

**Senator KENEALLY:** What, through customs?

**Mr Outram:** When they check-in. We get advanced information from the point of check-in, and then, between then and getting to our primary line, they'll be picked up there.

**Senator KENEALLY:** Is that a new process—

**Mr Outram:** No.

**Senator KENEALLY:** due to the border exemptions?

**Mr Outram:** No. Inbound and outbound, we have people on alert for a whole range of reasons. Sometimes the alerts want us to take action, and sometimes it's just notifying of somebody's travel.

**Senator KENEALLY:** In relation to the family that is currently in immigration detention on Christmas Island—and I will refer to them as 'the Biluela family' for shorthand—is there an update on the cost to the

government of keeping this family on Christmas Island? If it could be broken down into legal fees, transport, accommodation and the like, that would be useful.

**Mr Outram:** I can't give you the detailed breakdown, but I've got an estimated cost. Between 30 August 2019 and 31 August 2020, it was \$3.6 million. But I'll take on notice the breakdown of the costs and bring it up to date for you.

**Senator KENEALLY:** So that is costs incurred by Australian Border Force?

**Mr Outram:** And possibly the Department of Home Affairs. I'll take it on notice. We'll break it down and come back to you. We've got contracts with service providers that are already paid for, so it's not as simple as just a direct cost to the Border Force.

**Senator KENEALLY:** Sure, and I can appreciate that. I am looking particularly to understand the cost since they've been moved to Christmas Island, and that would include the legal fees, the transport costs, the accommodation and the detention costs, and there may be other costs associated with schooling—I do not know. So I'm seeking to understand a sort of whole-of-government figure.

**Mr Outram:** Yes. I mean obviously the accommodation is something that we already manage—

**Senator KENEALLY:** But there would be costs.

**Mr Outram:** There would be costs. Serco—

**Senator KENEALLY:** Yes. Food, health care, cleaning—

**Mr Outram:** There would be costs out of the contract that would absorb—there would be transportation, I suppose, on the island. We have to move them around on the island.

**Senator KENEALLY:** How many staff are required to detain the family on the island?

**Mr Outram:** I might see if Deputy Commissioner Saunders can assist me with a more detailed—I don't have that level of detail. I'll have to take that on notice. We do have a footprint there who are dedicated to the family. They're not part of the same group of staff who are working at North West Point.

**Senator KENEALLY:** Yes, I understand that. The staff that are, for lack of a better word, detaining the family on Christmas Island—are they Serco guards, ABF officers or AFP officers?

**Mr Outram:** It's a combination of Serco and ABF. I believe there may be some clinical staff as well. I'll come back to you, again, with the exact—

**Senator KENEALLY:** Are they required to have a Working With Children Check or licence of some sort?

**Mr Outram:** Yes. For staff who are working with children, we do require that, as the department. Yes—absolutely.

**Senator KENEALLY:** Are there still guards—they've been described as guards; the family is in detention—accompanying the five-year-old Kopika to school?

**Mr Outram:** We do have an obligation under the Migration Act. The guards don't wear uniform when they're accompanying the family outside of the accommodation area, but we do have an obligation and a duty of care under the Migration Act where we do have to have guards in proximity. But, as I say, they don't wear their uniform when they're undertaking that role.

**Senator KENEALLY:** What obligations do you have under the Migration Act to provide guards?

**Mr Outram:** Well, they're in detention, so obviously we have an obligation in terms of their safety and security, and if something were to happen to one of those children whilst they were in detention on our watch and nobody was nearby to look after them then that responsibility would come on the department. As to people in detention, generally we have a responsibility to make sure they stay in detention under the Migration Act, even if they're in hospital. We try to do it as sensitively as we can, but we do need to retain a presence to manage the risks, particularly around children, of course.

**Senator KENEALLY:** Do the guards stay with the five-year-old, Kopika, while she's at school?

**Mr Outram:** I'll take on notice how they manage and interact with the teachers in the classes and the distance that they keep and how they manage to maintain observation. I imagine they'll give the children space, but, again, I'll take on notice how they're managing that in the particular instance of the two children—one's in a school and one's in a kindergarten.

**Senator KENEALLY:** I apologise—there's an urn right behind me—

**Mr Outram:** I can hear it from here.

**Senator KENEALLY:** that has decided this is the moment to boil loudly. So could you repeat that, Commissioner.

**Mr Outram:** I said I'll come back to you with the detail of how we manage for both children, one in school and one kindergarten, in relation to how classes are being conducted and the distance that they maintain within those environments.

**Senator KENEALLY:** Are the children able to attend other events that children might attend, like a birthday party or a play date at a friend's house?

**Mr Outram:** Yes. We facilitate that and other excursions around the island for the family and access to the leisure centre and so on and so forth.

**Senator KENEALLY:** So they would be allowed to go to a friend's house to play?

**Mr Outram:** Yes, that's my understanding. We would allow that. And they're allowed—and encouraged, in fact—to interact with other children.

**Senator KENEALLY:** Presumably, by the evidence you've given, there would be guards that would accompany them on those excursions or those play dates or to those birthday parties?

**Mr Outram:** Indeed.

**Senator KENEALLY:** Just to establish—

**Mr Outram:** And that would be the same if it were on the mainland.

**Senator KENEALLY:** I'm sorry?

**Mr Outram:** If they were in detention in Broadmeadows, it would be the same.

**Senator KENEALLY:** Just to understand, again, for those who might be listening in: you've cited your obligation under the Migration Act, which seems almost as if it is twofold—so correct me if I'm wrong in my understanding—(1) because the family themselves are in detention and you need to maintain them in detention; and (2) it seems to me you're suggesting, also to ensure their safety?

**Mr Outram:** Indeed, there's a duty of care element, and, as I say, we wouldn't want any harm to befall the children whilst they were in detention in our care, and if we didn't have any service providers present then presumably—and general counsel is here—we would have some significant liabilities. It's a moral and legal responsibility, I think, that we've got, where the children are concerned.

**Senator KENEALLY:** Thank you, Commissioner. Chair, I'm cognisant of our earlier discussions about spillover of questions on notice and the like, and I just flag that I will put a range of questions on notice but thank the commissioner for his answers.

**CHAIR:** Thank you very much, Senator Keneally. Senator McKim has further questions but we will now break for supper and resume at 9.30.

#### **Proceedings suspended from 21:13 to 21:30**

**CHAIR:** We're continuing with outcome 1. I'd like to welcome Minister Cash to the table. Commissioner, you wish to clarify some of your previous evidence?

**Mr Outram:** I want to correct some evidence on the question about the children on Christmas Island at school and kindergarten that you asked about, Senator Keneally. I said I'd come back with what the arrangements are. There is a designated persons arrangement in place with the school and the kindergarten. The Serco plain-clothes officers drop off and pick up. We have that arrangement in place with the school and kindergarten.

**Senator KENEALLY:** Serco do not stay at the school?

**Mr Outram:** No.

**CHAIR:** Thank you very much, Commissioner.

**Senator McKIM:** I've got a couple of questions on the family from Biloela who are on Christmas Island as well, Commissioner. Could you—and feel free to take this on notice—provide the committee with information regarding any school holiday programs that are provided to the children?

**Mr Outram:** I will take that on notice. I'm not aware exactly of the details of what that may look like, but I'll take it on notice.

**Senator McKIM:** Why are the parents of the children being frisked and put through metal detectors in front of their children every time they enter and exit their accommodation?

**Mr Outram:** Again, if that's what the practice is, I'll take that on notice. I'm not agreeing that is the practice, but I'll take the question on notice.

**CHAIR:** Senator McKim, do you have any supporting material in relation to the allegations that you've made?

**Senator McKIM:** I've seen the footage of that happening, including with the children witnessing their parents being body searched and put through a metal detector, yes.

**CHAIR:** Thank you very much. You can take that on notice, Commissioner.

**Senator McKIM:** I don't make things up.

**CHAIR:** No, I'm not suggesting that. I'm just asking for the evidence on which you're basing your question.

**Senator McKIM:** Commissioner, as part of that response on notice, could you quantify what the department is looking for in those searches? I accept you're not yet accepting that they happen.

**Mr Outram:** Indeed, and there's a corollary to that.

**Senator McKIM:** Also, has there been a psychological assessment of the impact on the children of watching their parents undergoing that process?

**Mr Outram:** There is a fairly material medical presence on the island to cater to the needs of the family. I'll take that on notice as well.

**Senator McKIM:** Could you please provide an updated breakdown of costs associated with matters relating to this family, broken down by legal cost? Again, feel free to come back on notice. That might be one for you, Mr Pezzullo.

**Mr Outram:** I think I've already taken this on notice from Senator Keneally.

**Senator McKIM:** By detention costs—have you taken that on notice?

**Mr Outram:** I think I have taken on notice the costs in general, including legal and other costs.

**Senator McKIM:** Broken down by those criteria? Alright. Thank you, I appreciate that. Mr Pezzullo, is the department aware of a memorandum of understanding between the Australian government and the Sri Lankan government on the return and readmission of persons?

**Mr Pezzullo:** I'm aware of an agreement that the two governments have. Whether it's a memorandum of understanding or some other legal characterisation, I'll defer to Mr Ablong. He might know. We certainly have an intergovernmental arrangement, yes.

**Senator McKIM:** It's been reported in Sri Lankan media as an MOU, so I'm just after some clarity.

**Mr Pezzullo:** What's the nature of our agreement with Sri Lanka?

**Mr Ablong:** Yes, it's an MOU.

**Senator McKIM:** Is that publicly available?

**Mr Ablong:** I don't believe so.

**Senator McKIM:** Could you make it—

**Mr Ablong:** I will check and get back to you.

**Senator McKIM:** Thank you.

**Mr Pezzullo:** We'll take the question on notice.

**Senator McKIM:** Yes. I understood that to be an acceptance. If it's not publicly available, could you please take on notice whether you could provide a copy to the committee.

**Mr Pezzullo:** We'll take it on notice.

**Senator McKIM:** I appreciate that. Are you able to answer this question, Mr Ablong: does the MOU include provisions for the return of people who have sought asylum in Australia and who continue to face the possibility of torture and abuse in Sri Lanka, as reported in Sri Lankan media?

**CHAIR:** Senator McKim, you're referring to a report in the Sri Lankan media. Could I ask you to make that report available for witnesses so they can—

**Senator McKIM:** I'll take that last bit off the question. Mr Ablong, does the MOU include provisions for the return of people who sought asylum in Australia and arrived by boat and who continue to face threats of torture and abuse?

**Mr Ablong:** As you know, we have certain non-refoulement obligations. The returns agreement we have with Sri Lanka is for the voluntary return of Sri Lankans. We would not involuntarily return somebody who made a claim for asylum.

**Senator McKIM:** So that's never happened—that someone has been involuntarily returned to Sri Lanka?

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

**Senator McKIM:** Thank you. I appreciate that. I think this question would be for you, Mr Pezzullo. A large number of organisations and groups representing local governments and regional communities, church groups and diaspora communities have submitted to the government's review of the community sponsorship program for refugees. They were told on submission that the review would be completed in January but have yet to be updated. Are you able to update the committee on the progress of that review?

**Mr Pezzullo:** I'm very happy to update the committee under program 2.4, if that's the guidance of the chair.

**CHAIR:** Yes.

**Senator McKIM:** That's fine.

**Mr Pezzullo:** There seems to have been a bit of program hopping.

**Senator McKIM:** Okay. I apologise for that.

**CHAIR:** We're definitely completing outcome 1, which we're hoping to do as quickly as possible.

**Mr Pezzullo:** I will come back to you under 2.4.

**Senator McKIM:** Alright. We can deal with that later on, hopefully. This series of questions is to you, Commissioner Outram. You and I have discussed this on more than one occasion. It's around inwards travel exemptions for families that are separated. Commissioner, you said on the *Today* show on 19 August, 'We don't want families to be split up, where possible.' Well, you did—

**CHAIR:** Senator McKim, I appreciate that you have provided the program and the date. Just for the witness's benefit, do you have a copy of the transcript of that program?

**Senator McKIM:** No, but I will now seek that.

**CHAIR:** If you can seek that—

**Senator McKIM:** I'll withdraw that question.

**CHAIR:** Just to clarify: you're no longer seeking to rely on that television program and so there will be no need to table that transcript?

**Senator McKIM:** I'll be able to ask questions on notice, Chair. Those are a matter for me, not for you.

**CHAIR:** Senator McKim, I didn't suggest otherwise. So please don't reflect on me in that way.

**Senator McKIM:** Commissioner, do you recall your appearance on the *Today* show, just in general terms?

**Mr Outram:** Vaguely.

**Senator McKIM:** So you're not disputing you—

**Mr Outram:** My point would be that, where possible, you wouldn't want to split families. But we've had to, of course, in certain circumstances. I would accept that.

**Senator McKIM:** Of course. But you do recall that you appeared on the *Today* show?

**Mr Outram:** Yes.

**Senator McKIM:** Okay, thank you. Just after your *Today* show appearance, there was a flurry of approvals of claims for exemptions, but that's slowed down significantly in recent times. Of the cases that my office have on our books, we had one approval in December for an exemption where a family was split up, and one approval so far in 2021. My office has 40 cases currently where children are either separated from both parents, and there's one case that fits that category, or separated from one of their parents, of which there are 39. Now, they're just the cases that my office is aware of—that people have got in touch with us about. I guess my question, Commissioner, is why are those families, all of whom have put in multiple requests for exemption, still being denied under the compassionate grounds criteria?

**Mr Outram:** I might ask Deputy Secretary Kefford to step forward. In the meantime, I'll say that we received a list, I think, from your office on 9 March. There were 43 cases that were then reviewed. We have, obviously, throughout this pandemic, been collaborating with your office—and others, frankly, in the parliament as well—in relation to these sort of cases. All 43 cases were reviewed by the decision-makers, and they were found not to meet the provisions for split families. A further seven cases were raised in the email, and all of those have been

further reviewed and two were submitted for my consideration. In one case, further evidence was provided, and that person has since been given an exemption based on the additional information—critical skills—that was in the application, and another is a case of an asylum seeker BVE holder seeking entry for his wife and child, who are in the Netherlands, and that case does not meet the guidelines.

**Senator McKIM:** Alright. When you say they were found not to meet the provisions for split families, do you mean that the families were not separated or that they didn't meet the criteria for an exemption under compassionate grounds?

**Mr Outram:** Yes. I might ask Deputy Secretary Kefford to explain it, probably more eloquently than I can, in relation to the decision-making.

**Mr Kefford:** Without knowing the particular specifics of those two cases, the way in which the decisions are taken, you'll recall, going back to the decision the government took, is that it's only the families of citizens and permanent residents who are exempt from the travel ban. So families of temporary visa holders and other visa holders need to go through the exemptions process.

**Senator McKIM:** That's the process I'm asking about.

**Mr Kefford:** Indeed. In some cases, the question turns on the family relationship. In other cases, it turns on the application of the policy that's been described in these hearings previously, which goes back to the government's decision this time last year to close the border to certain categories of visa holders.

**Senator McKIM:** Just to be clear here—and I might just direct this to you, Commissioner Outram, in the first instance—I'm specifically asking about the process that you oversee, Commissioner, as I understand it.

**Mr Outram:** Yes. And the deputy secretary actually runs that exemptions process for me, with the decision-making side.

**Senator McKIM:** You are the decision-maker, though.

**Mr Outram:** Indeed. Let me say this—and this is the guidance I've given previously and I've given evidence on this previously, and nothing's changed—

**CHAIR:** Commissioner, can I just interrupt for a moment. Just for the benefit of those listening, can we just clarify the nature of the question here. So, Senator McKim, just for those listening, we are addressing a question in relation to the exemptions for those returning to Australia?

**Mr Outram:** Or coming to Australia with a temporary visa.

**CHAIR:** On a temporary visa.

**Mr Outram:** Yes.

**CHAIR:** Thank you.

**Mr Outram:** And the guidance generally, Chair, is that, in cases where children are offshore and a temporary-visa-holder parent is in Australia, it's open to the family to reunite in their home country. So unless—

**Senator McKIM:** Sorry, could I just ask you to repeat that last sentence?

**Mr Outram:** In cases where children are offshore and a temporary-visa-holder parent is in Australia, it is open to the family to reunite in their home country. Senator, I'd refer you to my previous evidence and our conversations on this both in the select committee and in front of this committee that our decisions go to the criticality of the role being performed by the person who is onshore—correct me if I'm wrong, Deputy Secretary Kefford—and the critical skills and occupations are called out and listed, and the circumstances in each case of whether the family were here before in Australia or not here before in Australia. There are a whole lot of things that are taken into account in the circumstances. But, by and large, our preference is to reduce the travel here to Australia by people from around the world where there may be COVID present. Our preference would be, in most cases, for the visa holder to go home to their family, if that's their preference.

**Senator McKIM:** I want to ask you about the first issue you raised, which is—and I'm not trying to misquote you—the suggestion that in some cases people could leave Australia and be reunited overseas. Many of these families have lived in Australia for five years or more. They have homes here. They have jobs here. I personally know one person in my home town of Hobart that has a job here and hasn't seen one of her children for 12 months, and you're suggesting that she should quit her job, move out of home and go back to where it is not home for her—

**CHAIR:** Senator McKim, I just want to pull you up here. The commissioner has not made any such suggestion. So could you just rephrase your question in a way that does not misrepresent the commissioner's position.

**Senator McKIM:** Well, in fact, the commissioner did suggest that families could reunite in other countries.

**CHAIR:** I understand that, but you asked about a specific case. Could you just rephrase your question so that you don't make that inference.

**Senator McKIM:** Commissioner, are you aware that you as the decision-maker have refused on multiple occasions to allow a family to reunite in Australia in cases where if the part of the family that was in Australia moved overseas that would mean the family lost their home, lost their job or lost their income? Are you aware of that?

**Mr Outram:** In terms of the criteria that we use for deciding on whether people can come to Australia on a discretionary basis, we use the grounds around their providing critical skills, delivering services in sectors that are critical to economic recovery, travelling at the invitation of the government, sponsored by an employer or that it would otherwise be in the national interest. There are other criteria about residing on vessels and so on and so forth. There is a ground including that we can, in certain circumstances, for compelling and compassionate reasons, reunite minors with parents. But we also have to balance this against the fact that there is health advice and there's a travel ban. So the default position is nobody travels to Australia. That's the default position—to prevent COVID-19 getting into our country. This is obviously a difficult process for many people who want to either travel overseas or travel to Australia. I accept that. There's a global pandemic and we're trying to manage and reduce travel. So we are therefore looking at each individual circumstances, and so we are taking it case by case.

In general, as I said to you, if the parent onshore is in a critical skills occupation then we'll take that into account. If not then we'll take that into account. I don't know if Deputy Secretary Kefford can provide me any more granular detail about how the decision-makers use my guidance there, but we take into account all of the circumstances. Whether the parent who is offshore with the children can satisfy any of the other criteria is something that we've worked with your office on to see if they have other reasons to be here.

**Senator McKIM:** I'll just indicate we do appreciate the extent to which your agency has engaged with my office on these issues. I'll place that on the record. Just to make sure I understand the evidence you've just given, what you're saying is that the fact that a child may be separated from one or both of its parents is not of itself sufficient grounds to automatically meet the compelling and compassionate criteria?

**Mr Outram:** Correct.

**Senator McKIM:** In regard to the health risk, do you know how many separated families there are that have applied for exemptions?

**Mr Outram:** I'll take that on notice. We may not even know.

**Senator McKIM:** You actually have taken these questions on notice previously, and the response has come back saying that you haven't got the dataset, basically. You'd have to have a look at every individual case—

**Mr Outram:** That may well be the case.

**Senator McKIM:** and so you've refused on the basis of an unreasonable diversion of resources.

**Mr Outram:** We've had literally tens of—

**Senator McKIM:** My office has got a system where you can press a button and it tells us. We're not a multibillion-dollar agency—

**CHAIR:** Senator McKim, can I ask you not to argue with the witness.

**Senator McKIM:** I do find it extraordinary that you've been unable, repeatedly, to come back to the committee on notice.

**CHAIR:** Senator McKim, could I ask you not to reflect on the witness, please.

**Senator McKIM:** Regardless of how many people we're talking about here, you facilitated the arrival of 1,200 tennis players, coaching staff and associated hangers-on, to come into the country for the Australian Open. Are you seriously suggesting that the health risk to Australia of allowing in maybe 100 to 200—maybe 500, tops—families who are separated is greater than allowing 1,200 of the tennis circus into Australia?

**Mr Outram:** The request in relation to the tennis was made by the state government and on economic grounds about the benefit to, in that case, the Victorian economy, and, until the state put into writing that request and also put into writing the fact that they would manage the people who were coming, over and above the travel cap, I won't approve, but it's within the exemption criteria for people to come to undertake activities that have an economic benefit to Australia—a significant economic benefit—and sports and film and those sorts of things are called out in that regard.



**Senator McKIM:** They're your criteria, are they?

**Mr Outram:** My criteria? They're the criteria that I use, so, you know—

**Senator McKIM:** But they're your criteria.

**Mr Outram:** Well, these are criteria that have been agreed, in policy, so I apply the criteria.

**Senator McKIM:** Whose criteria are they, if they're not yours?

**Mr Outram:** They're my guidelines, but the policy is clear—that things in the national interest fall within the exemption regime. Let me give you an example—

**Senator McKIM:** Sorry—are you still answering?

**CHAIR:** Yes, he is.

**Mr Outram:** The ABF Commissioner or authorised decision-makers will consider the following inwards request on a discretionary basis: a person travelling at the invitation of the Australian government or a state or territory government or authority for the purposes of assisting in COVID-19; a person providing critical or specialist medical services, including air ambulance et cetera; a person with—

**Senator McKIM:** Sorry to interrupt. What was the first bit you said then—'you will consider'—the very first part of that?

**Mr Outram:** Well, whether or not the person is auto-exempt in the first place. There is a group of people who are auto-exempt.

**Senator McKIM:** Sorry—you just read it out and I missed it. Could you start—

**CHAIR:** Sorry, Commissioner, could you just start from the beginning?

**Senator McKIM:** Just repeat the first bit that you just read out.

**Mr Outram:** There is a long list here, so bear with me.

**Senator McKIM:** Yes, but the first bit—before you get to the list—

**CHAIR:** Senator McKim, the commissioner understands—

**Mr Outram:** The ABF Commissioner or authorised decision-makers will consider the following inwards requests—

**Senator McKIM:** Yes—'consider'—

**Mr Outram:** on a discretionary basis.

**Senator McKIM:** Yes. I appreciate that. I don't need the full list. I've seen it.

**Mr Outram:** I'm more than happy to read it out to you.

**Senator McKIM:** No, no; I'm fine, thank you. I appreciate that, but the chair is cracking the whip on me, so I'm just trying to—

**CHAIR:** Ten o'clock, Senator McKim.

**Mr Outram:** And one of the criteria is: whose entry would otherwise be in the national interest, supported by the Australian government or a state or territory government or authority.

**Senator McKIM:** Yes. But, ultimately, these decisions—whether it's the Australian Open tennis players or a child that hasn't seen either of its parents for 12 months—are your decisions, in terms of whether to grant them an exemption, and no-one else's decisions. Is that correct?

**Mr Outram:** It's my decision, and what I'm saying is that you can't—well, we can't; you may be able to, but I can't. The reason we have different criteria is: it's not fair on my decision-makers to have to weigh one of those things against the other. I have to give them guidance. So somebody who comes in on a film set and is playing an essential role that's going to contribute millions of dollars to a state economy versus somebody who wants to come for the end-of-life of their family—they're two very separate criteria. Are you telling me that I should take one over the other—I should provide that guidance to my decision-makers? We'd get completely locked down. We wouldn't be able to make the decisions we have to make. We have to be objective and we have to be as compassionate as we can, but we have to follow through on criteria that we use to make decisions, and comparing different categories of decision exemption isn't the way to do this, because you've got people coming in for military purposes, people coming in for agricultural purposes, people coming in for medical purposes, people coming in for compassionate purposes, people coming to do movies, and to call one out as being more important than the other, on a subjective basis, is really difficult for decision-makers.

**Senator McKIM:** Well, that's exactly what you're doing.

**Mr Outram:** But I'm not comparing them.

**Senator McKIM:** You are saying it's more important to be a tennis player than it is to be a separated family—

**Mr Outram:** That's not what I'm saying at all.

**Senator McKIM:** because you're allowing the tennis players in and you're refusing multiple separated families—

**Mr Outram:** No, I—

**Senator McKIM:** keeping children away from their parents for over 12 months now.

**CHAIR:** Senator McKim, could you please make sure that you are directing questions only to the witness and not speaking over the witness. Commissioner.

**Mr Outram:** I do not accept at all that proposition, Senator.

**Senator McKIM:** Alright. Can I ask about—

**CHAIR:** Senator McKim, from a time management perspective—

**Senator McKIM:** I'm doing the best I can, Chair.

**CHAIR:** I'm hoping that you will wrap up by 10 o'clock because we do need to go to outcome 2—

**Senator McKIM:** I don't think we'll make that, quite.

**CHAIR:** and we will need, I think, most of the hour to deal with outcome 2.

**Senator McKIM:** Alright. How many of the offshore cohort who are currently in Papua New Guinea have contracted COVID that the department is aware of, in the wave of COVID that is sweeping PNG at the moment?

**Mr Pezzullo:** I haven't seen an up-to-date figure, but Mr Ablong might have the number.

**Mr Ablong:** Six members of the cohort have currently contracted COVID-19.

**Senator McKIM:** What medical treatment have they been provided with?

**Mr Ablong:** They were provided with individual medical treatment at the Pacific International Hospital. They were given appropriate medications, protective equipment and the like. They have been self-isolating, so they're not mixing with the other members of the cohort.

**Senator McKIM:** Okay. Were any hospitalised, as in did they stay overnight or longer in hospital?

**Mr Ablong:** One was admitted, but he removed himself from the hospital.

**Senator McKIM:** What advice has the department sought or received on the health risks, for cohort members, associated with being in Papua New Guinea?

**Mr Ablong:** Sorry, Senator, could you repeat the question?

**Senator McKIM:** Yes. What advice have you sought in regard to the health risk for people in that cohort who are in PNG?

**Mr Ablong:** We've sought medical advice from the Chief Medical Officer of the department and the MoCs, medical officers of the Commonwealth, about treatment in Papua New Guinea for members of the cohort.

**Senator McKIM:** Has that advice reassured you that all treatment facilities that are necessary are actually available in PNG, given the multiple reports that hospitals are full over there and health workers are contracting COVID in significant numbers?

**Mr Ablong:** We are monitoring it on a regular basis. At this stage, we're comfortable that those members of the cohort are being provided with the requisite medical support from our providers, being given personal protective equipment and being provided with the means to isolate and quarantine, should they feel that they need to. So, at this stage, we're comfortable that they can receive the treatment they need in Papua New Guinea.

**Senator McKIM:** Is the department ensuring that people are safe from recriminations from local people?

**Mr Ablong:** Well, the cohort mixes with the local community. Through our support providers in Papua New Guinea, we provide them with advice about what to do to ensure that they are as protected as they can be.

**Senator McKIM:** I'm specifically asking about the people who have tested positive for COVID. I know—because, well, I know—that they're worried about backlash from the local community for having contracted the disease. Is the department ensuring that they are safe?

**Mr Ablong:** We have provided those individuals with advice as to what they should do to protect themselves.

**Senator McKIM:** But they're self-isolating. You gave that evidence a moment ago.

**Mr Ablong:** Yes.

**Senator McKIM:** So those six are actually not mixing with the local community at the moment, are they?

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

**Senator McKIM:** No. And you're satisfied that in the locations in which they're self-isolating—I've been to the hotel I believe they're at; I'm not going to say its name here, in public—they're safe from any potential recriminations from locals?

**Mr Ablong:** We are satisfied at this point that they are safe.

**Senator McKIM:** Would you consider medevacing any of them to Australia if it were necessary?

**Mr Ablong:** If their medical condition required, on the advice of medical professionals, their transfer to Australia, we would work through that process. It would be a complicated process bringing somebody with COVID-19 into the country and finding a spot in an Australian hospital that would accept them, but we would undertake work to determine whether that was possible.

**Senator McKIM:** Thanks. I want to go now to the people who were medevaced to Australia under the—

**CHAIR:** Senator McKim, we are at 10 o'clock. That was the time by which I indicated that we would need to go to outcome 2. To avoid a spillover, I ask you to complete your questions within the next minute.

**Senator McKIM:** I don't think that would be possible, Chair, but I'll do my best to get through them within about the next 15.

**CHAIR:** No, I'm sorry, Senator McKim, out of respect for senators. There are many senators waiting to go to outcome 2. I have given you half an hour, which is what you indicated you needed. I understand that senators have an inherent right to continue asking questions, but, out of fairness to all of the officers here who are waiting to go to outcome 2, either we can go to outcome 2 now and go to a spillover hearing in relation to outcome 1 or I could give you a bit of grace—a couple more minutes, but certainly not 15. That would mean we will not get through outcome 2.

**Senator McKIM:** If you just give me a little bit of grace, I'll do the best I can.

**CHAIR:** A maximum of five, if we can do a deal.

**Senator McKIM:** I wanted to ask Mr Pezzullo or any of his officers about the people who were medevaced to Australia and who were, or in some cases still are, in APODs, alternative places of detention. Obviously, a number of them have been released into the community in recent times. Could you please just explain for the committee why some men have been released into the community and others haven't?

**Mr Pezzullo:** It is a question of working through the status resolution process for each individual. In some cases, held detention continues to be the appropriate course. In some cases, detention in an alternative place of detention makes most sense. In some cases, a determination about community residency is appropriate. The fourth category is a bridging visa to live and reside in the general community.

**Senator McKIM:** Thanks for that general answer, Mr Pezzullo, but I'm really interested in what criteria are applied during the status resolution process.

**Mr Pezzullo:** Is this in terms of the reference to medevac specifically—because it became a term under the short-lived amendment to the Migration Act—or all medical transfers?

**Senator McKIM:** I'm just asking specifically about people who were transferred under the short-lived amendment—all too short-lived in my view as one of the movers of that amendment—to the Migration Act.

**Mr Pezzullo:** So the so-called medevac amendment.

**Senator McKIM:** That's right—the 'capital M Medevac' cohort, if you want to put it like that.

**Mr Pezzullo:** Yes, understood.

**Senator McKIM:** Mr Kefford, are you able to provide any information about the criteria that are taken into account when status resolution processes are implemented

**Mr Kefford:** That process involves an ongoing consideration of all cases in detention for the possibility of ministerial intervention, in the way that has happened in relation to the 276 that have been moved from residence determination to final departure bridging visas and, indeed, the 140 moved from alternative places of detention onto those same visas. This reflects an ongoing part of the department's work but also reflects the operation of the act. For this particular cohort, the decision is ultimately with the exercise of a ministerial discretion to grant that visa.

**Senator McKIM:** Thanks, Mr Kefford. I do understand that there's ministerial discretion involved, but I know that some of the people who are still in alternative places of detention don't understand why some of their friends

have been released and they've been kept in. On that basis, I ask: are the status resolution assessments an ongoing process as of today?

**Mr Kefford:** The consideration for ministerial intervention as I've described it is ongoing, yes.

**CHAIR:** Final question, Senator McKim.

**Senator McKIM:** It won't be my final question, Chair, at the moment, so I will just ask what you say will be my final question. Mr Pezzullo, this goes to the matter I was raising with AUSTRAC this morning that you were, I believe, engaged with, and that is the Anti-Money Laundering and Counter-Terrorism and Financing Act and the process around—if I say the gatekeepers, you might not agree, but I think you understand that I'm talking about lawyers, accountants and real estate agents, in the main. Could you just give us an update on progress there, please.

**Mr Pezzullo:** Ms Patterson might return to the table. As Ms Rose indicated, a number of amendments were agreed by the government in what I think she called tranche 1.5—

**Senator McKIM:** I'm asking about tranche 2.

**Mr Pezzullo:** Yes, indeed. The persons who would fall under that evolution of legislative change, were government to agree, are solicitors, managers of trust accounts, conveyancing and others, and accountants. They would be captured in tranche 2. Some work was done initially by the Department of the Attorney-General, which had responsibility for this matter up until the machinery-of-government changes that led to the creation of Home Affairs. That work has now transitioned to us. I know, from the last time I looked at this, we've prepared and given advice on the relative cost and benefit of regulation in this area—the regulatory impost and the cost involved in the reporting scheme versus the benefit in relation to public safety, national security and counterterrorism. What is the current state of play, Ms Patterson, against that background?

**Ms Patterson:** Obviously, as AUSTRAC indicated this morning, we've put through two phases of reforms to the legislation. That's phase 1 and phase 1.5. We're now looking at phase 2, not to be confused with tranche 2.

**CHAIR:** Senator McKim, as I indicated, that needs to be your last question for this block. I have been very generous in accommodating you for more than 35 minutes.

**Senator McKIM:** We're so nearly done.

**CHAIR:** Senator McKim, we are going to need to move to outcome 2.

**Senator McKIM:** You're not able to do that under the order establishing this committee.

**CHAIR:** Senator McKim, you are at liberty to seek a spillover or you are at liberty to put questions on notice. I appreciate that. I'm not preventing you from asking questions in relation to outcome 1, but I think, as a matter of courtesy, unless you can convince me that you literally need two more minutes, it is very hard to ask a room full of officers and senators who have been waiting—some have been waiting several hours—for outcome 2. If you can convince me that you've got two more minutes, that would be brilliant, because these hearings do have to be time managed.

**Senator McKIM:** That is understood, Chair.

**CHAIR:** And we do have a resolution in relation to the management of the hearing, and obviously we can deal with that further in a private meeting if we need to. So I ask you to extend some courtesy to other senators and to officials here by wrapping up. I'm prepared to give you a final question.

**Senator McKIM:** Well, I'm very close, Chair. I can indicate to you that, depending on the length of answers, I think I could wrap up within five minutes.

**CHAIR:** Senator McKim, you really are pushing it, I'm sorry. I will give you the opportunity for two more minutes and then, as a matter of courtesy, we really do have to accommodate the officials and senators here in relation to outcome 2. We are more than two hours behind schedule. We have accommodated senators because most senators wanted to ask questions in relation to outcome 1, but fair crack of the whip, as they say.

**Senator McKIM:** It's Ms Patterson, is it?

**Ms Patterson:** Yes.

**Senator McKIM:** Sorry, I interrupted you in mid-flow there. I apologise for that and I'll give you an opportunity to continue. But it would be helpful to me, at least—and, I suspect, to other committee members—if you could explain the difference between tranche 2 and the other 2.

**Ms Patterson:** Phase 2.

**Senator McKIM:** Phase 2.

**Ms Patterson:** Okay. We've been doing this in phases. Phase 2 is intended to try and pick up the remaining recommendations from that statutory review which you referred to earlier today, as well as the 2015 FATF mutual evaluation report. As you'd be aware, one of the remaining recommendations is in relation to tranche 2, which is referring to that group of entities that would be regulated. So we're doing the work now to look at what phase 2 would look like, including tranche 2, and obviously that will need to be considered by government as to which of those reforms they want to do as part of our next tranche of reforms—sorry, our next phase of reforms.

**Senator McKIM:** Thank you. It's correct, though, that Home Affairs conducted a consultation with industry on tranche 2 that closed in January 2017, four years ago now, and we still remain one of only six countries in the world that haven't implemented tranche 2. The wheels are grinding pretty slowly here, are they not? That's probably an unfair question; I'll withdraw it. When do you expect to be able to provide advice to government on your consideration of phase 2, which, as I understand it, includes the consideration of the tranche 2 provisions?

**Ms Patterson:** As soon as possible. Work is being done in relation to that phase 2 for government's consideration.

**Senator McKIM:** Alright. Mr—

**CHAIR:** Senator McKim—

**Senator McKIM:** These are my last couple of questions.

**CHAIR:** We will have to go a private meeting in relation to time management if we can't—

**Senator McKIM:** It would be much quicker to let me ask my last two questions.

**CHAIR:** Senator Keneally, do you have a—

**Senator KENEALLY:** I do have a point of order. With all due respect to Senator Kim, he has been given extraordinary latitude by the chair—far more than any other senator today. We have had a private meeting once, and I propose that, if Senator Kim is seeking to persist with his questions, we go to another private meeting.

**Senator McKIM:** I've got two questions left.

**Senator KENEALLY:** Senator Kim, with the greatest of respect, I have heard you say that for the last 15 minutes.

**Senator McKIM:** My name is not Kim.

**Senator KENEALLY:** I said 'Senator McKim'.

**CHAIR:** Oh, sorry.

**Senator McKIM:** I'm not talking to you, Kristina. I'm talking to the chair.

**Senator KENEALLY:** It's been a long day.

**CHAIR:** Senator McKim, I propose—

**Senator McKIM:** Do you want the easy way out?

**CHAIR:** We will not get through outcome 2. You've had more than 40 minutes. No coalition government senator has had any time at all in outcome 1. I will suspend, and we will go to a private meeting.

#### **Proceedings suspended from 22:12 to 22:16**

**CHAIR:** The committee has resolved that we will now move to outcome 2, and I give the call to Senator Ciccone.

**Senator CICCONE:** Thank you, Chair. Officers, thank you for the documents that you tabled earlier. One of the questions I was going to ask was about unlawful noncitizens. I think that in the last round of estimates a few people, including me, described them as 'undocumented workers', but I'm assuming they're the same people that we're talking about.

**Mr Pezzullo:** There is no such legal category.

**Senator CICCONE:** That's right. So the legal category would be 'unlawful noncitizens'.

**Mr Pezzullo:** You've been watching far too much American public broadcasting! There is no such thing.

**Senator CICCONE:** It's been hard to get away over the last few months! On those figures, you have 70,000 as of 30 June last year. Do you have any updated figures?

**Mr Pezzullo:** It's our best estimate. In preparing that document, which we published today, we felt that it was safest to go with our best estimate. It is a modelled number insofar as it does have regard to entry data which in some cases goes back decades. You match it with, in some cases, presumed deaths, because people pass away, and you compare that with exit data. So it's a modelled number.

**Senator CICCONE:** How often does that figure get updated?

**Mr Pezzullo:** We may need to rely on Dr Davies's assistance.

**Senator CICCONE:** Whilst we're getting that answer, can I also ask this: to the best of your knowledge, Mr Pezzullo—and maybe the minister might be able to help here—what efforts have there been to mitigate the health risks that may be associated with the 70,000 or so people—obviously in the middle of the pandemic—being able to have access to things like the coronavirus jab?

**Mr Pezzullo:** As a matter of policy—the health minister has articulated this publicly—we want everyone in Australia to be vaccinated irrespective of visa, residency or citizenship status, because it protects all of us to have the highest uptake of vaccination. In terms of status resolution, as a matter of law, each individual case is treated on its merits. We do encourage people to come forward to regularise their status. There are visas available—either a pandemic event related visa, this particular subclass or some form of bridging visa. Frankly, there is no reason for anyone who has overstayed—because typically, with unlawful noncitizens, it's principally a factor of time expiration: they've overstayed their visa—not to come forward, and we actively encourage them to come forward in order to regularise their status.

**Senator CICCONE:** Not to go over this again, but in the last round of estimates I got some straightforward answers both from you and from Minister Cash, who was also at the table at the time, in response to my—

**Mr Pezzullo:** I'm glad you're not sounding surprised, Senator!

**Senator CICCONE:** It's been a long day. One of the questions I asked was with respect to an amnesty, or the so-called amnesty.

**Senator CICCONE:** It's been a long day! One of the questions I asked was with regard to an amnesty or so-called amnesty, and the minister had responded by saying:

We cannot condone the use of illegal workers in this country. An amnesty would send a dangerous message that it's okay to flout our strong visa and migration rules—principles this government has worked hard to secure.

My question to you, Minister, and also to Mr Pezzullo, is: is that still the government's policy today, and has anything changed since the last round of estimates?

**Mr Pezzullo:** I can speak in terms of the advice we've furnished to government. It's been our resolute advice either as the Department of Home Affairs or, previously, the immigration department for years, if not decades, that it's a matter for government in the end because governments can change policy in terms of guidance issued by ministers under the Migration Act. But, as a matter of policy, it would not be our advice to change direction, because of the perverse incentive created to get to Australia, overstay your visa and go to ground. Periodic so-called amnesties—and I will use that term not in the legal sense but in a commonly understood sense—would create an incentive for people to get themselves smuggled into Australia, effectively on false pretences, overstay their visas and go to ground until such time as a government of the day said, 'Amnesty time—now come forward.' You would just get recurring cycles. The policy is a matter for the government, but I certainly wouldn't be advising them to go down that path.

**Senator Cash:** In relation to the evidence that you referred to from the last Senate estimates hearing, that has not changed. Again, the government does not support the amnesty or an amnesty as you referred to. Certainly, as Secretary Pezzullo has eloquently stated, it would undermine the integrity of this government's strong visa system.

**Senator CICCONE:** I do ask because, as you may be aware, there have been many stories on this issue—in fact, there was one today in *The Sydney Morning Herald* and in *The Age*, and there was one from a few weeks ago, on 26 February, which I'm more than happy to table.

**CHAIR:** Do you have those articles to table?

**Senator CICCONE:** I do.

**CHAIR:** Thank you. Could we get those distributed.

**Mr Pezzullo:** You're always well prepared. You've got copies. It's very helpful.

**Senator CICCONE:** Efficiency. I'm becoming a regular with this, you see.

**Mr Pezzullo:** It's much appreciated. The article is entitled 'Nationals MPs endorse amnesty for illegal migrant work farmers' and the story goes on to say there are a number of government MPs, mainly from the National Party, that are trying to seek to overturn government policy. That's it in a nutshell. What I want to know is: has there been any advice sought from government, Minister, or, Mr Pezzullo, from your department about trying to maybe overturn government policy with respect to an amnesty?

**Mr Pezzullo:** Has the government asked me for advice on how to overturn its own policy?

**Senator CICCONE:** Yes.

**Mr Pezzullo:** No.

**Senator CICCONE:** Thank you. And you've had no other representations from Nationals MPs?

**Senator Cash:** Certainly I'm aware of the media article, but the government's position remains very clear: there will be no amnesty.

**Senator CICCONE:** Okay. Minister, does it concern you that you've got members of your own government openly talking about trying to make changes to the visa system that ultimately could undermine the system?

**Senator Cash:** Well, I come from the side of politics that you're entitled to an opinion. I will always applaud that, but certainly, again, the government does not support the regularisation of status of the illegal migrant workers that are being referred to. As I've already stated, this would undermine the integrity of this government's strong visa system, and we're not going to do that.

**Senator CICCONE:** Are you aware of any correspondence between the minister and any members of the government trying to advocate for change with respect to this issue?

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

**Senator CICCONE:** I want to touch briefly on the topic of an agriculture-specific visa, which the government had previously promised to deliver and I think there had been some comments made about it by the Prime Minister at the NFF conference some years ago. I note that there have been various Senate inquiries over the last 12 or 18 months and the National Farmers' Federation, for instance, is one of many organisations that's argued for an ag visa. From your point of view, Mr Pezzullo, is that something that your department has been looking at?

**Mr Pezzullo:** Two points, if I may, and the first one just touches back on the previous question. I don't seek to make comment or engage in any kind of description of the advocacy by private government members on anything, but terminology sometimes is—

**Senator CICCONE:** Nor would I ask you to.

**Mr Pezzullo:** Indeed; thank you, I do appreciate that. Terminology here gets sometimes blurred. An amnesty with an incentive to regularise status with a view to permanency was the evidence I was giving to you. I do notice, on reading the article, that said members and others talk about resolving status. That is something that I'm very supportive of—in fact, I gave you evidence on that not two minutes ago—so people coming forward and having their status resolved, individually and on merits, can be considered for either extension, bridging or the issuance of a temporary pandemic event visa. People being incentivised with some sort of promise of permanency, that's the perverse distortion that would be introduced into our immigration program were that to be. I'm not seeking to split hairs, but terms get confused here. With amnesty status resolution, they can achieve the same end, but they've got two very different design features. An amnesty, typically in the literature, is related to a positive incentive about staying here permanently. That's the advice I give to government to not be in favour of.

In terms of an agricultural-specific visa, I do recall the public discussion about this. I'd have to go back and refresh my memory. I'm not sure the government said that it would introduce an ag-specific visa in the following terms. I think senior ministers made reference to, if that were a solution to the agricultural labour shortages, it would be something that they would actively look at. It is something that is being considered in the sense that the remediation of that is through seasonal work programs and seasonal labour schemes. But there's nothing that I'm aware of whereby the government is currently considering a sector-specific visa. Whether it was a couple of years ago—I think you made mention of that time period—I'd have to refresh my own memory here, but I think at one point it said it might look at such a visa, if it were going to be useful in terms of addressing labour market shortages. It's something that the government has chosen not to pursue.

**CHAIR:** A last question, Senator.

**Senator CICCONE:** I think the minister's about to say something.

**Senator Cash:** What I was going to say—and I'm happy for the secretary, if Senator Ciccone wants this information, to go through it with you—is, as you'd know, we introduced a number of temporary visa measures in response to COVID-19 and in particular to address the shortages within the agricultural industry as a result of the COVID-19 pandemic. If you'd like us to provide you with that information, we're able to.

**Senator CICCONE:** That would be great. My last question is: the National Agricultural Labour Advisory Committee published a report, I think, back in December. It only got released by Minister Littleproud, I think, back in February. One of the recommendations is the committee recommends the government allow a one-off, I

think, regularisation of undocumented agrifood workers. I'm not sure if that has the same meaning, but I was interested to know whether you and your department had seen the recommendations out of that report, but in particular that recommendation.

**Mr Pezzullo:** Yes, if it is the report that I'm thinking of, chaired by John Azarias. That's an amnesty by another name and see my earlier evidence

**Senator CICCONE:** Okay, thank you.

**Senator RICE:** I want to get some more information adding to the answer that you gave to my question on notice No. 455 about the 19 Australians who've had their citizenship revoked. You said:

There are 19 individuals whose Australian citizenship has ceased automatically ... The Department is unable to release the names of these individuals publicly due to privacy concerns. ...

That's the guts of it. Of these 19 individuals whose citizenship has been revoked or ceased, I acknowledge you can't provide names, but can you give me a breakdown of their ages, gender and where they were when their citizenship was ceased?

**Mr Pezzullo:** Possibly. Mr Teal is the head of our citizenship program.

**Mr Teal:** You're indeed correct with those 19 individuals. I will take that on notice.

**Senator RICE:** You can't give me any information now about those 19 individuals?

**Mr Teal:** No. I will take it on notice.

**Senator RICE:** Can you tell me how many are children for the purposes of the legislation—that is, aged between 14 and 18?

**Mr Teal:** I will also take that on notice.

**Senator RICE:** Can you tell me how many of those 19 were in Syria?

**Mr Teal:** At the time?

**Senator RICE:** Yes.

**Mr Teal:** Again, I will take that on notice.

**Senator RICE:** You haven't got that information there in front of you? You seem to have some documentation.

**Mr Teal:** No, I don't.

**CHAIR:** The witness has indicated he will take it on notice. Could you go to your next question?

**Senator RICE:** If there were any of the 19 individuals whose citizenship has been revoked who were aged between 14 and 18, can you please indicate how and in what form the best interests of those children were considered in the decision to revoke their citizenship?

**Mr Pezzullo:** It's perhaps worth briefly explaining that, for a time, at least—the provisions have since been amended—this parliament required that citizenship cessation occur as a result of the function of law or the operation of law. In other words, if certain objective facts have occurred and they come to our attention, we're duty bound under the law as it was written to advise the minister. So there's no determination specifically administratively that this person meets the criteria for having their citizenship stripped. I will just use that verb. It's not the verb in the legislation. But, by operation of law, their allegiance to Australia was effectively deemed to have been not operative, and then that's drawn to the minister's attention. The law has now been amended so there's an active decision required that takes into account of a whole lot of factors.

**Senator RICE:** For those 19 there's no opportunity for them to have the fact that their citizenship was stripped from them reconsidered, then?

**Mr Pezzullo:** The law as it was written, this provision of which remains on the statute book, gave the minister—because it's historical in relation to that group because the law has been amended. The only discretion available to the minister was whether he or she would reinstate their citizenship as a separate decision.

**Senator RICE:** But none of these 19, however, have had their citizenship reinstated?

**Mr Pezzullo:** No.

**Senator RICE:** Of those 19 individuals, can you also indicate how many of them had children, including the number and the ages of their children?

**Mr Teal:** Again, I will take that on notice.



**Senator RICE:** Were there any women and children aged over 14 in similar circumstances who didn't have their citizenship revoked?

**Mr Pezzullo:** By operation of law? By definition, the way the law was written for that period of time, it's only those whose own conduct triggered the legislative provisions that saw their—

**Senator RICE:** Was that conduct black and white or was there any—

**CHAIR:** Sorry, Senator Rice. I ask you to allow the witness to complete his answer.

**Mr Pezzullo:** It's set out in the law. There was an offshore dimension and there was an onshore dimension. It's a function of what's in the minister's state of knowledge. We've got a responsibility to apprise the minister of the facts as known to us. I don't really know how to better answer the question: 'Is it black and white?' All facts are subject to: How do you know? When did you know? What credibility does that fact have? So I presume there's a degree of grey, if that's what you're asking, but I don't think I can improve on my answer.

**Senator RICE:** If there was a degree of grey, were there any where you put a briefing up to the minister and said, 'There's a degree of grey here and we don't recommend stripping the citizenship of these people'?

**Mr Pezzullo:** No. Sorry, I clearly haven't made myself very clear, and it's only because I've been sitting here for a long time and I'm just tired. There's no recommendation. Under the law as it was written in 2015, amended last year or so—

**Mr Teal:** September last year.

**Mr Pezzullo:** There is no decision taken by any decision-maker, ministerial or otherwise, to say: 'I've got a brief before me with a series of considerations that relate to the way in which the statute is written. You now have to decide citizenship to be ceased or otherwise.' That's not how the law was written. It happened automatically as a function of law. In other words, the only advice that went to the minister, consistent with the terms set out in the statute book, was: 'It's become evident to us'—it's entered our state of knowledge—'and here's the supporting information. This person, by their conduct, has lost their citizenship.'

**Senator RICE:** I suppose my question is: was there any grey area as to whether, indeed, their conduct was consistent with the terms as set out in the legislation?

**Mr Pezzullo:** It's always for the supporting officials who prepare the advice for the minister to come to their own judgement about the intelligence reports and otherwise. We're into a sensitive area of how we get to know things, but I'll just put that to one side. Let's just assume that we've got a whole series of ways in which, through sources and methods, facts, classified or otherwise, become known to us. We have a very expert team, which works in Mr Teal's group, that would assemble that information. Now they would assemble it differently because the statute has been rewritten, but at the time these cessations took effect the officers were limited because the statute was written to say, 'We're comfortably satisfied that the facts that are known to us now need to be known to you, because you've got one decision to make, and that is: do you wish to, in effect, overturn this and reinstate the citizenship?' The way the law was written, that was the only administrative decision for the minister to make.

**Senator RICE:** But my question remains as to whether, in determining those facts, you found there were some cases where you looked at them, thought, 'Maybe the legislative criteria have been reached but maybe not,' and decided no, they didn't trigger the legislation.

**Mr Pezzullo:** Your officers have to be satisfied that the relevant provisions of the act have been met.

**Mr Teal:** The previous provisions, sections 33AA and 35, conduct and membership, were the tests prior to September 2020, when the act was amended, as the secretary said. Then there's, as the secretary said, that discretion that comes into the issue.

**Senator RICE:** But presumably you would have had some cases that came to you where you looked at them and said, possibly, 'Let's look at them,' and then decided that the act wasn't triggered by the behaviour?

**Mr Pezzullo:** I think as a matter of logic that's probably right, isn't it, Mr Teal?

**Mr Teal:** I would have thought—

**CHAIR:** Senator Rice, we will need to wrap up.

**Mr Teal:** I would have thought, by definition, that was a true statement, simply by material available at the time.

**Senator RICE:** Perhaps you could take on notice considering how many of those were in the area where their behaviour was brought to your attention on the basis that it looked like it may have triggered the act but, in the end, you decided it hadn't triggered the act. I know that's a pretty grey—

**Mr Teal:** I understand what you're saying, but my comment to you is: that would be above the 19. That's what we're talking about.

**Senator RICE:** Yes, exactly. That's what I'm trying to get a handle on: how many more than those 19?

**Mr Teal:** I'm very happy to do that, with a degree of greyness around that as well. I hope you appreciate that—it will be best endeavours.

**CHAIR:** Just to clarify: in relation to the cancellation of citizenship, what sort of conduct are we talking about which would give rise to such a cancellation?

**Mr Pezzullo:** To sections 33 and 35, Mr Teal.

**Mr Teal:** Yes. Membership of a proscribed terrorist organisation, for instance—an assessment of membership of a proscribed terrorist organisation.

**Mr Pezzullo:** And being in a designated area.

**Mr Teal:** Being in a designated area as well would fall into that. I don't have the act in front of me, but that—

**Senator RICE:** It's in the act.

**Senator Cash:** Potentially, dual nationals fighting or serving in terrorist conflicts overseas, for example.

**Mr Teal:** It's the proscription legislation.

**CHAIR:** Thank you, Senator Rice. We will need to move as quickly as we can through senators who wish to ask questions in outcome 2.

**Senator CANAVAN:** I won't be long, hopefully. I had some questions about meat industry labour agreements. Am I in the right area?

**Mr Pezzullo:** Yes.

**Senator CANAVAN:** I've been contacted by a number of meatworks that are frustrated by delays in the finalisation of meat industry labour agreements. I wonder if you could provide a status, as you see it, of how many MILAs you have outstanding or waiting for departmental approval.

**Mr Kefford:** I may ask First Assistant Secretary Willard to assist in terms of the processing. The decision-making under the labour agreement stream, though, does involve consideration of a range of integrity and quality measures in relation to both the firms that are seeking to employ visa holders under that as well as the individuals who they're seeking to engage. There are also the normal processes around labour market testing and so on. But, in terms of the processing, I may defer to Mr Willard.

**Mr Willard:** I can tell you that this year to date, as at 31 January, we've granted 58 temporary and 111 permanent visas in the meat industry labour agreements. Processing times have increased this year in terms of labour agreements generally. I don't have the meat industry labour agreement processing times to hand but I can tell you that 30 per cent of labour agreements are processed in three months or less, 28 per cent in three to six months and 42 per cent in over six months, and that's for the period 1 July 2020 to—

**Senator CANAVAN:** That's for all labour agreements, is it?

**Mr Willard:** That's all labour agreements. I don't have—

**Senator CANAVAN:** Just to clarify, I'm asking here about someone who apparently submits a new meat industry labour agreement—I think they might have to submit it every year or some such—and they're waiting for the department to approve or provide feedback on it. Could you, on notice, provide how many are in the category that are waiting for departmental response? There are a lot of concerns that I pick up in the industry about the delays.

**Mr Willard:** Sure.

**Senator CANAVAN:** Some have had to wait for over a year, by the look of this. They realise there is COVID and what have you, but they are obviously facing some significant labour issues, given the lack of overseas people moving here right now.

**Mr Willard:** Sure. Just to clarify, these are agreements under the meat industry temporary labour agreement, which is what we're talking about.

**Senator CANAVAN:** Yes. To clarify, I understand some are trying to have a bit of flexibility post COVID around transfer of people between visa categories and what have you. They do sound like relatively reasonable suggestions that I've heard, but they're frustrated they're not getting any feedback from government. Would you meet with some of these meatworks to discuss details of their applications?

**Mr Willard:** The relevant team would engage with them. I think, for the past year, it's obviously been by telephone and—

**Senator CANAVAN:** Also, feedback is they're struggling to have those discussions too. There wouldn't be any probity issues here or anything, really, would there? It's not a tender process as such.

**Mr Willard:** It's not so much a probity issue, but a key element in any assessment goes to integrity, so it goes to the nature of the claims put forward in terms of the visa applicants—their backgrounds; whether or not what they're claiming in terms of their background checks out when we undertake integrity checks. So there are issues related to that. In the context of COVID-19, with a rapidly evolving labour market situation, we have been asking labour agreement parties—not just the meat industry but all labour agreement parties—to provide further evidence around their labour market situation so that we can make an assessment about the need for a labour agreement. These are contributing factors to the extended processing period.

**Senator CANAVAN:** Thanks for that; that's all on that. Quickly, though I don't believe this is the area, does your department have any involvement in the current proposals to bring in Pacific Island workers for farm labour shortages, or is that handled by the department of agriculture?

**Mr Pezzullo:** We certainly work with the Department of Foreign Affairs and Trade that manages the external element of those agreements, both Pacific labour and seasonal labour. The department of agriculture is, if you like, the sectoral department that engages with the sector and then we obviously process the visas.

**Senator CANAVAN:** Are you involved in discussions around quarantine arrangements in Australia?

**Mr Pezzullo:** Yes, when you say we're involved, the Department of Foreign Affairs and Trade engages with foreign jurisdictions, whether it's Vanuatu, Timor-Leste or any of the countries that potentially come within the program for both the Pacific Labour Scheme and the seasonal worker scheme. They're two different but complementary programs. The department of agriculture engages onshore with where the labour demand is coming from. We're in the middle, as it were, as both the border management authority and the visa issuing authority. So, depending on the nature of your interests or question—

**Senator CANAVAN:** More any discussions between the Queensland government and the federal government around appropriate quarantine arrangements for Pacific Island—

**Mr Pezzullo:** I see. That would be a matter for the department of agriculture.

**Senator CANAVAN:** That's what I thought. I'll leave it there.

**Senator KENEALLY:** This morning I indicated I had some questions about Australian values and now I would like to ask them, given that we are in outcome 2.

**Mr Pezzullo:** I think we might make it a quinella for both Mr Teal and Dr Johnson. Why don't the deputy secretary and the first assistant secretary join us at the table for the remaining 14½ minutes?

**Senator KENEALLY:** Maybe longer, not because of my questions, Chair. Secretary, what exactly is the Australian values campaign?

**Mr Pezzullo:** The government funded a social cohesion package in last year's budget, an element of which is a strategic communications campaign to underpin knowledge of our democratic institutions, our civics and also the various traits that are identified in our citizenship pledge as well as the other factors of national identity that we seek to reinforce through both the Citizenship Act and the Migration Act. Mr Teal is the deputy secretary who leads on that program.

**Mr Teal:** You would be aware that the Australian values statement was updated on 30 October 2020. Prior to that, I think—and I'll stand to be corrected—the previous one was around 2007.

**Mr Pezzullo:** Or thereabouts.

**Mr Teal:** Or thereabouts, the previous value statement. That formed part of the program going forward. Of course, that is linked, as the secretary has said, to visa issuance, in some cases, to citizenship, in others. That's seen a change to the citizenship process as well.

**Senator KENEALLY:** Who are the targets of the campaign? I don't mean 'targets' in a—

**Mr Pezzullo:** The audience, perhaps.

**Senator KENEALLY:** Yes. Who are the audience you're seeking to reach with this campaign?

**Mr Teal:** I think the audience is all of the population, if I can be frank.

**Senator KENEALLY:** That's a fairly broad audience.

**Mr Teal:** I think, as we've seen with other things that I'm responsible for such as foreign interference and counterterrorism, we've seen in some cases the ability for people to hold values which aren't supportive of the liberal democracy, to be somewhat at odds with what we're attempting to achieve. For instance, things such as freedom of speech, freedom of religion, freedom of association, are things that are critically important, I would contend.

**Senator KENEALLY:** Mr Teal, if I can put it in these terms, is it your evidence then that the audience is all of Australia? Is that really the evidence you're giving us?

**Mr Teal:** I think it's important that the Australian values and what they represent form part of the democracy that people—

**Senator KENEALLY:** So it's a pro-democracy campaign—

**Mr Pezzullo:** Yes.

**Mr Teal:** It's a pluralist, liberal democracy, yes.

**Senator KENEALLY:** to underscore democracy and the value of democracy in Australia?

**Mr Teal:** Yes, informed by the construct that some elements—and I won't particularise—don't consider the democracy or the form of democracy that exists is important.

**Senator KENEALLY:** That's the point I'm getting to. As we heard from ASIO this morning, there are strains of extremist views, ideologically and religiously motivated. The Director-General called out specifically right-wing extremism and Islamic jihadism, Islamic State. I would imagine that, in part, it's to counter those extremist views and narratives that we'd seek to undermine democracy?

**Mr Teal:** In short, yes. It's to support the underpinning values of the democracy.

**Senator KENEALLY:** Is there a counter effect that you're seeking to have to those narratives that would seek to destroy our democratic system?

**Mr Teal:** I'll pass to Dr Johnson.

**Dr Johnson:** Indeed, there is. One of the immediate focuses that we've taken through the Australian values channels is to showcase Australia's inclusive national identity, an identity that's actually hinged on our values as opposed to particular ethnicity country of origin—the core of our national identity being the Australian values. We see a very strong opportunity to promote that, and it will resonate across a number of particular challenges and opportunities. One of them absolutely is those narratives that seek to narrowly construct what it is to be an Australian, basing it on a particular ethnicity or something like that. So we've opened up a channel where we've got already good content, organically derived in the sense that it was co-designed between us and a provider, which has a range of diverse voices speaking about what it is to be an Australian in modern Australia and what the values mean to them.

**Senator KENEALLY:** I think that's useful. To be crude in my language, and I do apologise, but one of the tenets of the National Socialist Network is 'Australia for the white man', and it seeks to argue that this country is 'dying' and 'sick' because it has invited people from other races to live here. This is what I'm trying to get at. Is this the type of narrative that the Australian values campaign is seeking to counter?

**Mr Teal:** Yes. In order to provide an alternate narrative, fundamentally, we know, through countering violent extremist programs and the like, isolationism and this ideology, whatever that ideology is—and you've articulated a number of data points in terms of the name of that ideology, whatever it is—is proposing an ideology which I would contend is counter to the values that we would want to promote in this country.

**Senator KENEALLY:** Was this a proposal put forward by the department? Did the government request that a campaign be brought forward? I'm trying to understand the genesis of the campaign.

**Mr Pezzullo:** It was recommended by the department as part of a suite of measures that the government asked us to consider broadly based to move more actively in the area of social cohesion. So there were a lot of different programs, some of which were very targeted and tailored to diversion or dealing with particular narratives. For instance, the genesis of CVE was very much 20 years ago in what you might describe as Islamist-inspired terrorism. The government, under Mr Morrison, was concerned to ensure that there was some underpinning platform in relation to those. Those programs still exist, by the way. They haven't been subsumed or aggregated. We still have targeted diversion programs, for instance.

To have a reference point, the department certainly had discussions with the then minister. We worked principally with Minister Tudge, who was in the role at the time, in his capacity as citizenship and social cohesion. We certainly had discussions with him. I personally had discussions with him. He was very attracted to

something in this area, and through the normal departmental processes we provided advice. The inspiration to some extent came from the way in which we tackle the citizenship oath. We give citizens the chance to affirm. It's got no legal standing or status, but we think that works very well in our citizenship ceremonies. There's a huge uptake of people reaffirming, and so we thought a nice way to amplify that would be across social media websites and the like.

**Senator KENEALLY:** I've seen the Twitter account. In what other ways does this campaign manifest itself?

**Mr Pezzullo:** Instagram, Twitter, YouTube, Facebook. There's a central website where the content is moderated and owned: [australianvalues.gov.au](http://australianvalues.gov.au). We've got a very careful moderation process that's linked to our citizenship program and the Australian values statement that was referred to earlier. Dr Johnson's assisted by both in-line staff and our specialist advisors on how to amplify particular messages, some of which can be quite rapid turnaround questions or mini campaigns. But the content is all moderated through that website.

**Senator KENEALLY:** What I might do, given that this is the first time we've had the chance in an estimates to really explore this, is seek to come back to it at another point in time.

These are questions in relation to the new skilled regional visas. Actually, Senator Ciccone has drafted these. Considering the chair has allowed us to wrap up our time, you can do that.

**Senator CICCONE:** On the subclass 491 and 494 visas, would you be able to provide a breakdown of how many people are on each of those?

**Mr Pezzullo:** I personally can't. Mr Kefford or Mr Willard might be able to. Otherwise, I will take it on notice.

**Senator CICCONE:** I understand these visas are meant to have access to social security and other government services. Is that correct?

**Mr Pezzullo:** Some would have those benefits; some wouldn't.

**Mr Kefford:** Do you mean the number in the country on those visas?

**Senator CICCONE:** The subclass 491 and 494 visas. How many have been granted?

**Mr Kefford:** We might need to take those numbers on notice.

**Senator CICCONE:** Is it the case that they have access to social security and other government services as part of that?

**Mr Willard:** They have access to Medicare but not access to social security. They're currently subject to the usual waiting period that non-Australian residents have to wait before they can access social security.

**Senator CICCONE:** Is that because the enabling legislation hasn't passed the parliament?

**Mr Willard:** Yes. The access to social security is governed by the relevant social security legislation, and the bill which relates to that is before the parliament.

**Senator CICCONE:** Do you know why it's taken 19 months and 22 days? It seems like a pretty straightforward piece of legislation.

**Mr Pezzullo:** How the parliament works is a mystery to me. I'm not well placed to answer.

**Senator CICCONE:** Minister, I don't know if you're—

**Senator Cash:** I would need to take that on notice to see what status it has.

**Senator CICCONE:** In terms of providing support as part of that visa, can you confirm whether the Red Cross has played any role as part of those two visas?

**Mr Willard:** As part of the visa?

**Senator CICCONE:** Part of the visa is an element of support for people who work in the regions. It's part of the regional skilled visas.

**Mr Willard:** It's not a criterion or an element to the visa directly. The Red Cross broadly provided support to temporary visa holders in Australia. There was some funding provided by government to do so. But, again, that's a social security matter.

**Senator CICCONE:** When people lose their employment, my understanding is that there is some support offered to them. I just want to know whether the Red Cross has played any role.

**Mr Willard:** I'll have to take it on notice, Senator. Just on the figures, I have a figure; it's not split by the subclasses, though. The issue with that is that it may include some in the older regional visas as well, but I can provide a figure that goes to the skilled employer sponsored regional and skilled work regional visas.

**Senator CICCONE:** If you could, it'd be much appreciated. If there is any other support of that nature, could you take that on notice too—

**Mr Willard:** Sure.

**Senator CICCONE:** unless you have something else you can just quickly—

**Mr Willard:** No, sorry; I beg your pardon. The figure I was going to provide was the visa number question that you started with.

**Senator CICCONE:** 491 and 494.

**Mr Willard:** I have grants by category; I don't have it before me by visa subclass number. The 494, which is the skilled employer sponsored regional, there were 1,775 visas granted in the period to 19 March 2021, and the 491, which is the skilled work regional, there were 7,189 visas granted in that period. But what I want to add there is that the way we count in that number those visas is that we also count some of the predecessor visas that were regional visas, so I'll need to split the subclasses for you to give you a precise answer.

**Senator CICCONE:** Alright. Yes, if you could come back to me with whether the Red Cross has had any involvement with any of the other support around those visas, that would be much appreciated.

**Mr Willard:** Just to clarify, Senator, when you say 'support around the visas', I'm just trying to understand—

**Senator CICCONE:** When the people who have been on these visas lose their job as a result of the pandemic, for instance, my understanding is that there is meant to be some form of support to help those people whilst they're not employed. I'm just trying to clarify my question. My understanding is that may be contracted out to third parties like the Red Cross.

**Mr Willard:** I'll take it on notice. I suspect it relates to a different portfolio but I'll do my best to respond.

**Senator CICCONE:** Thank you.

**CHAIR:** I thank you very much, Senator Ciccone. Senator McKim has indicated that he only wants three to four minutes, hopefully, to wrap up on outcome 2. If we can't do it in that time, we will need to go to a spillover in relation to outcome 2, if that's what Senator McKim seeks. But, hopefully, we can do it in three to four minutes. I do appreciate the forbearance of senators and witnesses here this evening.

**Senator McKIM:** Chair, I also appreciate the forbearance that you just mentioned. I want to ask some questions about subclass 485 visas. Mr Pezzullo, the Migration Amendment (COVID-19 Concessions) Regulations 2020 that went through last year enabled international students who had completed their studies but were overseas when the borders closed to apply for their 485 graduate visas from offshore. That's correct, isn't it?

**Mr Pezzullo:** Yes. That's right. I get Mr Willard to confirm that.

**Mr Willard:** That's correct, Senator.

**Senator McKIM:** I want to ask, though, about people who already held those visas prior to the borders closing. As of 31 August 2020 there were just over 13,000 people in that category according to your department's records. They've been sitting there watching their visas tick down and they can't come to Australia to study through no fault of their own. Did the department consider advising the government to include that cohort of people in the regulations? Why did it only apply to people applying for new visas and why did the regulations not cover people who already held 485 visas?

**Mr Pezzullo:** The amendments to the regulations related to the grant. It didn't give an entitlement to travel, did it?

**Mr Willard:** That's correct. Senator, the regulations provide for students who, because of COVID, being unable to travel but still enrolled in Australian institutions, were subsequently undertaking their education online via a virtual course. The change in regulations allowed those students to, first of all, count that time studying overseas online towards qualifying for the 485 visa and, then, also provided for that visa to be applied for offshore.

**Mr Pezzullo:** That's right.

**Mr Willard:** The change was aimed specifically at those enrolled students—

**Senator McKIM:** Who had not yet applied for the visa.

**Mr Willard:** who had not yet applied for a 485 visa.

**Senator McKIM:** But I'm asking about the people who already held a 485 visa when the borders were closed. They've spent 12 months, having invested in some cases tens of thousands of dollars in their education in Australia, including all the visa charges. They've watched their visas wind down and they're stuck overseas. Did

the department consider providing for that cohort in the regulations and would the department consider providing some further advice to government to deal with the situation that those people find themselves in through no fault of their own?

**Mr Pezzullo:** The measure related to supporting online study. Supporting international education was the measure and encouraging students to remain enrolled so that they could return once borders reopened.

**Senator McKIM:** That's right. It dealt with people who had yet to apply, but it didn't deal with people who had already applied and been granted a 485 visa; that's the point I'm making.

**Mr Pezzullo:** Yes, but they had their—

**Senator McKIM:** They have their 485, but they can't come to Australia because they can't get in.

**Mr Pezzullo:** But even those captured under the regulation can apply, be granted and still not travel.

**Senator McKIM:** Yes, but they can apply for a visa from overseas.

**Mr Pezzullo:** Yes.

**Senator McKIM:** The people who already had the visa under a pre-COVID expectation that they could come into Australia have been stuck overseas, and I'm wondering whether there could be provision for either an automatic extension to their visa or a provision that would allow them to apply for an extension from overseas. I don't expect you to make up policy on the fly here but I thought it was an issue worth raising. There's a large number of people, as I understand it, in that situation, and I think it's not beyond the wherewithal of government. I'm not necessarily making a comment about the department but, if government wanted to, they could do something for these people and the department could, if it chose to, provide advice to that effect.

**CHAIR:** Senator McKim, I'm going to have to ask you to wrap up.

**Senator McKIM:** Thanks, Chair. I appreciate that.

**CHAIR:** This now concludes today's proceedings. I want to thank the minister and the departmental officers for their attendance and, of course, Hansard, broadcasting and the secretariat staff. Is it the wish of the committee that documents tabled during the day be accepted? There being no objection, it is so ordered. Senators are reminded that written questions on notice should be provided to the secretariat by 5 pm Wednesday 31 March 2021. Thank you again.

**Committee adjourned at 23:07**