

Executive Summary

1. The Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2024 is a dagger pointed at the heart of ordinary Australians' freedom of speech.

It should be withdrawn in its entirety and not proceeded with.

- There is no compelling case for government to regulate online content on the basis of supposed truth or falsity, whether directly or indirectly.
- The powers created by the Bill can be abused, and there is recent evidence showing that they *will* be abused if the Bill is enacted.

2. The Bill lacks safeguards to prevent arbitrary and unnecessary restriction of free speech.

- The Bill provides no independent channel for content creators or consumers to seek redress against arbitrary or incorrect decisions by digital communications platforms or ACMA.
- Its design minimises the chances of decisions, or the misinformation codes or standards under which they are made, being the subject of independent review.
- Neither digital communications platform providers nor ACMA are required to report publicly on the extent or details of their censorship activities, and the effect of these on freedom of speech.

3. Compliance costs imposed on digital communications platform providers create incentives to apply broad brush censorship practices.

4. This submission focuses exclusively on how the Bill affects freedom of speech. However, there appear to be significant privacy issues associated with its potential application to non-public communications.

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There is no compelling case for government to regulate online content on the basis of supposed truth or falsity

In a free society based on the rule of law, censorship is not intrinsic to the legitimate role of government, whether the censorship is described as “controlling the narrative”, “being your single source of truth” or “combating misinformation and disinformation”, and whether it is done directly by government agencies or indirectly through regulating private sector publishers and platform providers.

Freedom of speech and of the press are fundamental rights of individual citizens. Citizens who abuse those freedoms by infringing the rights of others are subject to sanctions and remedies under the general criminal law and the law of torts (defamation, deceit), and specific statutory regimes such as the Australian Consumer Law.

In *Nationwide News Pty Ltd v Wills* [1992] HCA 46; (1992) 177 CLR 1, High Court Chief Justice Mason wrote (at paragraph 19, emphasis added):

The fundamental importance of freedom of expression in modern democratic society is recognized in the following statements:

The Commonwealth of Australia v. John Fairfax and Sons Ltd. [1980] HCA 44; (1980) 147 CLR 39, per Mason J. at p 52: “**It is unacceptable in our democratic society that there should be a restraint on the publication of information relating to government when the only vice of that information is that it enables the public to discuss, review and criticize government action.**”

Attorney-General v. Times Newspapers (1974) AC 273, per Lord Simon of Glaisdale at p 315: “The first public interest involved is that of freedom of discussion in democratic society. People cannot adequately influence the decisions which affect their lives unless they can be adequately informed on facts and arguments relevant to the decisions. Much of such fact-finding and argumentation necessarily has to be conducted vicariously, the public press being a principal instrument.”

Smith v. Daily Mail Publishing Co. (1979) 443 US 97, per Rehnquist J. at p 106: “Historically, we have viewed freedom of speech and of the press as indispensable to a free society and its government.”

Censorship based on the assertion that the censored material is “misinformation or disinformation” is especially pernicious. Not only is the government suppressing speech, it is arrogating to itself the right to decide whether the speech is true or false.

The Bill's regime for suppressing online content has no counterpart in the body of law governing publication of content in printed form. Neither the Commonwealth Parliament nor a State or Territory legislature would dare to impose a similar regime on printed content, such would be the outcry about infringing freedom of the press.

Despite the Explanatory Memorandum's claim that "checks and balances [...] have been incorporated into the ACMA's powers in Part 2 to ensure that any restriction on freedom of expression is necessary and proportionate to the objective of preventing serious harm"¹, the Bill is a dagger pointed at the heart of ordinary Australians' freedom of speech. That the dagger appears not to be wielded directly by government (but rather by platform providers at the behest of government) makes it no less a dagger.

The Bill should be withdrawn in its entirety and not proceeded with.

The real purpose and effect of the Bill

The main thrust of the Bill is to create various mechanisms that force digital communications platform providers² to "implement measures to prevent or respond to misinformation and disinformation on the platforms". These mechanisms involve ACMA deciding whether "adequate protection for the Australian community from serious harm caused or contributed to by misinformation or disinformation on the platforms"³ is being provided.

The amount of content available online is vast. Much of it is true. Much of it is false. Which of these categories a given piece of content falls into is very often unverifiable and in many cases unknowable.

Furthermore, much online content, perhaps the greatest part, is neither true nor false: rather, it sets out interpretations of facts, expresses opinions about what is true, or makes predictions about future events. Interpretations, opinions and predictions are of

¹ Page 41.

² The term is defined in clause 7, and abbreviated to "platform provider" in this Submission.

- References in this submission to clauses, and to provisions within clauses, are to clauses and provisions of the new Schedule 9 that item 2 of Schedule 1 to the Bill proposes to insert into the Broadcasting Services Act 1992.
- References to Schedule 9 are references to the Schedule inserted by that item.
- References to the Principal Act are references to that Act.
- References to the Guidance Note are references to the Guidance Note for the Bill.

³ Subparagraph 47(1)(d)(iii), subparagraph 50(1)(d)(iii), paragraph 54(a), paragraph 55(1)(c), paragraph 56(1)(e), paragraph 57(1)(d), subclause 57(6), paragraph 58(1)(e), subclause 58(6), paragraph 59(1)(a) and subclause 59(6).

their nature debatable, and should be freely debated without any government interference.

By their very nature they are incapable of being *misinformation*. If posted with intent to deceive, these kinds of content might be *disinformation*⁴, but that will often not be apparent on the face of the content in its immediate context.

In view of all that, and of the fact that no government agency is omniscient, how can ACMA possibly assess the adequacy, at the level of specific content or in the aggregate, of measures to prevent or respond to false information online?

The obvious answer is that ACMA cannot do so. Once that is understood, the real purpose of the Bill becomes apparent. It is to provide the means for *particular* content to be censored.

How is it possible to “to prevent ... misinformation and disinformation on digital platform services”⁵ without censoring, that is rejecting, removing or otherwise suppressing, particular content? There are a range of ways to “respond to” mis- or disinformation once it is on a platform, but they mostly involve addressing *particular* content.

The whole point of the Bill is to ensure that platform providers censor particular content.

As shown later in this submission, the Bill also empowers ACMA to require, directly through remedial directions and indirectly through infringement notices and civil penalty proceedings, the censorship of particular content.⁶

Which particular content can be seen by reading the definition of *serious harm* in clause 14, which clause 13 relies on in defining mis- and disinformation.

The definition of *serious harm* sets out a checklist of topics covering many matters about which governments have in recent times sought to set up an official narrative, and about which there has also been enormous controversy in public debate, generating a great deal of online content whose truth or falsity, even on purely factual matters, is disputed and cannot be definitively established.

Major examples of such matters (and related paragraphs of clause 14) are:

⁴ That being the case, subclause 13(2) may define *disinformation* too narrowly. I do not however propose that it be broadened.

⁵ Clause 32 and numerous other places in Schedule 9.

⁶ The wording of subclause 67(1) does not fully prevent ACMA using its powers in this way. This point is discussed further below.

- the 2023 referendum on an Indigenous Voice to the Parliament (paragraphs 14(a) and (c));
- the war in Gaza and conflict in the Middle East (paragraph 14(c))
- immigration (paragraph 14(c))
- gender ideology, including pharmaceutical and surgical interventions for “gender dysphoria” in children and adolescents (paragraphs 14(b), (c) and (d));
- vaccine safety, vaccine mandates, lockdowns, mask mandates and other aspects of government responses to the COVID pandemic (paragraph 14(b) and subparagraph 14(e)(ii));
- climate and energy policy, including debates about climate science (paragraphs 14(b) and (f)).

This is exactly the kind of content that the right of free speech and freedom of the press exist to protect, yet clearly the Bill is targeting it.

If this Bill becomes law, it will undermine the foundation of a free and open society. The right of free speech is premised on a healthy distrust of governments’ motives, especially their motives for restricting speech. This Bill amply demonstrates why that distrust is well-founded.

Every orthodoxy regards its opponents’ views as false and harmful. This Bill equips the government with the means to suppress every view that disputes or dissents from government orthodoxy. The fact that the government even wants this regime is already a red flag.

Contrary to what the Bill and the Explanatory Memorandum assert about “protection for the Australian community”⁷, a government that censors what can be seen and read by adult citizens is like an overprotective parent who never lets their child grow up. The approach and mindset in both Bill and Explanatory Memorandum are patronising and paternalistic.

The proper way to protect against the risks that arise from **incorrect** information in the public square is by putting out **correct** information that is equally freely available. The internet provides ample opportunity for the government to do this.

In a free society adults get to make up their own minds about what is true or untrue, harmful or not harmful.

Yet in this Bill the Government seeks to be able to shut down views that are inconsistent with its own. How the Bill achieves this is discussed below.

⁷ See footnote 3 above and subclauses 4(7), 57(6) and 58(6).

It should be up to platform providers and their users how to deal with user misconduct on platforms. It is not a legitimate concern of government except insofar as conduct is unlawful under the general law.

The powers created by the Bill are easily abused

Ministerial directions

Under subsection 14(1) of the *Australian Communications and Media Authority Act 2005*, the Minister administering that Act “may give written directions to the ACMA in relation to the performance of its functions and the exercise of its powers”.

Subsection 14(2) limits this power to directions “of a general nature” in the case of ACMA’s new functions under the Bill, because those functions are inserted⁸ into section 10 of the Act, which sets out broadcasting, content and datacasting functions. The same is likely true of ACMA’s new powers under the Bill, because they relate to the new functions.

Nonetheless, subsection 14(2) would not prevent the Minister from directing ACMA, in performing and exercising those new functions and powers, to pay particular attention to mis- and disinformation of a particular kind, for example, content that challenges government energy policy, the government’s policy responses to climate change or government information about COVID vaccines, or treatments such as Ivermectin.

The introduced Bill includes subclauses 68(2) and (4) restricting the Minister’s powers to give directions under sections 171 and 183 in relation to particular content posted on a digital communications platform by a single end-user identifiable by ACMA. These restrictions were not in the Exposure Draft and do not detract from the point made in the previous paragraph of this Submission. They can in any event easily be evaded by careful drafting of a direction.

Ministerial powers to extend the scope of Schedule 9

Schedule 9 confers powers on the Minister to extend its scope, and alter its application, by legislative instrument:

1. Paragraph 5(1)(e) and subclause 5(7) enable the Minister to extend the reach of Schedule 9 to additional digital services. This power was also in the Exposure Draft.
2. Paragraph 12(1)(c) and subclause 12(3) enable the Minister to exempt digital services from Divisions 2 to 5 of Part 2 of Schedule 9. This power was also in the Exposure Draft.

⁸ See item 2 of Schedule 2 to the Bill.

3. Paragraph 13(3)(h) and subclause 13(4) empower the Minister to add to the list of matters to which which regard must be had in determining whether the provision of content on a digital service is reasonably likely to cause or contribute to serious harm. This is the most significant intrusion into the operation of Schedule 9, and has been added since the Exposure Draft.

The provisions in items 1 and 3 of the list above are in the nature of “Henry VIII” provisions and should be removed as inappropriate delegations of legislative power, quite apart from the broader objections to Schedule 9 set out in this Submission.

Current censorship arrangements between the Commonwealth government and platform providers

Recent history shows that the Commonwealth Government, including officers of the Australian Public Service, does not require statutory authority to achieve de facto censorship of online content.

This was revealed by answers to questions asked by Senator Antic in the Senate Legal and Constitutional Affairs Committee on 22 May 2023 about the Department of Home Affairs’ “Online Content Incident Arrangement Procedural Guideline”, which was also the subject of an FOI request by Senator Antic⁹.

Attached to this submission is the Hansard transcript of the hearing in which those questions were asked and answered. I have highlighted the relevant passages from pages 49 to 51. In summary, what they describe is a process under which, as described by Mr Pezzullo, then Secretary of the Department of Home Affairs (emphasis added):

Following a decision of the Morrison government in the early part of the [COVID] pandemic [...] Mr Hunt [then Minister for Health] announced some work that Health, in conjunction with other partners and departments, would undertake from about March or April of 2020. [...] The Department of Home Affairs, because we’re scanning social media for other purposes—terrorist incidents being live streamed and the like—if we came across material that, in the department of health’s view, **offended, or potentially offended, the disinformation and misinformation standards that the technology companies themselves have in place around COVID, as an assistant or an adjunct to the department of health**—typically; I don’t know if they’ve since built a 24/7 referral capability—we would take that on as, if you like, a utility player able to assist the department of health.

⁹ See https://www.alexantic.com.au/home_affairs_freedom_of_information_request

Mr Pezzullo made it clear that this action did not purport to be based on the statutory powers of any agency. It follows that, if the action was lawful at all, it was an exercise of the executive power of the Commonwealth¹⁰.

An official of the Department also makes the point¹¹ that any citizen can make a referral to a platform provider about content on the platform that breaches the provider's terms of service.

The disclosures made at the Senate Committee hearing highlight these important points that are relevant to how the Bill will operate in practice:

1. Even under the current law, online content is being censored on the basis of platform providers' terms of service, in some cases at the behest of a government agency acting under direction from a Minister.
2. The Bill tasks ACMA with ensuring that, one way or another, platform providers will be obliged to "prevent or respond to" content that is alleged to be mis- or disinformation. To comply, platform providers will need to ensure that their terms of service give them the legal right to remove content without consulting the person posting the content.
3. As a result, the regime established under the Bill greatly increases the scope for government agencies, acting without explicit statutory authority, to influence providers to remove content: just as Home Affairs colluded with platform providers to remove content that in the Department of Health's view, "offended, or potentially offended, the disinformation and misinformation standards" (transcript page 50) of the providers themselves.

These points were further confirmed by the Guidance Note to the Exposure Draft.

Scenario 2 on page 16 describes a situation where ACMA would use its powers under the Bill at the instigation of federal government officials wishing to suppress debate about an issue such as the risks of 5G telecommunications infrastructure.

Scenario 3 describes a situation where ACMA would put pressure on a platform provider because of information provided to ACMA by other providers about content relating to an issue such as the war in Ukraine.

The scenarios are predicated on the impugned content being "demonstrably false", "refuted by the Chief Scientist" and "objectively false". This betrays the censorship mindset that animates the Bill: first, assuming the right of the state to determine what

¹⁰ See section 61 of the Constitution.

¹¹ See bottom of page 49 of the transcript.

is “demonstrably” or “objectively” false in contexts where there is genuine debate; and second, seeking to suppress speech rather than counter it with evidence and argument.

Scenario 2 is particularly instructive in this regard. It asserts a connection between “false and misleading claims” and an increase in vandalism of infrastructure. Such a connection might be demonstrable if the online content specifically advocated vandalism. In that case, criminal sanctions should be pursued against the persons posting the content. In the absence of evidence of incitement, ACMA would be seeking to suppress free speech on the basis of mere supposition.

The Bill lacks safeguards to prevent arbitrary and unnecessary restriction of free speech

Statements of regulatory policy

Item 8 of Schedule 2 to the Bill inserts a new subsection 4(3AC) into the Principal Act. The drafting of this new subsection has changed significantly from the Exposure Draft¹² version, which stated:

The Parliament also intends that digital platform services be regulated, in order to prevent and respond to misinformation and disinformation on the services, in a manner that:

(a) has regard to freedom of expression; and

...

Although paragraph (a) was little more than window dressing, it has been removed from the new subsection 4(3AC), which instead provides:

The Parliament also intends that digital communications platforms be regulated, in order to prevent and respond to misinformation and disinformation on the platforms, in a manner that:

(a) enables public interest considerations in relation to misinformation and disinformation on digital communications platforms to be addressed in a way that does not impose unnecessary financial and administrative burdens on digital communications platform providers ; and

...

The phrase “public interest considerations” is so vague as to be almost meaningless. As for addressing these “in a way that does not impose unnecessary financial and administrative burdens on digital communications platform providers”, the provision is merely adding insult to injury when one considers the onerous regulatory burdens for which Schedule 9 provides, and the associated compliance costs.¹³

¹² See <https://www.infrastructure.gov.au/departments/media/publications/communications-legislation-amendment-combatting-misinformation-and-disinformation-bill-2023>

¹³ The introduced Bill is 9 pages longer than the Exposure Draft, which already weighed in at a hefty 60 pages.

The only reference to freedom of expression in the introduced Bill is in paragraph (e) of clause 11, which sets out the objects of Part 2 of Schedule 9. Paragraph 11(e) is as follows:

(e) to provide the ACMA with powers, which respect the freedom of expression, to take action for the purposes of this Part; and

This does not even purport to exhort ACMA to exercise its powers in a way that respects freedom of expression. Rather it asserts that the powers themselves respect that freedom: an assertion the analysis below shows to be “reasonably verifiable as false, misleading or deceptive”. It is, in short, misinformation within the meaning of Schedule 9. Oh, the irony.

Application of the definitions of mis- and disinformation by platform providers

Clause 13 defines misinformation and disinformation. The 2 most important elements of the definition of *misinformation* are:

- First, that the disseminated content “contains information that is reasonably verifiable as false, misleading or deceptive”; and
- Secondly, “that the provision of the content on the digital service is reasonably likely to cause or contribute to serious harm”.

“Reasonably verifiable”

The words “reasonably verifiable as” have been added in the introduced Bill: they were not in the corresponding provision of the Exposure Draft. At first blush they appear to address some of the concerns set out earlier relating to:

- online content whose truth or falsity cannot be definitively established; and
- online content that is neither true nor false because it sets out interpretations of facts, expresses opinions about what is true, or makes predictions about future events.

However, for reasons set out below, this change of wording does not remedy those fundamental concerns. It merely gives a spurious air of objectivity to the test, while begging all the same questions as did the Exposure Draft wording.

Neither the Bill nor the Explanatory Memorandum offers any guidance on interpreting “reasonably verifiable”.

Construing the phrase is not helped by the fact that its context creates an oxymoron: “information that is reasonably verifiable as false, misleading or deceptive”. By definition, false information cannot be “verified” at all, because it is false.

This suggests what is really meant is something like “information that can reasonably be established as being false, misleading or deceptive”,

But that paraphrase could itself have a number of different meanings. For example:

1. “can be established with certainty after making inquiries that a reasonable person could be expected to make”;
2. “can be established to the satisfaction of a reasonable person”.

Each of these interpretations is problematic, as is the fact that different interpretations are possible, especially considering that in practice the legislation will be applied by platform provider staff members and ACMA officials, not by a court.

Neither interpretation addresses the reality that opinions can differ about the truth or falsity of a statement, even when it is of a kind that must be either true or false. The right to free speech exists to ensure that the government cannot censor opinions it does not agree with, regardless of how “unreasonable” the government considers those opinions to be.

Further, both interpretations fail to take account of the fact that the state of knowledge on a particular matter changes over time, so today’s “misinformation” could well be tomorrow’s self-evident truth, and vice versa. In the 16th Century Galileo was prosecuted for holding as true the doctrine of heliocentrism, the astronomical model in which the Earth and planets revolve around the Sun at the centre of the universe. Under the Bill, his posts would be suppressed for the same reason.

The second interpretation also opens the door to censoring predictions about future events if “a reasonable person” would be satisfied that the predictions will not come to pass. Many of the “misinformation” allegations made by supporters of the Yes case in the Voice to Parliament referendum fall into this category.

It also invites censorship of content consisting of interpretations, or characterisation of facts or situations, even where the underlying facts are not in dispute.

“False, misleading or deceptive”

The expressions “false or misleading”, “misleading or deceptive” and “false, misleading or deceptive” are found in a large number of provisions in existing Commonwealth Acts. These provisions mainly create offences, although quite a few

are civil penalty provisions and a number create private rights of action, for example under consumer protection provisions.

The common feature of *all* the provisions just described is that the element must be established in judicial proceedings before any legal consequence, such as a sanction, can apply. Few, if any, current provisions in Commonwealth Acts involve a government official (much less a private sector entity such as a platform provider) applying any of these tests in a way that affects a person's rights or obligations.

The position under the Bill is fundamentally different. Whether acting under a misinformation code or a misinformation standard, it will be the **platform provider** who refuses to accept a user's content, or takes it down or otherwise suppresses it, on the basis of the **provider's** view that it is "false, misleading or deceptive", quite possibly influenced by government actors as documented by the Senate Committee hearing described above.

Providers will of course alter their terms of service to allow them to do so without being exposed to legal action by the user, even if the content is not in fact false, misleading or deceptive.

"Reasonably likely to cause or contribute to serious harm"

The second main element of the definition is "the provision of the content on the digital service is reasonably likely to cause or contribute to serious harm".

Paragraphs 14(g) and (h) elaborate what is meant by "serious" in the context of the list of harms in clause 14. This elaboration was not present in the Exposure Draft, and arguably sets a higher threshold than the ordinary meaning of "serious", at least in the case of paragraph 14(g).

However, in practice these tests too will be applied by platform provider staff members or ACMA officials, and not by a court. In many cases, the staff applying the test will have nothing on which to base a conclusion except the content itself and their own suppositions and prejudices. The tests involve prediction of consequences, which can easily degenerate into speculation and fantasy.

It is worth noting here that paragraph 13(3)(f) adds significant confusion to how the serious harm test is to be applied. It reads:

(g) whether the information has been attributed to a source and, if so, the authority of the source and whether the attribution is correct;

Consider a case where the attribution of information is correct and the source is authoritative. On what basis will the information then be determined to be "false,

misleading or deceptive”? The obvious inference is that if information contradicts an official narrative, it can be determined to be false, misleading or deceptive even if it is accurately sourced to a reliable authority. That would be a telling indication of the mindset of the framers of this Bill.

Mis- vs Dis-information

Subclause 13(2) contains 2 significant changes to the definition of “disinformation” as compared to the Exposure Draft. Each of the 2 broadens the meaning of that term.

First, the “intention to deceive” test has been watered down, in that it can now be satisfied if “there are grounds to suspect” an intention to deceive.

Second, an alternative to the first test has been included based on “inauthentic behaviour”, a new concept defined in clause 15.

However, there appear to be only 2 places where Schedule 9 refers to disinformation without also referring to misinformation:

- A note to subclause 13(2) makes the somewhat circular point that “Disinformation includes disinformation by or on behalf of a foreign power.”.
- Subclause 67(1) (discussed further later in this Submission) excludes disinformation, but only if it involves inauthentic behaviour. As a matter of drafting, subclause 67(1) could have achieved that exclusion without the Bill creating the category of disinformation, which is otherwise redundant.

The references in the Bill to disinformation appear to have the purely rhetorical function of arousing fear and loathing in the public mind, owing to disinformation being more reprehensible based on its ordinary meaning. This impression is reinforced by how the Explanatory Memorandum uses the term “disinformation”.

Censorship decisions by platform providers will in most cases not be subject to effective independent review

Internal review

The Exposure Draft contained no requirement for a misinformation code or standard to provide a right of review or appeal to a user who disputes a censorship decision of the platform provider.

The introduced Bill enables digital platform rules made by ACMA to provide for complaints and dispute handling processes for misinformation complaints: see Subdivision D of Division 2 of Part 2. Clause 2 defines “misinformation complaint”

to mean a complaint about content on a platform, or about the removal of content from a platform.

Compliance with this aspect of the digital platform rules is enforced by civil penalties (see clause 26) and can be the subject of remedial directions by ACMA, which are also enforceable by civil penalties (see clause 27), and infringement notices (see paragraph 73(e)).

There is however no guarantee that digital platform rules will include complaints and dispute handling provisions. Subclause 25(1) says “may provide” not “must provide”.

As anyone knows who has tried to appeal a decision on the X platform, internal review procedures are often automated and ineffective. This is understandable, since maintaining proper review procedures adds significantly to the costs of the platform provider. The Bill creates other incentives (discussed later in this Submission) that bias internal review towards removal of content. In short, internal review is not independent review.

No merits review by the AAT

The Bill does not give a platform user the right to apply to the Administrative Appeals Tribunal (**AAT**) for review of a decision to censor content. For decisions made under a misinformation code, it also seems unlikely that giving the user that right would be consistent with subsection 25(1) of the *Administrative Appeals Tribunal Act 1975 (AAT Act)*.¹⁴

Judicial review under the *Administrative Decisions (Judicial Review) Act 1977*

It is unclear whether a user could dispute a decision by making an application under the *Administrative Decisions (Judicial Review) Act 1977 (ADJR Act)*. The better view seems to be that they **could not** if the decision is made under a misinformation code, but that they **could** if it is made under a misinformation standard.

An application under section 5 of the Act for review of a decision to which the Act applies can be made by a “person who is aggrieved” by the decision. It seems fairly clear that a person whose content has been censored by a platform provider (by refusal to post it or by removing it) is “a person whose interests are adversely affected by” the censorship decision. So the person would be a “person who is aggrieved” by

¹⁴ This is because the definition of *enactment* in subsection 3(1) of the AAT Act is similar to the corresponding definition in the ADJR Act, which is discussed below.

the decision within the meaning given by subparagraph 3(4)(a)(i) of the Act. This is the case whether the decision is made under a code or a standard.¹⁵

However, the decision must be one to which the Act applies. For that to be the case, it must be “of an administrative character” and made “under” certain kinds of “enactment”.

In general, platform providers will not be government agencies. If that means their censorship decisions cannot be “of an administrative character”, then the decisions will not be reviewable under the Act. However, the ordinary meaning of “administrative” may be broad enough to cover censorship decisions made by a non-government entity.

ADJR review of censorship decisions under misinformation code

However, the requirement for a decision to be made under an enactment is where the position likely differs depending on whether the censorship decision is made under a misinformation code or under a misinformation standard.

A misinformation code is “developed” by a body or association that “represents a particular section of the digital platform industry”¹⁶ and is then approved by ACMA¹⁷. It is arguable that an approved code is made “under” the Principal Act, but the argument seems fairly weak.

The Act contemplates the making of the code in the manner just mentioned. And this is backed up by ACMA’s powers to make a misinformation standard if a suitable misinformation code is not forthcoming.

However, a code is not made “under” the Act in the more usual sense of being authorised or legally required by the Act. A code is thus unlikely to be an “enactment” covered by (c) of the definition of *enactment* in subsection 3(1) of the ADJR Act.

There is also an argument that censorship decisions made under a misinformation code are (indirectly) made under the Principal Act itself. The considerations just outlined make this a weak argument also.

¹⁵ It is unclear whether a user other than the creator of the content has standing. The eSafety Office takes the view that he or she does not (communication to the author of this Submission).

¹⁶ Subclause 47(1)

¹⁷ Subclause 47(3)

ADJR review of censorship decisions under misinformation standard

It is much clearer that a misinformation standard is an “enactment” covered by paragraph (c) of the definition of *enactment* in subsection 3(1) of the ADJR Act. Standards are determined by legislative instruments governed by the *Legislation Act 2003*.

It should be noted that paragraph (a) of the definition of *decision to which this Act applies* in subsection 3(1) of the ADJR Act does not require that the decision be made by a Commonwealth agency.¹⁸ The fact that most platform providers are non-government entities is thus no impediment to judicial review of censorship decisions made under misinformation standards (as opposed to misinformation codes).

It is anomalous that the availability of judicial review depends on whether the censorship decision is made under a misinformation code or under a misinformation standard. This seems arbitrary and reflects disregard for safeguarding the free speech rights of ordinary citizens.

Judicial review of limited utility even if available

Even if a censorship decision is made under a misinformation standard and thus eligible to be challenged under the ADJR Act, the grounds of challenge are restricted, since review under that Act is about the lawfulness of the decision, not its substantive merits. An application would usually not provide redress where a user wishes to challenge a decision on the basis of matters of fact: for example, by showing that the censored content is factually correct.

In addition, even though applications under the ADJR Act can be made to the Federal Circuit and Family Court of Australia (Division 2), as well as to the Federal Court, the cost of making an application would be prohibitive for ordinary citizens.

Judicial review by way of prerogative writ

I have not researched the relevant case law, but from first principles it seems unlikely that a censorship decision by a platform provider that is a non-government entity could be challenged by seeking a prerogative writ.

Conclusion

This analysis demonstrates that the Bill will in many if not most instances subject a platform user’s free speech rights to incorrect and even arbitrary censorship decisions

¹⁸ Contrast paragraph (b) of the definition in this respect.

made by staff of the platform provider. The user will generally have no more redress than an internal review by the provider in accordance with the digital platform rules.

Role of ACMA as de facto censor of last resort

Although the Bill is designed so that the day-to-day censorship of online content will be done by the platform provider acting in compliance with either a misinformation code or a misinformation standard, ACMA has extensive powers under the Bill to ensure that the providers perform their role as censors. By their nature, these powers mean that ACMA will also perform the function of censor, for 3 reasons.

ACMA will need to monitor online content

First, ACMA must review specific material posted on platforms in order to form a view about the following matters that enliven its powers:

- whether to issue a formal warning to a platform provider because the provider has failed to comply with an applicable misinformation code (subclause 52(1) and paragraph 74(1)(i)) or applicable misinformation standard (subclause 62(1) and paragraph 74(1)(j));
- whether to give a remedial direction to a platform provider because the provider has failed to comply with an applicable misinformation code (clause 53) or applicable misinformation standard (clause 63);
- whether it is necessary for ACMA to determine a misinformation standard in order to provide adequate protection for the Australian community from serious harm caused or contributed to by misinformation or disinformation on digital communications platforms (clauses 57, 58 and 59).

The Explanatory Memorandum confirms that the Bill will operate as just described.¹⁹

ACMA's review of specific material is attended by all the same issues that affect decision-making by platform providers, as discussed above.

ACMA power to censor online content by remedial direction

Secondly, the exercise of some of ACMA's powers will of their very nature be directed to censoring specific content on a platform. The result of the analysis that

¹⁹ See page 16:

"The immediate objective [of ACMA's information-gathering powers] is to enable the ACMA to collect data regarding the spread of misinformation and disinformation, so as to enable it to assess the steps being taken by digital communications platform providers to manage the risk of misinformation and disinformation on their platforms."

follows is that the Bill, on its true construction, does give ACMA power to censor content on online platforms. Indeed, it is logically impossible for ACMA to achieve the task the Bill sets for it *without* censoring content.

Clause 53 empowers ACMA to give remedial directions based on a past or present contravention of a misinformation code. Clause 63 makes corresponding provision in relation to a misinformation standard.

Subclause 67(1) says that nothing in Part 2 of Schedule 9 or any of its offspring **requires** removal of content (except disinformation that involves inauthentic behaviour). At the same time, subclause 67(2) says that nothing in that Part or its offspring **prevents** removal (nudge, nudge, wink, wink).

The same is said of blocking users but, importantly, other forms of censorship are not mentioned, such as shadow-banning, content demotion, or preventing a post from appearing on the platform in the first place.

The drafting of clause 53 is undeniably broad enough to authorise a direction to censor, by means other than removal and user blocking, content that ACMA considers to be mis- or disinformation (whether or not it actually is).

Clause 53 applies if “ACMA is satisfied that the provider has contravened, or is contravening” a misinformation code. The purpose of a code is to require providers to “implement measures to prevent **or respond to** misinformation and disinformation on digital communications platforms”²⁰ (emphasis added).

It was clear from the Guidance Note to the Exposure Draft that the sponsors of the Bill understand “respond to” in a broad sense, “including takedowns, content demotion”²¹. It is therefore conceivable, indeed likely, that an approved misinformation code will provide for the reach of content to be limited if it is considered to be misinformation. That result is completely consistent with the language of clause 67.

If ACMA is satisfied that particular content is mis- or disinformation as defined by clause 13, and that the only effective way to “respond” to the content is to limit its reach via “content demotion”, it follows that ACMA must be satisfied that the provider’s ongoing failure to take such action is a continuing contravention of the code by the platform provider.

²⁰ Paragraph 11(c).

²¹ Page 16, Scenario 2, final paragraph. There are a variety of ways to “respond to” mis- and disinformation. Most compatible with freedom of speech is an online response that sets out information and argument to rebut the false information.

A remedial direction under clause 53 can require “the provider to take specified action directed towards ensuring that the provider **does not contravene the code**, ... in the future²²”. In the case just described, clause 53 must authorise a direction to remedy the continuing contravention by limiting the content’s reach.

A similar analysis applies to the drafting of clause 63. The continuing presence of offending content on a platform will, in cases like the one just discussed, represent a continuing contravention by the platform provider of a misinformation standard, since the determination of the standard was predicated on ACMA being satisfied that it was necessary “to provide adequate protection for the Australian community from serious harm caused or contributed to by misinformation or disinformation”²³.

ACMA power to censor content indirectly by means of infringement notices

The provisions requiring a platform provider to comply with a misinformation code and a misinformation standard are “designated infringement notice provisions”.²⁴ This means that contraventions of those provisions attract the operation of Part 14E of the Principal Act, which deals with infringement notices.

Under section 205Y of the Principal Act, an infringement notice can be given if ACMA “has reasonable grounds to believe that a person has contravened a designated infringement notice provision”.

Allowing specific content to be posted on a platform, or failing to “respond to” it, can constitute a contravention of a misinformation code or misinformation standard, and hence of a designated infringement notice provision. An infringement notice for such a contravention will specify a penalty of 60 penalty units²⁵ (currently \$18,780) if the provider is a body corporate and otherwise 10 penalty units²⁶ (currently \$3,130)²⁷.

If the penalty is paid, proceedings cannot be brought against the person for the alleged contravention.²⁸

²² The words “in the future” seem redundant. It makes no sense for ACMA to direct someone not to contravene a code in the past.

²³ Paragraph 55(1)(c), 56(1)(e), 57(1)(d), 58(1)(e) or 59(1)(a).

²⁴ Paragraphs 73(i) and (j).

²⁵ New paragraph 205ZA(1)(ad) inserted by item 25 of Schedule 2 to the Bill.

²⁶ Paragraph 205ZA(1)(b) of the Principal Act.

²⁷ For the current dollar amount of a Commonwealth penalty unit, see <https://asic.gov.au/about-asic/asic-investigations-and-enforcement/fines-and-penalties/>

²⁸ Section 205ZC of the Principal Act.

This infringement notice regime could easily be exploited to enforce censorship of specific content on digital platforms by means other than removal of content or user blocking. The “reasonable grounds” threshold is low, and the penalty is substantial enough to incentivise a platform provider to avoid it by not allowing similar content to be posted in future. But the penalty is not high enough to make it worthwhile for the provider to refuse to pay it and defend proceedings for the alleged contravention.

Lack of remedies against censorship decisions by ACMA

AAT review of ACMA decisions does not help content creators

The Bill includes amendments of the Principal Act that make reviewable by the AAT decisions by ACMA to give remedial directions.²⁹

However, only the platform provider to whom a remedial direction is given can apply for review. A creator whose content is affected by a direction has no standing to apply for review if the platform provider chooses not to. Nor does a user who wishes to access the content.

It can be expected that in general platform providers will find it more convenient to comply with a remedial direction than to challenge it, and that the providers’ terms of service will ensure that compliance with an invalid direction does not amount to a breach of their contracts with users of the platforms.

The Explanatory Memorandum repeatedly attempts to make a specious distinction between “systems and processes” and “regulation of individual pieces of content”.³⁰ This lack of redress for content creators and other users reflects that fallacy.

ADJR review of ACMA remedial directions enforcing codes and standards

It has been shown above that ACMA’s power to give remedial directions is broad enough to include directions to censor content in at least some cases.

A decision to give such a direction would be subject to review under the ADJR Act on application by the person posting the content, who is a “a person whose interests are adversely affected by” the decision.

However, as noted earlier, judicial review is of limited utility in this kind of case. A further obstacle is that the person may not even be aware that the direction has been

²⁹ See items 14 to 17 of Schedule 2 to the Bill.

³⁰ See, for example page 6, second paragraph from the bottom.

given, and may have no means of finding out, depending on whether and when information about the giving of ACMA remedial directions is made public.³¹

Implied freedom of political communication

The Exposure Draft of the Bill referenced the implied freedom of political communication at a number of points.³²

However, all these references have been removed from the introduced Bill, and replaced with provisions³³ that the framers of the Bill believe “aligns with the test endorsed by the High Court of Australia for assessing the consistency of Commonwealth legislation with the implied freedom of political communication”.³⁴

Although the implied freedom has been much litigated since first promulgated by the High Court in the early 1990s, very few clearcut propositions have emerged from the case law.

Two crucial points are clear, however, from this passage of the joint judgment of 3 Justices in *Clubb v Edwards; Preston v Avery* [2019] HCA 11 (10 April 2019):

It is well settled that the implied freedom is a limitation upon the power of government to regulate communication relating to matters of government and politics. It does not confer a right to communicate a particular message in a particular way.³⁵

First, the implied freedom is not co-extensive with an explicit constitutional guarantee of a right of free speech, such as exists in the First Amendment to the United States Constitution. As a result, much of the online content that the Bill seeks

³¹ See discussion below about the Bill’s lack of provision for ACMA transparency and accountability.

³² Subparagraph 37(1)(d)(i) of the Exposure Draft required ACMA, when deciding whether to approve a misinformation code, to consider whether the proposed code burdens the implied freedom. Subparagraph 40(1)(d)(i) had a corresponding requirement for when ACMA decides whether to approve a draft variation of a misinformation code.

Clause 45 required ACMA, before determining a misinformation standard, to consider whether the standard burdens the implied freedom and if so, whether “the burden would be reasonable and not excessive”. Clause 60 provided that Schedule 9, and instruments made or approved under it, have no effect “to the extent (if any) that their operation would infringe any constitutional doctrine of implied freedom of political communication”. This would have ensured that Schedule 9 once enacted would withstand constitutional challenge on the basis of the doctrine.

³³ Subparagraphs 47(1)(d)(iii) and (iv) and clause 54.

³⁴ See pages 106 and 115 of the Explanatory Memorandum.

³⁵ per KIEFEL CJ, BELL AND KEANE JJ.

to have policed for mis- or disinformation is not protected by the High Court doctrine.

Second, because the limitation is on the power of government to regulate communication on certain matters, it does not directly affect actions by private entities such as platform providers. This means that, in applying misinformation codes or standards, providers will have no reason to concern themselves with whether removal of content would, if mandated by law, infringe the implied freedom.

In principle, a misinformation code or standard could expressly prohibit rejection or removal of online content that is protected by the doctrine. However, there is nothing in the Bill that requires this, or indicates that it would happen in practice.

Even if there were such a prohibition, the lack of appeal or review rights would make it of little avail to someone whose content was wrongly refused or taken down, or to users wishing to access that content.

What the other exemptions reveal about the intent of the Bill

The Exposure Draft had a list of exclusions from scope, set out in the definition of *excluded content for misinformation purposes* in clause 2. This has been replaced by a list of categories of “excluded dissemination” in clause 16 of the introduced Bill.

The changes are significant.

The exclusion for “content produced **in good faith** for the purposes of entertainment, parody or satire” has been narrowed to “content that **would reasonably be regarded as parody or satire**” (emphasis added).

The exclusion for “reasonable dissemination of content for any academic, artistic, scientific or religious purpose” is no longer tied to accreditation by government, and thus is broader than the Exposure Draft, although it is not clear what counts as “reasonable” for these purposes.

The exclusion for professional news content seems substantially the same, though the drafting has been re-organised. It covers legacy media, which can be relied on to keep its content within, or fairly close to, the boundaries of the government-approved narrative on any topic.

The exclusion of content authorised by any level of government in Australia, which was justly criticised, has been removed. The practical effect of this deletion is likely minimal, however: it is hard to imagine ACMA using its powers under the Bill in relation to government-approved narratives and material, much less platform providers antagonising the powers that be.

Note that printed material outside of these categories is not subject to similar censorship. Online material should not be subject to any greater restriction than print media.

Duplication of consumer law and defamation remedies without due process safeguards

As alluded to earlier, the first main element of the definition of *misinformation* is very similar to section 18 of the Australian Consumer Law, which reads:

A person must not, in trade or commerce, engage in conduct that is misleading or deceptive or is likely to mislead or deceive.

A person who posts information that is false, misleading or deceptive will contravene section 18 if the person does so “in trade or commerce”. To that extent the Bill duplicates existing law, but without the judicial due process requirements that apply to seeking remedies under the Australian Consumer Law.

The same can be said of the law of defamation, under which a defendant has the opportunity to prove to a court the truth of an allegedly defamatory statement, or facts that otherwise establish a defence. A statement is not subject to suppression under defamation law on the mere say so of a private party or government official.

The Explanatory Memorandum cites—as an example of disinformation justifying the measures in the Bill—“The misinformation campaign that followed the attacks in Bondi (*sic*), Sydney in April 2024, wrongly identifying a Jewish Australian as responsible for the attacks and resulting in death threats to that individual”. But the Explanatory Memorandum does not mention, first, that this libel also appeared in reporting in legacy media, and second, that the affected individual had remedies in defamation law and successfully availed himself of those.

Due process safeguards form part of the justification for existing legal remedies that impinge on freedom of speech. They are absent from the draft Bill.

Lack of transparency and accountability of the censors

The Bill appears to contain no provision requiring public reporting by platform providers about the nature and extent of censorship activity carried out under misinformation codes and misinformation standards, or carried out of their own volition.³⁶

Part 2 of Schedule 9 includes extensive provisions about ACMA collecting information from platform providers about their censorship systems and activities. Clause 30 empowers ACMA to make “digital platform rules” requiring providers to keep records of these matters and to prepare reports derived from those records. There are elaborate provisions for enforcing these rules.

Clause 38 *authorises* ACMA to publish on its website information about mis- and disinformation on digital platform services, and about providers’ censorship activities. However, there is no *requirement* to publish any of this material.³⁷

Clause 38 may be broad enough to authorise publication of information about ACMA’s performance and exercise of its functions and powers under Schedule 9, such as giving remedial directions, issuing infringement notices, and conducting proceedings under civil penalty provisions. However, once again there is no *requirement* for ACMA to be transparent in real time about the exercise of its powers and their impact on freedom of speech.³⁸

By contrast, subsection 183(2) of the *Online Safety Act 2021* includes quite detailed requirements to include in the Online Safety Commissioner’s Annual Report statistics about the respective numbers of notices given under specified provisions of that Act, although there seems to be no requirement for transparency about the content of the notices and their outcome.

There do not appear to be any specific FOI exemptions relating to ACMA and its role under Schedule 9. However, the general exemptions relating to commercial

³⁶ This information is not required to be published under clause 17, which deals instead with risks and policies.

³⁷ A further limb to the Exposure Draft version of this clause read as follows:
(c) the prevalence of content containing false, misleading or deceptive information provided on digital platform services (other than excluded content for misinformation purposes).
Presumably, it was recognised that this was never going to be possible to assess.

³⁸ Clause 69 requires ACMA to report annually on the operation of Part 2 of Schedule 9. There is no requirement for any granular detail about ACMA’s activities.
Clause 70 requires the Minister to conduct 3-yearly reviews of the operation of Part 2 of Schedule 9, including an assessment of its impact on free speech. This is no substitute for ACMA publishing information in real time about its activities.

confidentiality would apply. Also, having to apply under FOI laws is a poor substitute for having this kind of information available to the public in the interests of transparency. Finally, FOI laws do not apply to the vast majority of platform providers that are non-government entities.

Compliance costs create incentive to apply broad brush censorship practices

The powers conferred on ACMA by Part 2 of Schedule 9 will create red tape and compliance costs for platform providers. The introduced Bill adds further regulatory burdens to what was in the Exposure Draft:

1. Reporting and publication requirements (clause 17)
2. Preparing and updating risk assessments and risk management plans (clauses 17 and 19)
3. Preparing and updating “media literacy plans” (clauses 17 and 22). This is a particularly insulting and pointless intervention: the Nanny State patronising its citizens based on some paternalistic vision of what’s good for them.

The requirements imposed on providers are quite simply oppressive. A platform provider will want to minimise the costs of complying so far as possible, and in doing so will err on the side of broad brush approaches to give the government regulator what it wants. It is much easier to censor content that contradicts the official narrative and that the government claims is “misinformation” than to go to the trouble and expense of checking the content independently, much less defending the free speech rights of content creators and platform users. This is even acknowledged in the Explanatory Memorandum.³⁹

An obvious way to cut costs is to use software to screen content on a platform. This is a crude technique that produces arbitrary results and suppresses content without any substantive evidence that it is false or misleading.

Platform providers should be free to respond to their users’ concerns by facilitating posting of content to contradict disputed material already on the platform. The Community Notes feature on X (formerly Twitter) is a good example of how this can be done. This is cheaper, more effective, and more compatible with freedom of speech, than the measures imposed by the Bill.

Thomas Reid
30 September 2024

³⁹ Page 18.



COMMONWEALTH OF AUSTRALIA

Proof Committee Hansard

SENATE

LEGAL AND CONSTITUTIONAL AFFAIRS LEGISLATION
COMMITTEE

Estimates

(Public)

MONDAY, 22 MAY 2023

CANBERRA

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LEGAL AND CONSTITUTIONAL AFFAIRS LEGISLATION COMMITTEE

Monday, 22 May 2023

Members in attendance: Senators Antic, Chandler, Ciccone, Dean Smith, Green, McKim, Paterson, Polley, Rennick, Roberts, Ruston, Scarr, Shoebridge and Watt

HOME AFFAIRS PORTFOLIO

In Attendance

Senator Ayres, Assistant Minister for Trade, Assistant Minister for Manufacturing

Senator Watt, Minister for Agriculture, Fisheries and Forestry, Minister for Emergency Management

Department of Home Affairs

Mr Michael Pezzullo AO, Secretary

Australian Border Force

Mr Michael Outram APM, Commissioner

Chief Operating Officer

Ms Justine Saunders APM

Mr Michael Milford AM, Group Manager, Technology and Major Capability

Ms Stephanie Cargill, Chief Finance Officer

Ms Lee-anne Monterosso, Chief Procurement Officer

Mr Radi Kovacevic, Chief Information Officer

Ms Tiffany Blight, First Assistant Secretary, People and Culture

Mr Stephen Hayward, First Assistant Secretary, Health Services

Dr Michelle Graham, Acting First Assistant Secretary, Integrity, Security and Assurance

Ms Sara Vrh, Acting First Assistant Secretary, Enterprise Bargaining

Executive

Ms Sophie Sharpe, Deputy Secretary

Ms Mary Balzary, First Assistant Secretary, International

Mr Adam Meyer, First Assistant Secretary, Intelligence

Mrs Nicole Spencer, First Assistant Secretary, Executive Coordination

Dr Steven Davies, Chief Data Officer

Mr Justin Douglas, Assistant Secretary, Economic Analysis

Legal

Ms Pip de Veau, General Counsel/Group Manager

Cyber and Infrastructure Security Centre

Mr Hamish Hansford, Deputy Secretary

Mr Samuel Grunhard, First Assistant Secretary, Security Regulation

Mr Brendan Dowling, First Assistant Secretary, Cyber and Technology Security Policy

Mr Peter Anstee, Acting First Assistant Secretary, Cyber Response and Coordination

Mr Michael Burke, Acting First Assistant Secretary, Industry Partnerships and Infrastructure Policy

Immigration

Ms Stephanie Foster PSM, Associate Secretary, Immigration

Mr Michael Willard, Group Manager, Immigration Operations

Ms Alison Larkins PSM, Head of Migration Reform Taskforce

Ms Tara Cavanagh, First Assistant Secretary, Immigration Policy, Integrity and Assurance

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

Mr Angus Kirkwood, First Assistant Secretary, Citizenship and Multicultural Affairs

Ms Leanne Smith, First Assistant Secretary, Service Design and Delivery Programs

Mr Michael Thomas, First Assistant Secretary, People Smuggling Policy and Implementation Taskforce

Mr Andrew Kiley, Acting First Assistant Secretary, Refugee, Humanitarian and Settlement

Ms Michelle Pearce, Assistant Secretary, Migration Reform Taskforce

National Security and Resilience

Ms Kendra Morony, Acting Deputy Secretary

Mr Anthony Coles, First Assistant Secretary, Counter Foreign Interference Coordination Centre

Ms Catherine Hawkins, First Assistant Secretary, Strategic Research and Communication

Dr Jeni Whalan, First Assistant Secretary, Strengthening Democracy Taskforce

Mr Tim Roy, Acting First Assistant Secretary, Counter Terrorism Coordination Centre

Australian Border Force—Strategy and Capability

Ms Kaylene Zakharoff, Deputy Commissioner, Strategy and Capability

Australian Border Force—Regional Operations

Ms Vanessa Holben PSM, Deputy Commissioner, Regional Operations

Australian Border Force—National Operations

Mr Tim Fitzgerald, Deputy Commissioner, National Operations

Rear Admiral Justin Jones CSC, Commander, OSB JATF/Commander Maritime Border Command

Australian Security Intelligence Organisation

Mr Mike Burgess, Director-General of Security

Ms Hazel Bennett, Deputy Director-General, Enterprise Service Delivery

Mr Ewan Macmillan, Deputy Director-General, Vetting Service Delivery

National Emergency Management Agency

Mr Brendan Moon AM ASM, Coordinator-General

Dr Rina Bruinsma, Deputy Coordinator-General, Disaster Resilience and Recovery Group

Mr Joe Buffone PSM, Deputy Coordinator-General, Emergency Management and Response Group

Ms Vidoshi Jana, Chief Operating Officer

Mr Andrew Hocking, First Assistant Coordinator-General, National Resilience Capability Programs

Mr Andrew Chandler, First Assistant Coordinator-General, Enterprise Governance

Ms Cindy McGhie, Chief Financial Officer

Ms Hannah Wandel OAM, Acting First Assistant Coordinator-General, Programs and Policies Division

Ms Sophie Cartwright, Assistant Coordinator-General, Resilience and Community Programs

Ms Karina Menday, Acting Assistant Coordinator-General, Recovery Programs

Committee met at 09:00

CHAIR (Senator Green): I now declare open this hearing of the Senate Legal and Constitutional Affairs Legislation Committee for the budget estimates. The Senate has referred to the committee the particulars of proposed expenditure for 2023-24 for the portfolios of Home Affairs and the Attorney-General and other related documents. These are budget estimates proceedings, and outcomes to be heard during today's estimates are for the Home Affairs portfolio. The committee has set Friday 14 July 2023 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, Friday 16 June.

Under standing order 26, the committee must take all evidence in public session, and 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 the 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 those rules.

The Senate by resolution in 1999 endorsed the following test of relevance on questions at estimates. Any questions going to the operations or financial positions of departments and agencies which are seeking funds in 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 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, which will be incorporated into the *Hansard*.

The extract read as follows—

Public interest immunity claims

That the Senate—

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

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

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

(1) If:

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

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

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

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

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

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

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

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

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

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

(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. I also remind all senators that, as we continue our work in implementing the *Set the standard* report, as chair I will ensure that proceedings are conducted in an orderly, respectful and courteous way.

Department of Home Affairs

[09:03]

CHAIR: I now welcome Senator the Hon. Tim Ayres, representing the Minister for Home Affairs, the Minister for Cyber Security and the Minister for Immigration, Citizenship and Multicultural Affairs. Would you like to make an opening statement?

Senator Ayres: No, thank you.

CHAIR: I now call officers from the Department of Home Affairs, including Australian Border Force, in relation to cross-portfolio, corporate and general matters. Welcome, Secretary. Would you like to make an opening statement before we go to questions?

Mr Pezzullo: Yes, Chair, thank you. With the coming to office of a new government a year ago, the department embarked upon a program of realigning its functions and structures so as to be better placed to deliver on new and/or revised policy and delivery priorities. This program of change was undertaken deliberately in consultation with staff and in stages so as to lessen the risk of unnecessary disruption. As at 1 May this year, this process was substantially finalised, with a number of minor changes still to come into effect, which will occur on 1 June this year. As a result of these changes, immigration, citizenship and multicultural functions have once again been brought together under the leadership of associate secretary Stephanie Foster. All immigration operations have been brought together under her leadership under, in turn, the leadership of group manager for immigration operations Michael Willard. Cyber and critical infrastructure security functions have been brought together under the leadership of deputy secretary Hamish Hansford. The government recently decided to assign the Commonwealth's own IT cybersecurity governance function to the department. Mr Hansford's group has assumed that responsibility as well.

In order to better integrate national security and resilience functions, I have established a group which bears that title, and I'm in the process of finalising the recruitment process for the deputy secretary who will lead that group. Its responsibilities will span counterterrorism, countering violent extremism, countering espionage and foreign interference, national resilience in relation to climate, geoeconomic and geopolitical risks, and strengthening democracy.

I refer the committee to the recently published 11th edition of a document known as *The administration of the immigration and citizenship programs*. As at 31 March this year, there were around 557,000 on-hand visa applications, compared to approximately 960,000 at 30 June last year. To repeat that for the committee, as at 31 March, we had around 557,000 on-hand visa applications, compared just under one million, that is to say 960,000, as at 30 June last year. The integrity of the visa system has been significantly strengthened in recent years. The government has made it clear that it places a high priority on further strengthening the integrity of the visa system, especially as it relates to detecting and dealing with fraudulent or non-genuine applications, which might actually or potentially be associated with migrant worker exploitation and other forms of migrant exploitation.

I wish to advise the committee that the average visa refusal rate for the six-year period which extended from 2001 to 2007 was 1.8 per cent. In more recent years the average visa refusal rate for the six-year period from 2014-15 to 2019-20 was 3.2 per cent, an increase of 1.4 percentage points. This improvement was a function of our deeply expert immigration and intelligence staff becoming even better trained and better supported to detect and deal with fraudulent and non-genuine visa applications, as well as applications which do not meet the relevant applicable visa criteria. This has included the building since 2014-15 of better risk profiling and threat identification engines and tools.

Extrapolating the financial year 2022-23, that's to say the financial year that we're currently in, were the weaker integrity performance of those earlier years of 2001-02 to 2006-07 applicable today, an estimated 120,000 visas will have been granted this year in circumstances where the grantees were not actually entitled to a visa grant for reasons of fraud or non-eligibility otherwise, as compared to the department maintaining at least the stronger performance of more recent years. That said, our ministers have made it clear that they wish to see even better results, especially in relation to thwarting migrant worker exploitation.

Finally, with the advent of the National Anti-Corruption Commission on 1 July, I'm giving further thought to how our integrity and anticorruption settings must be normalised and brought into line with broader public service norms, without of course doing so in a manner which might inadvertently increase materially the risk of fraud, corruption and criminal infiltration. I hope to be in a position to further advise the committee on relevant developments when we next meet. Thank you, Chair.

CHAIR: Thank you, Mr Pezzullo.

Senator PATERSON: Mr Pezzullo, I was going to start with other matters, but given your opening statement and your references to the changes within the department, I might start there instead. Thank you for tabling your statement. I note in particular your observation in your opening paragraph that the changes to the department are substantially finalised. How many people are currently in acting roles at the deputy secretary or FAS level?

Mr Pezzullo: At the deputy secretary level, I'll check, but I'm fairly certain it's one. I'm currently in the process of recruiting for the position, which I described in my statement as being newly established, of national security and resilience. That officer will perform a triple hatted function, as it were: to be the deputy secretary of that group, NSR, national security and resilience—I listed the functions in the statement—as well as being the counterterrorism coordinator and the countering foreign interference coordinator. So I'm obviously looking for someone with the skill sets who can adopt both a strategic and, if you will, policy role, but also in an incident be able to switch quickly into supporting the government in a fast-breaking scenario as well.

At the FAS level, relatively few. We've recently had a couple of transfers to other departments. I'll have to come back to you. I can probably come back to you through the course of the morning. It wouldn't be more than two or three, but I will check. When I say FAS, I mean first assistant secretary, band 2.

Senator PATERSON: I have your organisational chart dated May 2023. I'm not sure when in May that was. But it appears to me that there are more than one or two. Just at the deputy secretary and FAS level, it looks to me that there are about half a dozen, unless this is out of date. I can go through some of them. The industry partnership and infrastructure policy role; the digital security policy role; the cyber response and coordination role is listed as a TBA; the deputy coordinator for terrorism—

Mr Pezzullo: Which is the position I just described.

Senator PATERSON: Both the deputy secretary and the deputy coordinator are listed as acting here, not just the one role. The national resilience taskforce role; the immigration programs role; the humanitarian settlement role—these are all FAS positions which are listed as acting.

Mr Pezzullo: I know for a fact that a number of those have filled. Why don't we get the chief operating officer and Ms Sharpe, as head of executive, just to give me better advice through the course of the morning. But I think you'll find that at deputy secretary level there's one vacancy. I'm near certain of that, as they report directly to me. As to band 2s, there are a number, but I will get you that number through the course of the morning. In part because our people are so attractive to other departments—

Senator PATERSON: No doubt.

Mr Pezzullo: in a couple of cases they have won transfers to another department of state, and they went with my congratulations and blessings.

Senator PATERSON: I'd also be grateful for the number in the position immediately below FAS.

Mr Pezzullo: The assistant secretary level?

Senator PATERSON: Yes. According to this document, there appear to be a number of vacancies as well. From my quick scan of your document it would look like about a dozen, maybe more, senior roles that are unfulfilled.

Mr Pezzullo: I will come back to you through the course of the morning.

Senator PATERSON: That would be good. How long has the counterterrorism and counter foreign interference role been vacant for?

Mr Pezzullo: Only a few weeks, in so far as Mr Kefford, who was previously the deputy secretary in a slightly different role—I've reconfigured the role but with substantially similar functions, counterterrorism, counter foreign interference and so on—he left us maybe three to four weeks ago—I'll seek advice—to take up a position in the Department of Parliamentary Services as the deputy secretary. So the position has only been vacant for that period. It would be in the order of three to four weeks, perhaps five at the outside.

Senator PATERSON: And his deputy is also vacant, or there is someone acting in the role?

Mr Pezzullo: Only recently. In two cases, or one case at least, a colleague was transferred to a position in the Department of Foreign Affairs and Trade. But again, that's been in recent weeks.

Senator PATERSON: Speaking of which, in the international section of the department it seems everyone at the assistant secretary level is in acting roles. Is there a reason why every single person in that team is in an acting role, other than the FAS?

Mr Pezzullo: That's been a circumstance for quite some time. It's something I have asked the deputy secretary to pay attention to and to remedy.

Senator PATERSON: I note that Mr Ablong's position is no longer here, in the department breakdown. Has that position been abolished?

Mr Pezzullo: The functions have been redistributed to the two main groups that I described in my statement. There's the cyber and infrastructure security group, Mr Hansford, which is the group that, amongst other things, acts as the regulatory office for the security of critical infrastructure legislation and so on. They're also leading the development of the government Cyber Security Strategy with the expert advisory panel. Some of the functions were distributed to that group. The balance have been distributed to the national security and resilience group, which is the subject of that deputy secretary vacancy we just discussed. Mr Ablong himself continues to be a valued member of the department. He is on a two-year secondment to ASPI, the Australian Strategic Policy Institute. Along with the Executive Director of ASPI, I have asked Mr Ablong to work on a particular project which is in the national resilience area. He's on transfer to ASPI.

Senator PATERSON: Is the department having difficulty retaining or attracting talent? Is that one of the reasons why there'd be so many acting positions?

Mr Pezzullo: No. The rounds that we have for either band 1 or band 2 and, in the cases that I directly manage, band 3 are well subscribed in terms of people expressing interest in coming or, indeed, putting forward their candidacies. It's really just a question of going through the merit process to ensure that we get the right people for the right jobs.

Senator PATERSON: I'll look forward to your chief operating officer clarifying exactly the number of vacancies that there are at these levels, but, given your own evidence that it's substantially finalised, it doesn't seem substantially finalised to me and it doesn't seem like—

Mr Pezzullo: They are in terms of structures and functions. The functions are as depicted in the chart that you have before you. I think you said you've got the 23 May chart. The functions are distributed, as the ministers and I have been discussing, so, if you like, the alignment of functions. Immigration, citizenship, multiculturalism are in a large group under the associate secretary, with an immigration operations function. That's settled. The establishment of a cyber and infrastructure security group is settled. The bringing together of those functions around national security and resilience is settled. I just need to fill the position of deputy secretary.

Senator PATERSON: It's great to have the org chart finalised but I imagine it would be even better to have the people in the roles.

Mr Pezzullo: We've got very good, talented, more junior officers stepping up very well and doing a great job. It gives them a great opportunity to display their wares and it's great for succession planning and to keep the vitality of the organisation healthy. It's like a political party. You get more junior people stepping up. They demonstrate capacity in other roles. They serve very well on committees and then the leader gives them a greater role.

Senator PATERSON: Very droll, Mr Pezzullo. I'll put some other questions on notice. I'm particularly interested in the breakdown of the total SES vacancy rate and then the vacancy rate more broadly within Home Affairs.

Mr Pezzullo: If it's agreeable to you, I will come back—if not before the morning tea break then immediately after—with the band 2s. We can eyeball that. That's straightforward. In terms of vacancy rates and trends, I'll take that on notice and give you some trends over time. Did you ask about vacancy rates by level or across the SES?

Senator PATERSON: That would be great if you could break it down.

Mr Pezzullo: I'll give it to you on notice over some time period that makes sense.

Senator PATERSON: Thank you. I want to move to some budget matters. I wonder if the relevant official is available. You had a very helpful official last year—I don't know if it was a CFO or someone else—who helped me with this.

Mr Pezzullo: It will be our CFO, so I'll ask the chief operator officer, Ms Saunders, and the CFO, Ms Cargill, to join me at the table.

Senator PATERSON: Thanks. In the first instance, I'm interested in the department's overall resourcing. I'll have some questions about specific lines of funding later on. Just to start with, overall, I've got your portfolio budget statements in front of me. I'll just make sure, for the purposes of this conversation, I'm on the right page and we're discussing the same thing. I'm on page 14 and looking at table 1.1. Am I in the right place?

Ms Cargill: Correct.

Senator PATERSON: Under total departmental resourcing for the 2022-23 financial year it has it at \$3.928 billion. Is that right?

Ms Cargill: Correct.

Senator PATERSON: Falling to \$3.768 billion next financial year?

Ms Cargill: That's correct.

Senator PATERSON: What is the reason for that cut of a bit less than \$200 million?

Ms Cargill: I'll take you through each of the individual lines making up that differential because you have to deal with each line individually. There's a drop-off in the prior year appropriation available from \$421 million to \$275 million, which is making up the majority of the variance between the two years. That reduction is attributable to the fact that we have overspent our budget in 2022-23 and have declared, as you'll note from our PBS, an operating loss in 2022-23 of \$120 million, which is making up the majority of that reduction in our prior year appropriation. Then we have an increase in our current year appropriation of between \$2.8 billion to \$2.9 billion. That's an increase in revenue from government this year of \$100 million. That's attributable to new measures in the budget, offset by terminating measures from prior years. We have a slight reduction in our section 74 external revenue attributable to about \$50 million. Section 74 revenue is projects we deliver on behalf of other departments, and also POCA funded projects. That's a moving number. At this stage, for example, we haven't agreed the MOU that we have in place to deliver the NCIS project, the National Criminal Intelligence System, that we do for ACIC. Funding for this year is yet to be included in that number, and we have a drop-off in our POCA funded projects. That's the differential there. In our annual appropriations for prior-year approps for equity, we effectively have a reduction due to movement of funds for equity funded projects, and we have fewer equity funded projects this year than last year. The key movements are obviously in the prior-year approp for the operating loss and the fact that we have an additional \$100 million of new funding this year.

Senator PATERSON: I'll come back to that additional funding in a moment. The administrative resourcing for the department has fallen from about \$3.5 billion to \$3.3-and-a-bit billion.

Ms Cargill: That's exactly right. We have a movement in our prior-year appropriation receivable. Again, that is predominantly due to movement of funds in relation to administered programs, where we've had movements from 2022-23 that are not required in 2023-24. They predominantly relate to our refugee humanitarian program, and our offshore management program in particular. Then we have movements in the outcome funding for administered for 2023-24. The movement in outcome 1 is very small. In terms of outcome 2, we've got an \$80 million reduction. Again, this is due to the establishment of an enduring capability in Nauru and the reduction in our offshore funding requirement. In outcome 3, we've got a reduction required, predominantly related to our immigration detention network, where we have had a funding capacity in the immigration detention network of 1,400 in 2022-23, and some additional funding—that I think we've talked about before—relevant for the COVID pandemic, that was required in 2022-23 in our administered detention network. We have a very small reduction in our administered capital budget, which is our standard budget for minor capital items in the administered space, and, again, a small reduction of \$5 million in our prior-year approp for movement of funds.

Senator PATERSON: Okay. That adds up to a total reduction in resourcing for the department of about \$300 million from this financial year to next. Is that right?

Ms Cargill: That's right. The total is at the bottom: \$7.4 billion versus \$7.1 billion.

Senator PATERSON: Is this a hangover from the machinery-of-government changes and the resources going to Attorney-General's?

Mr Pezzullo: No. It might be helpful if I interpolate some context. Outside of the defence department—which is funded on a completely different basis with a global budget, and then they come back with variations as to their spend—most, if not all, other departments are funded on a rolling basis. As I often used to explain to Senator Keneally, when she used to sit in the same chair, if you look ahead at the funding for things like Operation Sovereign Borders, which is typically dealt with as an estimates variation, or detention contracts, or what we might be doing on Nauru, which might be a function of the number of people there, and you project forward, in any given financial year, into the forward estimates, you do find some of these drop-offs occurring. What typically happens either at MYEFO, the Mid-Year Economic and Fiscal Outlook, or through the year, with estimates variations and the like, you get the funding that you require to do the job. Indeed, Ms Cargill referred to the operating loss that we declared to the finance minister. We had to demonstrate to her that that wasn't simply maladministration and that it actually related to the volume of work we had and the task that the government had assigned to us relative to the cash that had been appropriated previously, going back to the budget of 12 months ago, as adjusted by MYEFO. Like any department, we have to demonstrate to the finance minister that that's a real mismatch between demand on activity versus resourcing. I've got no doubt that, rolling forward into MYEFO this year and into next year, we'll be able to demonstrate whether it's for volumetric issues, such as the number of

visa applications we've got on hand, or whether it's to do with things like the retendering of a contract. When the government turns its mind to either a terminating measure, a lapsing measure, an estimates variation or, indeed, new policy, they give us the funding that we require.

Senator PATERSON: I certainly understand the point you're making.

Mr Pezzullo: You asked about the machinery-of-government change itself.

Senator PATERSON: You've already answered that by saying this wasn't the result of that. I thank you for that. I wish you all the best of luck at the Expenditure Review Committee next year. I take your point—perhaps the government might actually increase your funding—but, as it stands, the government plans to cut your funding by \$300 million, roughly, between this financial year and next. I think I'm right in understanding that these are nominal figures, not real figures, so, taking into account inflation, it's an even bigger cut, given how high inflation is at the moment.

Mr Pezzullo: Is this on the appropriation again?

Ms Cargill: Yes, this is on the appropriation cuts.

Senator PATERSON: Are the national security challenges facing our country getting so much less serious that you can afford to cut hundreds of millions of dollars out of the home affairs department's budget?

Mr Pezzullo: It's precisely for that reason that I've got every confidence that, when the government turns its mind—as it's scheduled to turn its mind—to things like our maritime capability, detention contracts, offshore management arrangements or OSB, it will always give us the funding that we need to do the job that—

Senator PATERSON: This is the financial year starting on 1 July. You don't have the funding yet. How do you think you're going to get it in just a few months?

Mr Pezzullo: I understand, and we'll demonstrate that, relative to the volume of work that we're doing, whether it's through an estimates variation or next year, if it gets to it, where we have to convince the finance minister again that—

Senator PATERSON: It would be too late next year, wouldn't it? This financial year would be well underway by then.

Mr Pezzullo: But you manage your cash to what you're going to get plus what you think you're going to get, and you have that active dialogue with the finance department at all times. I'm supremely confident. This drop-off is no bigger—in fact, in some cases it's more modest—than drop-offs I've had to manage in the last decade. This always happens when you've got a cyclical cash-based funding arrangement, whereby certain programs are funded, certain volume and baselines are funded, and then you have to go back at intersessional points. I'm not any more concerned than I have been for the last decade.

Senator PATERSON: We'll come back to that when I have the call again.

Senator McKIM: Mr Pezzullo, how many contracts does Home Affairs have with PricewaterhouseCoopers?

Mr Pezzullo: Ms Saunders can address that. We've been doing some work—as you can imagine, Senator McKim—on that very issue. Ms Saunders.

Ms Saunders: We've currently got six active contracts with PricewaterhouseCoopers.

Senator McKIM: What's the value of those cumulatively?

Ms Saunders: The total value of the contracts entered into is \$8.13 million, and total expenditure to date on those contracts entered into is \$7.8 million.

Senator McKIM: Are the details of all of those contracts available on AusTender or some other public—

Ms Saunders: Yes, they are.

Senator McKIM: Mr Pezzullo, considering you said you've been doing a little bit of work on that, I'm just going to give you an opportunity to precis that for the committee. I'm specifically interested in what due diligence, if any, the department has been doing to assure itself that PricewaterhouseCoopers is not monetising confidential information.

Mr Pezzullo: Obviously, like everyone, I've been watching the revelations of what was done with tax-sensitive information with concern. The Secretary to the Treasury, who is responsible for that portfolio area—tax administration—has also shared in confidence the concerns that he has about the activities that occurred there—some time ago, it has to be said, but it's come to light through email discovery and the like. I think it's fair to say—I won't speak for my fellow secretaries, but I suspect all of us are doing the same thing—if there's anything there that goes to culture or to the practices that that firm engages in, then anything that we might have which

might be market sensitive or tax sensitive—we do collect revenue, of course. Through the ABF, we're the second-largest revenue collector. Just as a matter of due diligence, I've asked the chief operating officer to look at all of the engagements that we've had, at least at the moment, as a snapshot, to see if there's the appropriate non-confidentiality—non-disclosure, I should say—

Senator McKIM: A Freudian slip, perhaps, Mr Pezzullo?

Mr Pezzullo: Whether it was Freudian or otherwise, it was certainly a slip. But let's say confidentiality arrangements that go to non-disclosure. We do have the practice of ensuring that employment suitability checks are done on the actual contractors who come in the door, particularly those who have to be on our systems in terms of their accesses to sensitive customs, immigration and other data. But, Ms Saunders, can you add to that general answer, please?

Senator McKIM: I will give you a chance to do that, Ms Saunders, but, before you do that, Mr Pezzullo mentioned confidentiality agreements. You've said there are six contracts—are any of them covered by confidentiality agreements? If so, how many?

Ms Saunders: I'll have to take on notice the specifics of each contract. First, I should make the point that, obviously, this has been looked at in a whole-of-government sense and, of course, those agencies that have lead on these matters are the Department of Finance and Treasury. So, more broadly, I'd suggest you direct questions to them, noting there is quite a bit of work being done and, certainly, from the Department of Finance in regard to the procurement framework and ensuring that ethics is at the forefront of our mind in terms of the guidance that we are giving.

Mr Pezzullo: I suspect the senator will be asking other departments, as a very diligent scrutineer.

Ms Saunders: I understand that Treasury is also giving careful consideration to the Commonwealth's position, given the new material that the Tax Practitioners Board has tabled in parliament. So those two departments are looking at that matter. But, on the back of the concerns that have been raised, all six active contracts have been examined by the department. We've gone through all contract managers which relate to areas within the department, including the Finance Division, the Major Capability Division and the Refugee, Humanitarian and Settlement Division on the six active contracts, particularly looking at issues of conflict of interest and at any integrity concerns we might have. I have been reassured that all personnel associated with relevant contracts have submitted deeds of confidentiality prior to their commencement, where that was required, and that no probity, privacy, integrity, confidentiality or service delivery concerns have been identified throughout the course of those current active contracts.

Going back to the secretary's comments on the checks and balances that the department has in place, in addition to the standard contract clauses that we have in the Commonwealth relating to conflicts of interest and integrity generally, we obviously ensure that all our contracts adhere to the contractor-consultant management framework. But, as the secretary suggested, we also have additional layers of assurance insofar as it's our policy that all people, including all contractors, consultants and ESPs who need non-public access to information complete employment suitability clearance documentation and also undertake induction training, which gives them training in regard to fraud and corruption awareness, integrity essentials, professional standards, privacy essentials, the public interest disclosure scheme, records awareness and security essentials. So we have put in place additional layers of assurance to ensure that those contractors and consultants who come to work in the department have a very clear understanding of what our ethics and integrity frameworks require of them.

Senator McKIM: Clearly, in some cases the confidentiality agreements signed by PricewaterhouseCoopers employees are not worth the paper they're printed on. That's become very obvious through the revelations that we've seen over the last six months or so. Do the department's confidentiality agreements with PricewaterhouseCoopers, where there are any in relation to those six contracts, vary materially from the ones that were signed by PricewaterhouseCoopers with Treasury for the design of the anti-tax-avoidance measures?

Mr Pezzullo: I'm not sure we would know, would we?

Senator McKIM: Are they consistent across the Public Service or are they specific to each department?

Ms Saunders: No, the secretary is right. We wouldn't actually know the specifics of the contract clauses that Treasury entered into with PwC at that time—and I note we're going back to 2018, I think, or pre that date. I couldn't comment on that, but certainly there's a general framework and guidance that's provided to departments which we adhere to.

Senator McKIM: What actual work has the department done to assure itself that PricewaterhouseCoopers is not attempting to monetise confidential department information? Have you asked them to give you assurances?

Have you done any investigation? What's your due diligence here to make sure that the confidentiality of the data you're handing over to PricewaterhouseCoopers is being respected?

Ms Saunders: As I indicated, all of the contract managers are responsible for that engagement with the contractor and have oversight to ensure that all the clauses are being adhered to and that they're delivering on expectations. They have all been engaged and have all undertaken an examination of those current contracts and have assured themselves, as the contract managers, that there have been no issues of concern identified. Having said that, though, as I indicated, there is further work being done in a whole-of-government sense, and, on the back of any further advice we get from Finance or Treasury, we will undertake further examination if it's determined appropriate.

Senator McKIM: You said the contract managers are assuring themselves that everything's okay. I'm trying to get to the bottom of how they are doing that. You said you've asked them—Mr Pezzullo has asked you; you've asked the contract managers. I understand that, in terms of the internal processes of the department, but what is actually being done at the coalface here to make sure that PricewaterhouseCoopers is respecting confidentiality? Sorry, could you start that again, Mr Pezzullo?

Mr Pezzullo: In terms of what the contract managers would be looking for, if you're working in Treasury or the ATO on a tax-sensitive announcement that can be turned into product advice about how to potentially minimise your exposure, then that's one thing. But I'm not sure we'd have a lot of contracts that would be of that character. In other words, it would be specific to the risk associated with the piece of work being undertaken. So, it's advisory work on, say—I don't know; just give us an example of one of the contracts.

Ms Saunders: To give an example of those, we've got software maintenance and support. So, as the secretary said, it would really be heavily dependent on the nature of the risks associated with the contract, the nature of the work they're performing and the nature of the information to which they have access.

Mr Pezzullo: Who'd be managing that—Mr Milford and his team?

Ms Saunders: That would be right.

Senator McKIM: Before we go into—

Mr Pezzullo: We could even ask Mr Milford, head of technology.

Senator McKIM: Obviously I'm happy to hear from Mr Milford, but there are six contracts, and we're on limited time here.

Mr Pezzullo: I guess what I'm saying is that in some cases there would be a financial advantage if you misused the information, because you could start to develop tax advisory advice for clients, to say, 'The government's going to do X, but if you do Y'—

Senator McKIM: As they did.

Mr Pezzullo: Well, it appears from the documents that have been disclosed, and PwC themselves have conceded that. But if you're providing advice on how to employ a particular piece of software or how to modify a piece of software, it's hard to see how a market benefit would arise. That's where you get into the detail of how each contract manager needs to understand what the risks attendant to their interaction with the company are. So, we really are starting to get into me having to ask each of the contract managers.

Senator McKIM: Alright, but without going to that level of specificity, has any risk been identified through these processes that you've just spoken about and taken us through? Has any risk been identified in regard to the potential for confidential information to be monetised by PwC?

Ms Saunders: As a result of the review that's been undertaken, no risks have been raised with me.

Senator McKIM: Okay.

Ms Saunders: But I also make the point that the actual monitoring of these contracts hasn't taken place just on the back of these more recent reports. Contracts are monitored very closely, and certainly I've been advised anecdotally that historically where we have identified concerns in regard to the integrity of the contractors then we've asked for those contractors to be removed and we've engaged with the contractors. So, the integrity of the contract is in the forefront of our minds. We monitor very closely through the course of the contract, and if we have concerns we do raise them with the contractors and have in some instances removed those contractors from that work.

Senator McKIM: I understand that, but PwC have been exposed as bad-faith actors, at least in the context of their relationship with Treasury and in the more-specific consultation that Treasury engaged in around designing anti-tax-avoidance laws. So, they're bad-faith actors, at least in that circumstance, and heads are rolling in PwC,

and more should roll. Do you have confidence in PricewaterhouseCoopers, Mr Pezzullo, in terms of your current contracts and any future contracts that you might let? And the corollary to that question is: how on Earth, given what's been given in the past six months, can you have confidence in PricewaterhouseCoopers, and why on Earth would you award them any contracts into the future?

Mr Pezzullo: Well, the stance that I've taken—and I've directed the chief operating officer and her staff to in further replies apply the Russian proverb of 'trust but verify'—I'm certainly not confident, given what I've read. I think I'm correct in saying that the current chief executive is described as the interim chief executive, and if I've got that wrong I'll apologise to her. She's reached out, as I'm sure she is doing to a number of major clients—

Senator McKIM: I'm sure she is!

Mr Pezzullo: to say, 'Here's what we're doing to remediate this. Obviously I've got to engage in that process in good faith. But to your larger point about how you can deeply verify, I'm sure it'll be something the Treasurer and the secretary of the Treasury will speak about in more detail. I'm not well positioned to. But my hypothesis—because I've got to look after my own integrity perimeter, if you like—the judgement that I've drawn is that if no red flags were being made apparent to either the Treasury or the ATO but this activity was happening on PwC systems, so it would seem they were taking information in breach of nondisclosure requirements and then within their own internal company networks sharing that information, then, as far as I'm concerned, the advent of the NACC could not have come to soon. We have to throw the anticorruption net much more widely to get into the full supply chain of people who deal with the Commonwealth, and, if this is a salutary example, albeit from some years ago, as to why you need that broader anticorruption framework, this is a good example.

Senator McKIM: We've referred it to the NACC, so we'll see how that goes. We'll see whether it's within scope.

Mr Pezzullo: I should add I know nothing on the detail. I know nothing beyond what's been put to the media. I should stress that.

Senator McKIM: You've said, 'Trust but verify'. Where does the trust come from? PwC engaged in a flagrant breach of trust that I think was a criminal act and corrupt. I'll put that on the record—it was a corrupt, criminal act. How can you trust PwC, and why have you adopted a trust-but-verify framework instead of something that acts to better protect the confidential information that you're providing them with?

Mr Pezzullo: If the company says: 'We did something wrong. We've moved to new leadership. We're overhauling our processes'—and, as Ms Saunders said, there's more consideration being given to this across government—unless we are get to a lawful basis whereby you say, 'The whole of government is not going to engage with you,' I'm not in a position, as an individual secretary, to say, 'I'm not going to contract with you at all.' We will monitor more closely the six contracts that we have. I'll certainly be taking a very close view of any new contracting with we do. Within the current law, we're not in a position to determine criminal guilt. You've put on the record your judgement that it's criminal. We don't make that judgement.

Senator McKIM: No, of course not.

Mr Pezzullo: That's for others. Nor do we make the judgement that the action was corrupt. That's, again, for someone else to establish. Knowing everything that I know, I've asked Ms Saunders and then the contract managers on each of the contracts to take much closer interest, to pay much closer attention and to verify everything that's being done, especially where there's a risk of monetary advantage—so market sensitive or tax sensitive or revenue sensitive information arising. Where we are at the moment, unless new information comes to light or the government itself makes a broader decision, I don't think I can do anything more than I've done.

CHAIR: Senator Paterson, you've got the call again.

Senator PATERSON: Returning to these budget matters, we've agreed that there's a reduction cut to the department of \$300 million or thereabouts between this financial year and next financial year, but, of course, if we go back to the March 2022 budget, the cuts are much greater than \$300 million. The estimate for 2022-23 in the March 2022 budget was \$8.59 billion, so we're now talking about a cut of about \$1.1 billion compared to what the department was anticipating in the March 2022 budget. That's a 12 or 13 per cent cut in the department's funding.

Mr Pezzullo: There was a budget then in October. Perhaps you could assist Ms Cargill. You're going to the March '22 budget brought down by Minister Frydenberg, it would have been.

Senator PATERSON: Correct.

Mr Pezzullo: And you're looking at the financial year—

Senator PATERSON: 2022-23.

Mr Pezzullo: Ms Cargill, have you got anything that can assist the senator?

Ms Cargill: Yes, in 2022-23 the total portfolio finding was \$8.8 billion, but the vast majority of that and the difference is actually MOG impacted, so there was \$2.6 billion of NEMA administered funding that is no longer part of the portfolio.

Senator PATERSON: We understand the implications of the Attorney-General's Department moves as well. Nonetheless, we're talking about a major reduction in funding for the Department of Home Affairs, which, at least under the previous government, was the lead domestic national security agency. I'm not sure whether that's still true now.

Mr Pezzullo: Sorry, just so we're all clear on terms, you're referring to the portfolio funding at a time when Federal Police, ACIC and AUSTRAC were in the portfolio.

Ms Cargill: The number I gave was inclusive of NEMA and ASIO, so it doesn't include the previous portfolio agencies.

Mr Pezzullo: What's this shift then? It's the NEMA administered fund?

Ms Cargill: Correct.

Mr Pezzullo: Can you just quickly explain to the senator what happened to that administered funding?

Ms Cargill: NEMA administered funding is effectively demand driven for disaster funding. In the year 2022-23 they had \$2.68 billion of COVID related and disaster related funding. Their current administered budget in 2023-24 is \$254 million. So that is the majority of the difference. If you look at the departmental operating funding over the years from 2021 to 2024—and this is specifically the department's operating funding—it goes from \$2.7 billion to \$2.8 billion to \$2.98 billion in 2023-24.

Mr Pezzullo: So the money that I use is my operating budget. Obviously, the portfolio is a larger entity with administered capital operating. In fact, NEMA didn't exist, so that would have been the emergency management administered funding within the department—correct?

Ms Cargill: Correct.

Mr Pezzullo: NEMA was a creation of the Labor government subsequently, wasn't it?

Ms Cargill: Yes.

Mr Pezzullo: So, when you refer to NEMA, you're actually referring to the emergency management function.

Ms Cargill: Yes, that's right.

Mr Pezzullo: So administered money is what it is. You can't move that around for other purposes, as you know, Senator Paterson. You've got to manage with a small overhead and administered program, and it might be disaster payments and the like. Those administered numbers move around because they're quite volatile and are a function of the particular program, but that's no different from Services Australia administering the pension program.

Senator PATERSON: I do understand that, and I appreciate your valiant efforts here, but I want to underline this key point. In March 2022, you were told by the then government that, in the 2022-23 financial year, you would have about \$8.6 billion at your disposal for the national security challenges our country faces and the broad remit of the Department of Home Affairs. In fact, from this new government, you're only given \$7.48 billion—a cut of about \$1.1 billion.

Mr Pezzullo: Again, I can only restate that, if administered money goes in and out, it doesn't reflect your departmental operating position and doesn't relate to the number of people you have. It's the payments that you put out the door and the like.

Senator PATERSON: I'm very interested in your departmental officers, but I'm also interested in the overall spending on national security challenges faced by our country, which used to be the principal task of Home Affairs. I think it's debatable whether that's still the case now. Nonetheless, we're talking about a \$1.1 billion cut to what Home Affairs had at its disposal or was told that it would have at its disposal not much more than a year ago.

Mr Pezzullo: I can only repeat what I said. You said 'money at my disposal', but I can't move around administered funds. I get administered funds, and, if I put payments out the door or if Mr Moon—as the head of NEMA—puts payments out the door to do disaster recovery, that's not a function of your departmental funding profile. That's a function of the money the government gives you to administer a program, which is no different from a pension program, disaster relief program or child support programs. I think it's—I won't say misleading;

that's too loaded a term—potentially deceptive if administered money is thought to be the resources that a secretary has at their disposal to run their department.

Senator PATERSON: Sure, but, as we've discussed in the previous section, your departmental resourcing is dropping as well.

Mr Pezzullo: That's a separate question.

Senator PATERSON: I think they're linked, actually.

Mr Pezzullo: In terms of your department, what I'm much more focused on—

Senator PATERSON: Both the overall funding and the department's funding are declining.

Mr Pezzullo: Administered money comes in and out. Can we agree, perhaps, to set that aside if you don't mind—well, it's up to you as to whether you accept that or not. But, in terms of the department's operating position, I will be making an argument at MYEFO, and I'll be making an argument at various points where, for instance, estimates variations are considered for things like Operation Sovereign Borders. Depending on the threat that I face, depending on the environment that I face and depending on the pressures that I face, I'll be making the same case, as I've been doing for 10 years—I'm coming up to 10 years in this job. As I said to you earlier, I'm feeling no more or less confident—in fact, I'm pretty comfortable—with where I am, having done this dance for nine years, including under the previous government.

Senator PATERSON: I'm pleased to hear you're confident, but it doesn't matter which way we cut this. The only numbers we have available—not your theoretical future numbers or your future success at ERC, which we wish you well for—indicate that the department is facing a cut. It's either a \$300 million cut or thereabouts, based on this government's numbers, or a \$1.1 billion cut, compared to where we were under the previous government. In the uncertain strategic environment that we face, which you have discussed yourself, it seems perverse to be cutting the department's funding. Anyway, let's move onto another matter.

Mr Pezzullo: I think the minister is going to support my ERC.

Senator Ayres: The government listens carefully to the security advice and considers all of the relevant information, including submissions from Mr Pezzullo and others, and makes sure that every taxpayer dollar counts and is directed towards the right purpose.

Senator PATERSON: Good to hear. I'm moving onto another matter. Mr Pezzullo, as I hope you know, I am one of your many legions of followers in terms of your published writings. I note them with great interest. I was particularly interested to read your 2023 Anzac Day message, but I couldn't help but note a subtle shift in tone from your previous Anzac Day message in 2021. The infamous 'drums of war' Anzac Day message, which you'll remember, generated some media attention at the time. You've gone from warning us of the drums of war beating loudly to now saying that it's peace that we should pursue at all costs. You even say:

If only we could throw away the rifles and the uniforms, we would be able to live peaceably in the fellowship of humanity.

That's a very noble sentiment. What accounts for this quite significant change in tone between those two years?

Mr Pezzullo: I'm not sure that there's a significant shift in overall thinking. It was weighing on my mind some two years ago that tyrants may well use something that we thought that was in our past—that is, the weapon of war—to impose their will on their neighbours, in this case. Regrettably, it was prescient in terms of what Mr Putin did with his absolutely abhorrent, unlawful and inhumane assault on his neighbour. It's something that I think we should reflect on, particularly on Anzac Day, and we should reflect particularly on those who have lost their lives or those who have suffered the scourge of war. I suspect, if they have a voice now, they would be saying, 'Do everything you can to avoid the same calamity that happened to us happening to you.' There's an inconsistency, but—

Senator PATERSON: I don't think I'm the only person who's detected a change of tone. Your 2021 note was very strongly criticised by then shadow ministers, led by the former shadow minister for foreign affairs, Senator Wong, who said that your comments were very inappropriate. I note that the senator hasn't made the same criticism of your message this year. Presumably, she's approved of the change of tone from two years ago.

Mr Pezzullo: I'm sure the foreign minister is far too busy to be reading my musings. I'd be very surprised if they've come to her attention.

Senator PATERSON: That's very humble of you, but the media has noticed the change in tone, as well. You would have seen Rob Harris's pieces in the *Sydney Morning Herald* and in the *Age*, where he noted that it was quite a big shift. Some of us defended you at the time in the media, when you were criticised for those remarks, which were prescient in anticipating the change of strategic environment. But I wonder whether our defence was misplaced if you're so flexible that you can just change it for a new government.

Mr Pezzullo: My thinking and reasoning about these matters is undisturbed by the machinations of the changes of political hue and stripe. It's just my way of engaging with my staff. I get very engaged feedback. Indeed, one of the things that I enjoy most about those messages is that colleagues within the department come back with critiques, sometimes, but more particularly with, 'Oh, have you read or seen this further exposition of the point that you were making?' It may be about some of the references I've made to movies or literature that I draw upon. It's a way of engaging with staff.

Senator PATERSON: But it's not just engagement with your staff, because—invariably, somehow—your messages to your staff find their way to the media.

Mr Pezzullo: That's because they're put on the website. I suspect the journalists just look at the website.

Senator PATERSON: Perhaps they're just waiting on the Home Affairs website for updates like that. But, nonetheless, my point is that it's not just engagement with your staff; it's engagement with the public as well because you put it on a public-facing website.

Mr Pezzullo: That's a fair point, Senator.

Senator PATERSON: Did you seek the approval of your minister or of any other ministerial office? Do you share that?

Mr Pezzullo: No. As a courtesy, I let them know what I intend to say, but I never seek approval for messages I write in my own hand, in my own time, to my staff.

Senator PATERSON: How far in advance did you share it with the minister's office before circulating it?

Mr Pezzullo: Several days—I'd have to check. But it was certainly not to check for authority. I would never seek authority, and I would be most reluctant to be directed in such matters.

Senator PATERSON: It would have given them an opportunity to object, should they have wished to, if you had given them a few days notice.

Mr Pezzullo: I suppose so, yes.

Senator PATERSON: They obviously didn't, so I presume they do approve of it.

Mr Pezzullo: I don't know. You'd have to ask either the minister or her office.

Senator PATERSON: Perhaps the minister at the table can assist.

Senator Ayres: I'm not in a position to assist. I know no more than what Mr Pezzullo has just relayed to you.

Senator PATERSON: Chair, I have another topic to move on to. Would you like me to do that now or wait for the next call?

CHAIR: I need to share the call in a minute.

Senator PATERSON: Why don't you share the call now, and I'll come back to it?

CHAIR: Senator Ciccone, you have the call.

Senator CICCONE: Thank you very much, Chair. Thank you, Senator Paterson. It's very nice of you. Hello, Mr Pezzullo. It's good to see you. I'm looking forward to talking internal politics with you this morning, given your earlier comments around internal politics and the machinations of party politics.

Mr Pezzullo: That's of no interest to me.

Senator SCARR: Do you need advice, Senator Ciccone?

Senator CICCONE: No, I don't. Mr Pezzullo might.

Senator McKIM: That's not what I'm hearing!

Senator CICCONE: Some other internal matters within your own department relate to the Parliamentary Liaison Network. I've got a couple of questions here for you and your team. Recently my office contacted the Parliamentary Liaison Network on behalf of an individual whose assessment for a subclass 489 visa, a skilled regional visa, had extended well beyond the indicative time frames that are set by the department on the website for the 90 per cent of applications.

Mr Pezzullo: In terms of the finalisation?

Senator CICCONE: Yes. But in response to that request—and this is probably key—the advice from the department stated that because the individual was not a constituent of mine, the department was unable to respond. I just want to get an understanding—

Mr Pezzullo: Given that you're a senator, I don't quite follow that.

Senator CICCONE: That's right. The exact words, without giving away the name, were that the individual 'does not appear to be a constituent of your office'. The department wouldn't normally provide assistance when requested by parliamentarians, I'm assuming, because of an individual in question—they have to go away, find out and seek advice—but what is the test that your department or this particular network uses for their assessment? I found it highly unusual, given the very nature of the individuals asking for help.

Mr Pezzullo: I might ask Ms Foster. It strikes me as odd. Is it possible that the person was outside of Victoria? You're a senator for Victoria.

Senator CICCONE: I don't want to give away too many details, but this individual is not a citizen. By the very nature of the matter, they wouldn't be a citizen.

Mr Pezzullo: They'd be a resident.

Senator CICCONE: We get a lot of requests, as you know. I was quite taken aback. It's the first time a department has come back to us—

Mr Pezzullo: I have to say I'm slightly puzzled. I am puzzled. Ms Foster, whose group—

Senator CICCONE: Is Ms Foster responsible for the PLN?

Mr Pezzullo: She's head of Immigration.

Senator CICCONE: Are we able to have Ms Foster come up to the table, please?

Mr Pezzullo: You're the expert on all things parliamentary liaison?

Ms Foster: I think that Mr Willard will be able to assist with the detail of this.

Mr Pezzullo: The senator is making the comment that his office was rebuffed on the basis that there was no constituency link. Given that the senator is a senator and doesn't have a lower house electorate, I wonder how our processes—

Senator CICCONE: I have a very large electorate, as you know.

Mr Pezzullo: I get it. I understand. But you're a senator for Victoria. How does it work in the case of a senator?

Mr Willard: I actually was aware of that particular case. I was made aware of it.

Mr Pezzullo: We'll tread very carefully in terms of the circumstances.

Mr Willard: I certainly won't go into details, but I do understand that, subsequently, the Parliamentary Liaison Network contacted your office and clarified the matter, which was that they should have been providing advice in respect of that particular application.

Senator CICCONE: Have other offices been impacted or received the same response?

Mr Willard: Not that I'm aware of. There have actually been a lot of changes made to the Parliamentary Liaison Network recently, with a focus on feedback from electorate offices and improving performance.

Senator CICCONE: Is this a new test from the Parliamentary Liaison Network—that they determine who is and who isn't a constituent?

Mr Willard: No. It was a circumstance where there was an error in terms of assessment of the request. When it was drawn to their attention, I understand that the Parliamentary Liaison Network got in touch with your office to clarify that advice.

Senator CICCONE: Does the department define what a constituent is?

Mr Willard: The department can provide advice in terms of members making representations on behalf of constituents. In this circumstance, the advice should have been provided in respect of that individual.

Senator CICCONE: Just to be clear: The department doesn't assess whether someone, in my case for instance, is inside or outside of the state of Victoria? The department doesn't make an assessment of whether they're a citizen or a non-citizen who's having issues with a visa? The PLN doesn't do any of that assessment?

Mr Willard: There's an assessment as to whether the individual is a constituent in the sense of someone being represented by a member. In this particular case, I understand, there was a relationship to Victoria.

Senator CICCONE: If there was someone, hypothetically, from the state of Queensland who wrote to me and I wanted to make representations on their behalf, you would say that I could not do that?

Mr Willard: I'd expect the network would still provide a response in that circumstance. There might be a circumstance where an individual from overseas who has no connection to Australia might seek for you to make representations. The advice that's been provided to the network is to try to answer the question provided by

parliamentarians as best they can. That particular circumstance was the result of a misunderstanding of the process.

Senator PATERSON: Can I just support Senator Ciccone on this. My office advises me we had the same response from the Parliamentary Liaison Network when we sought to raise an issue with a constituent, and we were told it wasn't within our remit. I don't know about Senator Ciccone, but I don't feel limited by geographic boundaries if there's an issue that needs to be raised.

Senator CICCONE: At the end of the day we are members of the federal parliament and we have a right to represent people on these very issues.

Mr Willard: I understand, and you may be aware that the Parliamentary Liaison Network has commenced a new operating model since 1 May. The network actually came to Parliament House on 10 May to start their first monthly outreach session for electorate office staff. That will continue virtually and that's an opportunity for issues to be raised in terms of the operation of the network.

Senator CICCONE: You don't sit down, for instance, and work out the individual in question is or is not a citizen? That was my first part of the question. I'm not sure I got an answer to it.

Mr Willard: The assessment being made is trying to identify the individual. That will then determine the nature of the response—whether, for example, we can provide specific information or whether we provide generic information.

Mr Pezzullo: Logically, if they're a visa applicant they're not going to be a citizen, so I think the question that both senators are posing relates to the link to representation. I think, in our response, we've used the term 'constituent' and 'representative'. They are senators who have electors within the state of Victoria. For the benefit of the committee, Mr Willard, can you explain what the nexus is between the applicant, because typically what will be happening is that an applicant will say, 'Where's my visa,' or 'There's a hold-up,' or 'I got a knockback letter,' or whatever. Does that person then need to have an elector stand in between their application, because by definition they're not going to be an elector because they're not going to be a citizen? Do they need to then stand in between and have an elector represent to a member of the lower house or a member of the Senate? I think that's the question that's being gotten at.

Mr Willard: The department can provide advice to members, acting on behalf of representations.

Senator CICCONE: Whether they are an Australian citizen or not an Australian citizen?

Mr Pezzullo: Two non-citizens.

Senator CICCONE: I was under the impression from some of the feedback—and apologies, I'm maybe paraphrasing—that we were only able to make representations, or ideally representations from citizens, for overseas individuals who are seeking an application, but are better directed to another process?

Mr Pezzullo: I don't think that's the evidence that's just been given. I think the phrase Mr Willard used was representation. Is that right?

Mr Willard: Correct.

Mr Pezzullo: If you receive a representation from any person, you're able to utilise the services of the Parliamentary Liaison Network to raise that with the department.

Senator CICCONE: For the record, my office does a lot of triage. We obviously don't want to burden the PLM. We understand that you're obviously having to work very hard and process a number of constituent inquiries through many offices. I was just a bit taken aback when I got that because I thought: 'Who's the department to say what's a constituent?' And in this case this individual was not a constituent because they were, by their very nature, seeking to apply for a visa, so they weren't an Australian citizen or a permanent resident.

Mr Pezzullo: Understood. Have you got anything more to add, Mr Willard?

Mr Willard: In terms of the PLM, and it might also give some context for previous advice received, there were over a thousand items on hand on 1 July 2022. At the start of this month that had been reduced to 153. So the network will continue to stay focused on keeping those on-hand numbers as low as possible.

Mr Pezzullo: And an item, presumably, is a representation made by one of the electorate officers in the lower house or the Senate.

Mr Willard: Correct, and, as I said, a new operating model commenced on 1 May, which incorporates a lot more outreach with electorate offices to make sure we're providing a satisfactory service.

Mr Pezzullo: If it assists the committee, why don't I come back to you on notice with a definition that Ms Foster can examine of how we treat representation—a definition in terms of practice and procedure of how the

PLN treats a representation, so who can make it and what is the definition, and, to assuage the two senators who have raised the issue, whether there's any geographic limitation placed upon those representations. Would that be of assistance?

Senator CICCONE: To be fair, I'm not here trying to present something that you're not aware of, but I understand other senators have had similar issues as well. Just to add—you might want to take this notice too, Ms Foster or Mr Pezzullo—I understand there is a new website for parliamentarians to put in details. My limited understanding, given that my staff do the bulk of the work when it comes to this while I'm here—and they do a great job too, by the way, if they're watching—that there's still a tick box that asks whether the person, I suspect, is a constituent or not, and that's why I'm also interested as to why. What's the department trying to get at when it defines what is and what isn't a constituent? Is it simply whether they are an Australian citizen or someone from overseas?

Ms Foster: We'll certainly come back to you on the definitional issue, but I wanted to make the broad statement that the reset, if you like, that we've done of the PLN, starting this month, is aimed at increasing service levels, increasing the utility of the service to members and senators, and we really welcome questions like this and direct feedback to help us actually make the service work in your interests because we understand how important it is to you. I was just checking with Mr Willard. After six months in the job, there are still a lot of things I don't know. I think we're the ones who define how we manage the PLN, and, therefore, that means that it's within our capacity to make sure that we define things in a way that best meets the needs of members and senators.

Senator CICCONE: If you're able to take that on notice and come back, I'd appreciate that today.

Ms Foster: Yes, no problem.

Senator CICCONE: Mr Willard, you might be best suited, but what are the PLN's current service standards for calls and email responses?

Mr Willard: The standard's 85 per cent of inquiries responded to within 10 business days and triage of urgent inquiries within 48 hours.

Senator CICCONE: Has there been any change to the standard or support that the PLN provides to MPs and senators?

Mr Willard: As I mentioned, there's a new operating model that's come into effect from 1 May. I've touched on some of the engagement with electorate officers that's been established, which includes that monthly information session. The first session was held here at Parliament House, but they'll be online in the future. There's also the provision of a quick reference guide and provision of information trends that will be provided monthly.

Mr Pezzullo: And the website that the senator referred to?

Mr Willard: There has been the introduction of a new online form. This is designed to handle the inquiries more efficiently. The form is encouraged but is not mandatory. There's also a call-back service that's been incorporated when requested by electorate office staff, which can be requested by the form.

Senator CICCONE: Are the service standards currently being met, and, if not, how significant are the delays?

Mr Willard: Yes, service standards are currently being met, and, as I said, the on-hand number has reduced significantly over this financial year.

Senator CICCONE: How many staff are currently in the PLN team?

Mr Willard: The core team is seven staff, but the staff are connected to other teams that assist them. For example, they have a connection with a visa support centre whose job is to be able to resolve urgent or compassionate and compelling cases in a short period of time, and they also connect within the wider department.

Senator CICCONE: How many calls or emails are responded to or unanswered?

Mr Willard: There shouldn't be any calls or emails that are not responded to by the PLM.

Ms Foster: I have recently become aware from one of your colleagues that there are instances where there is no response, where for example the requested visa is granted. I'm working with my team to make sure that we do in fact respond.

Senator CICCONE: Thank you. What is the urgent turn around time frame for the PLM?

Mr Willard: That's the 48 hours I mentioned earlier, but the team will make an assessment and action it as quickly as they can.

Senator CICCONE: Do you conduct regular feedback with MPs and senators to see how happy or satisfied they or their staff are with the PLM and the responses provided?

Mr Willard: That's part of the purpose of those monthly sessions, in terms of feedback from electorate office staff in terms of the performance of the PLM. Obviously we realise that there are new staff coming on board all the time, and there is an opportunity to explain to them what the PLM is and how they can use it.

Senator CICCONE: I want to say thank you for the work that your team does, by the way. I'm not here to be critical. I think it's important for both the department and the various MPs and senators to get these inquiries processed as quickly as possible, so thank you.

Mr Willard: It's a very dedicated team working very hard in the PLM.

Senator CICCONE: Thanks a lot.

Senator SHOEBRIDGE: Mr Pezzullo, thanks very much for attending today. When did you become first aware of the existence of the Corner report, which was so deeply critical of the VERA-2R terrorist risk assessment that the Department of Home Affairs had been using for years?

Mr Pezzullo: I might just seek some guidance. The questions thus far have been about departmental administration, budget resourcing and processes. We are starting to get into a matter that I'll need some support on and is better dealt with under the counterterrorism program. Could I get your guidance on that?

CHAIR: We're in cross-portfolio. We have allocated a small amount of time for cross-portfolio senators, and we will be coming to outcome—

Mr Pezzullo: Outcome 1 and particularly program 1.4.

CHAIR: If your questions relate to outcome 1, I will hand the call back to the opposition so we can get to outcome 1 sooner rather than later.

Senator SHOEBRIDGE: This is cross-portfolio, because it handed over to Attorney-General's.

Mr Pezzullo: I think in the past the definition of cross-portfolio has been taken to mean across the portfolio, that is to say relationships with portfolio agencies. Hitherto the questioning has been about our resourcing.

Senator SHOEBRIDGE: Let's get to outcome 1 sooner rather than later, and I'll ask them then. I have some other questions in the broader cross-portfolio space.

CHAIR: If it relates to cross-portfolio and corporate matters, we'll deal with that now and then we can get to outcome 1. I know lots of senators have questions in that.

Mr Pezzullo: I have agitated with the committee staff in the past as to the slightly ambiguous nature of the term 'cross-portfolio', as to whether it crosses boundaries of portfolios—

Senator SHOEBRIDGE: This portfolio is often cross, so that covers much of it! In the answers that were given to Senator McKim's query about PwC and about what checks have been made of the confidentiality obligations and the retention of confidentiality by PwC, I was unable to hear any example where additional tests have been applied to PwC over and above the standard integrity tests. Can you identify a single additional integrity measure that has been rolled out in relation to PwC since the scandal involving their disclosure of tax information has been made public?

Mr Pezzullo: I thought Ms Saunders had made the point that we're looking in more detail at the six on-foot contracts, but perhaps we might pose the question more directly.

Senator SHOEBRIDGE: Ms Saunders, is there any single additional integrity test that has been undertaken by the department since the tax scandal?

Ms Saunders: The short answer is no. That's because our position is the integrity measures are actually quite robust. As outlined, there are a whole range of measures, including adherence to the frameworks that exist across the Commonwealth as well as additional checks and balances that we have in place, I should point out, for all contracts, because the integrity of contracts is in the forefront of our mind when we enter into and monitor contracts.

Senator SHOEBRIDGE: So despite PwC grossly breaching written confidentiality agreements which are no doubt very similar to those that your department has, you are saying that there has not been a single additional integrity check that your department has undertaken in relation to PwC for any of the six contracts?

Ms Saunders: No, Senator, if I can correct that, I wasn't suggesting that because, of course, we undertake quite detailed scrutiny of every contract with PwC.

Senator SHOEBRIDGE: Additional.

Ms Saunders: We haven't done that for other contracts that we have in place. I should also point out, as I indicated earlier, the Department of Finance is looking very closely at the procurement framework. I would imagine that in the coming days and weeks we'll see further tightening of that framework to address the very issues we are referring to.

Mr Pezzullo: I think the senator is seeking further amplification of what was said about the six contracts that are under the scrutiny of the contract managers.

Senator SHOEBRIDGE: I was just simply seeking an answer to my question: have you undertaken any additional integrity checks? Your answer was no, and I am testing that answer. Have you not even asked PwC to assure you that the confidentiality agreements have been adhered to? Have you made that basic enquiry of PwC?

Senator Ayres: Senator, just for the purpose of clarification, are you asking about integrity measures in a forward sense? Or are you asking about integrity measures in relation to the six contracts that have been the subject of the discussion?

Senator SHOEBRIDGE: I'm asking in relation to the multimillion-dollar contracts that are on foot, under which you are no doubt sharing confidential information with PwC.

Senator Ayres: So it's in relation to the six.

Senator SHOEBRIDGE: Have you sought assurance from PwC that they have complied with their confidentiality agreements? Have you sent that email or made that inquiry?

Ms Saunders: I can certainly confirm there's been communication with PwC regarding the concerns that have been raised. We have received assurance from PwC that there have been no breaches of probity or integrity as it relates to those contracts.

Senator SHOEBRIDGE: Can you provide the committee with when and how those inquiries were made, and the answers that were provided by PwC? If they were done by email, please table the emails.

Ms Saunders: Senator, I'll have to take that on notice for each particular contract. Obviously, it's all occurred quite recently on the back of commentary regarding the allegations surrounding PwC. So it's all recent, and I'd have to take on notice the nature of the communications.

Mr Pezzullo: We can come back on notice.

Senator SHOEBRIDGE: I'm finding it hard to square those answers you have just given with your initial blanket clear statement you had undertaken no additional integrity checks. I'm trying to work out how to square those two answers.

Ms Saunders: Sorry, Senator, if I wasn't clear in my answers.

Senator SHOEBRIDGE: You were quite clear.

Ms Saunders: My point was that there was no blanket integrity check per se. What I said was though, to clarify the point, is that we have examined each of the contracts: the nature of the information that's being shared and if there have been any concerns through our ongoing monitoring of those contracts or engagement of PwC that would generate any unknown risks to the department. The advice has been no. Obviously as part of that process, there has been communication with PwC, and I'd take on notice the specifics of that communication.

Senator SHOEBRIDGE: Thanks.

Senator PATERSON: Mr Pezzullo, I want to take you to some quotes from your minister and others on the importance of bipartisanship when it comes to national security. Prior to the last election, in its national security policy platform, Labor promised, 'Labor will take the politics out of national security, always seeking bipartisanship, and always acting in our shared national interest.' And at a speech at the Australian National University, your minister said in relation to foreign interference specifically:

I want to have a conversation about this which is open, informed and is non-partisan. This is very, very important, because partisanship in this conversation is a huge problem.

She goes on to emphasise that point. Is that your view too? That the use of language when discussing these kinds of serious matters of national security be as bipartisan as possible?

CHAIR: Mr Pezzullo, before you answer—I don't want to pre-empt your questions, Senator Paterson—we just had a discussion about this being cross-portfolio and corporate matters, and that any substantive questions about outcome 1, which we are seeking to get to as soon as possible, should be asked under outcome 1. I wanted to remind you of that before this exchange goes too much further.

Senator PATERSON: I hear you, Chair. I promise that by the time I get to my questions you will see why this is in cross-portfolio and not in outcome 1.

CHAIR: Let's hope we get there quickly.

Mr Pezzullo: Are you asking me about bipartisanship?

Senator PATERSON: Yes.

Mr Pezzullo: I think it would be improper for me to have a view about that. I can see circumstances where there needs to be a public debate which has conflicting values, norms and views. For a public official to say, 'Hey, everyone, settle down'—

Senator PATERSON: Let me narrow it down to assist you.

Mr Pezzullo: It's not my role to admonish parliamentarians about how they engage.

Senator PATERSON: I understand. I wouldn't ask you to do that. Let me narrow it down, to make it more direct for you. Is it important that in the department's communications there is no hint of partisanship, in what you produce?

Mr Pezzullo: Absolutely. I can absolutely assure you that as a Public Service department we abide by the Public Service code, which includes, amongst other things, a legislative requirement to operate in an impartial fashion.

Senator PATERSON: I take you to a document published by your department, A migration system for a more prosperous and secure Australia. There's a section on the second page, in the opening paragraph, which says:

Australia must have a more targeted, simpler migration system that serves our national interest and helps migrants thrive. Yet after a wasted decade of continental drift and piecemeal change, our current system lacks direction, is complex ...

et cetera. This is not a foreword by the minister. This is not identified as being from the government. This is unsigned and, therefore, I assume, has come from the department. That language is exactly the kind of partisan language that the government uses to try and trash the record of the previous government. Is it appropriate, in a departmental issued document, to use that kind of partisan language?

Mr Pezzullo: I'd need to check the provenance of the document. If it's a review or a document written by external parties that would be one matter. If it's a document issued under the authority of the minister then that would be another matter, but the sorts of corporate documents—

Senator PATERSON: Mr Pezzullo, this is a document issued by your department. It says on the front page: 'Australian government, Department of Home Affairs.' Please don't tell me you're not familiar with a major document that your department issued in April.

Mr Pezzullo: I might just ask Ms Foster to attend. If it's the review that was undertaken into the migration system, as distinct from the government's response—certainly the department hasn't issued a response to that immigration review. I might just get Ms Foster to attend. I don't have the document in front of me; it's not on the screen, so I'm just going to be a bit cautious about how I respond. To your general proposition about whether a departmental document should make references to a so-called wasted decade of this, that or the other: then no, it shouldn't. If it's issued on the authority of the minister, she can quite properly engage in a political debate with her opponents as she sees fit.

Senator PATERSON: It's a seven-page document. There's no signature block from the minister. There's no photo of the minister. There is nothing in this document that identifies that it has come from the minister or the minister's office. Perhaps that's where it was drafted; I don't know. But it's on your website. It is only identified as an Australian government Department of Home Affairs document, and it contains explicitly partisan language.

Mr Pezzullo: If Ms Foster can attend—perhaps she's looking at the document as we speak. I know that the minister commissioned an independent review. To go back to the start of your question, she has used that kind of language about the judgement of this government about the performance of its predecessor. As to whether that document's got the status of a departmental document, I'll just check. If it does, it won't say that—I can assure you. Are you familiar with the document that the senator is referring to?

Senator Ayres: I think, Senator, you have the advantage of having the document.

Senator PATERSON: It's a public document on the department's website. It's not a secret, classified piece of information.

Senator SCARR: It's a pretty significant document, Minister. I would expect that—

Senator Ayres: But you have the advantage of having it in front of you.

Senator PATERSON: I'm sure the secretariat could circulate—

CHAIR: Are you able to table the document, Senator, to make it easier?

Senator PATERSON: You could pull out your phone or your iPad and pull it up; it's on the department's website.

Ms Foster: Senator, I'm just having someone pull it up for me so I can check, but my understanding is that that is the document that was released—it was indeed Minister O'Neil's document—in conjunction with the Press Club speech in which she referred to the fact she would release a discussion paper.

Senator PATERSON: It doesn't say anywhere on the document that it was the work of the minister.

Ms Foster: Which is why I'm just having it checked, Senator.

Senator PATERSON: It's on the department's website.

Mr Pezzullo: I can give you an assurance at the table that no departmental document will have any pejorative or partisan language about the performance of the former government or the government before the former government, and if it is misidentified in that way it will be fixed by about 11 o'clock, I can assure you.

Senator PATERSON: I would be very grateful for that, because I don't think there's any way that the public could identify that this is not from the department—if it is, indeed, not from the department.

Mr Pezzullo: Ms Foster and I will scrutinise the document visually, to make sure that it—

Ms Foster: I've just had it confirmed, Senator, that it is indeed minister O'Neill's document. The error is in the way we have not identified that on the website, and we'll correct that.

Senator PATERSON: Thank you. I'm grateful for that.

Mr Pezzullo: How can we give the senator an assurance, leaving aside the visible identification, that it's Minister O'Neill's document? That's the assurance that I think the senator—

Ms Foster: Because my staff have just checked the document, and they have confirmed to me that that was indeed the document that was produced by the minister in conjunction with that speech.

Senator PATERSON: I'm grateful for your recognition this is problematic and for your commitment to fix it, so that it is clearly identified as belonging to the minister. What steps will you put in place in the future to ensure the minister does not again issue documents that appear to be from the department that have partisan language in them?

Mr Pezzullo: The function of curating our website falls to the department. The minister doesn't have a web administrator. I will ensure, through another part of the department—it falls under Ms Sharpe—that our website curation is not merely 100 per cent accurate but that it's 1,000 per cent accurate. I don't any think anyone needs to have any concerns about the ability of my department to operate apolitically in a highly contested space. We did so on election day, where we stood our ground in the interests of the apolitical defence of my department, and I intend to do so on this occasion. If we've got the web management wrong, I do apologise.

Senator PATERSON: It's not just the web management. It's the document itself. It's a PDF. It could be circulated in its own right, and no doubt it was circulated by the minister's office to journalists and others. It's document control as well as website management. This is not just a web administrator issue. Your logo is on the front page.

Mr Pezzullo: If it's a document issued under the minister's name, there are plenty of other instances where ministerial documents clearly identify that they are ministerial documents. If that hasn't occurred on this occasion, I will remedy it.

Senator PATERSON: Thank you. I appreciate that. On a related matter, does the department produce poorly drafted legislation?

Mr Pezzullo: We certainly try not to. We work with the Office of Parliamentary Counsel. Departments don't themselves draft legislation; we give instructions. In our instruction-giving, we certainly try to be meticulous, thorough and accurate.

Senator PATERSON: Your minister does believe that you produce poorly drafted legislation. In an interview with Sabra Lane on the ABC on 27 February, she referred to a piece of cybersecurity legislation—she didn't name it, but I assume it to be the critical infrastructure reforms—as 'bloody useless', not worth being printing on the paper and 'poorly drafted'. Do you think that's an accurate description of that legislation?

Mr Pezzullo: Chair, if I may come back to you, whereas the previous question related to the department's impartiality, I think any reasonable person would say that that's a general matter—

CHAIR: And the website. The questions related to the website. It's a corporate matter.

Mr Pezzullo: Yes, quite. It's possibly the case that we're getting into substantive discussions around cybersecurity, but I will be guided by you.

Senator PATERSON: I don't intend to, actually. I'm just interested in the drafting function of the department, and the way you work with the Office of Parliamentary Counsel. I'm not sure which outcome that would fit under.

Mr Pezzullo: Can we stay any specific reference to cyber and infrastructure security until the relevant outcome, because I know the minister's mind on this. She and I have spoken many times. The strength, which she has acknowledged in other interviews—

Senator PATERSON: I know. That's what I find interesting about this. It seems contradictory to—

Mr Pezzullo: The minister's position, which she has articulated eloquently on quite a number of occasions, is that it's designed to do certain things very well. There are certain other things that it doesn't do so well. For instance—I'm going to chance my arm ever so slightly—but I remember that rather colourful phrase being associated with one of the major data breaches. Sometimes it's called a cybersecurity breach, but it's sometimes quite a simple security breach which then leads to a significant data spill. I think the minister's point, I won't repeat her pungent phrase, was that the legislation, in so far as it relates to the protection of critical infrastructure networks and devices, is strong. She's said that on the record on quite a number of occasions. In dealing with the consequence of having very significant personal information spilt onto the dark web, if the extortionist puts it on the dark web, or where there's a similar breach of data privacy, that particular piece of legislation—how shall I put this?—lacks utility. I won't repeat her phrase. It lacks utility.

Senator PATERSON: You were the one who was not keen to get into the details of the cybersecurity elements of this, although you've just done so. What I'm interested in—

Mr Pezzullo: Without that context, I just couldn't answer the question.

CHAIR: Senator Paterson, can I? That's actually not the case. What we've asked you to do is to ask detailed questions about outcome 1 in outcome 1. I don't think it's a fair assessment on the secretary about whether he wants to answer them or not.

Senator PATERSON: No, no, I wasn't saying that. The secretary said we shouldn't do it now, we should wait, and he's just done so. But, anyway, the point I'm really driving home is the drafting issue here.

Mr Pezzullo: Yes, I understand.

Senator PATERSON: I would hope that you would be able to say that your department does not preside over and does not produce, in conjunction with Parliamentary Counsel, poorly drafted legislation.

Mr Pezzullo: I'm very proud, and I've made it clear to this government, that the work was done under the former parliament insofar as the ambit of that legislation went. The minister's point is that it went to its ambit, but then there are other issues around the downstream consequences of significant data breaches.

Senator PATERSON: That's a very charitable interpretation of these comments. I don't think 'poorly drafted' and 'not worth the paper it's printed on' encompasses that nuance that you've just articulated.

Mr Pezzullo: I think she was saying it lacks utility in respect of certain functions but it's strong in relation to other functions.

Senator PATERSON: You must know the minister's mind very well to be able to read between the lines in that way.

Senator Ayres: Senator, I also think it's pretty hot to try and blame the department for the previous government's legislation, and I think the minister is making comments in wake of significant—let's call them—'data breaches'—I won't go into the technical details of this. I think she was pointing to the previous government. I appreciate the valiant effort to shift responsibility from the previous government to the department, but in a lot of these areas there have been weaknesses identified there, and the minister and the department are working assiduously to resolve them.

Senator PATERSON: To your point, Senator Ayres, I don't know how it operates under your government, but under the previous government I don't think it was the minister themselves or even the minister's office who were involved in drafting the legislation.

Senator Ayres: You see: we hold the hose. We take responsibility. That's what we do. We don't shift it away.

Senator PATERSON: It was the department that drafts legislation in conjunction with the Office of the Parliamentary Counsel, and that's why I'm asking Mr Pezzullo: does this department produce poorly drafted legislation?

Senator Ayres: We just don't blame them like that.

CHAIR: Senator Paterson—

Senator PATERSON: That's exactly what the minister's just done!

CHAIR: you wanted to hand the call to Senator Scarr, but you've actually exhausted all of your time. Have you one more question?

Senator PATERSON: I could hand the call to Senator Scarr now.

Senator Ayres: For one question!

CHAIR: No. You have failed in that attempt, is what I'm suggesting to you.

Senator PATERSON: Chair, the secretary and the minister engaged me more than I anticipated, so we'll have to come back.

CHAIR: It was a robust discussion.

Senator CICCONE: Mr Pezzullo, can I turn your and the department's attention to QON 943, in which Senator Green asked about how much the department has spent on the provision of garrison and welfare services to Nauru between 1 November 2017 and 31 May 2022. I can provide a copy of the QON if that helps.

Mr Pezzullo: I think, Chair, that we really will start to get into a level of detail in answering that question. Even though it's about a budget matter, it is a very particular budget item that ordinarily will be dealt with under outcome 2 program 2.4 in terms of offshore management support services, so, again, I'll seek your guidance.

CHAIR: As with other senators, I'll let Senator Ciccone ask his questions. If we do get into that outcome, I think what senators mainly seek is a commitment that those questions will be asked under that outcome, and I'm sure that Senator Ciccone could come back to that time period. We just wouldn't want any relevant officials to leave the building.

Mr Pezzullo: In this case it's more about them attending, because that program is not scheduled to start until 4.15.

CHAIR: No. What I'm suggesting to you is that if we could just ensure that they're here for outcome 2. I don't want to pre-empt Senator Ciccone's questions.

Mr Pezzullo: Perhaps, if the questions are put, I can ensure that the relevant staff are around when we get to that outcome.

Senator CICCONE: I can wait until then.

CHAIR: Okay, thank you very much.

Mr Pezzullo: I do have an update for you on the PLM question you asked. Perhaps we can dispose of that, with your concurrence, Chair?

Senator CICCONE: Please.

Ms Foster: We have had a practice of linking responses to constituents of members or senators—'constituents' in the broad sense, for a senator. The intent was to manage those people who shop around for an answer—sometimes we get multiple requests by the same person through many different people. What I've just discussed with the team is that there are other ways in which we can manage that issue without having a strict limitation on constituents. We will change that practice.

The issue of responding to people outside Australia is a slightly more problematic one. The rule of thumb that we apply is that there be a link to Australia—that there is either a state-sponsored visa for someone who is still currently outside Australia, which would reasonably engage a senator in that state—

Mr Pezzullo: Or, presumably, a partner or a family member.

Ms Foster: Or a partner or a family member. But if we were to open up the PLN to everyone outside Australia who wrote to an MP, it could become unmanageable and it could take away from the response rate that we're able to make for others. There is a global support sector which is available to all people to call, so those people from overseas without a link to Australia can call that service and get a response.

Senator CICCONE: A recent example occurred in Afghanistan. It's fair to say that all our offices got quite a large number of correspondence. In that example, would you be saying the department would be advising parliamentarians that they were not able to use the PLN for those services but rather they should direct those individuals to a global service centre?

Ms Foster: Being reasonable, there is a link to Australia in our response to Afghanistan and humanitarian application from Afghanistan.

Senator CICCONE: The other question would be: what is not a link? By them applying for asylum or a visa, isn't there an inherent link to Australia?

Ms Foster: There is a special circumstance around Afghanistan, linked to our history with Afghanistan and the policies that successive governments have employed in relation to special programs for people from Afghanistan. I'm talking about somebody who is a visa applicant in a foreign country with no existing link into Australia, of which, as you can understand, there are millions.

Senator CICCONE: Will you be advising parliamentarians about this new scenario and explaining what the link—

Ms Foster: We can certainly do that.

Senator CICCONE: Because I'm still not very clear what you mean by that evidence you just presented me with. How do I advise my staff what is a link to Australia or not?

Ms Foster: As I just said, sometimes it's a state-sponsored visa, or it could be a family member sponsoring the person to come to Australia. We can certainly provide some more guidance. The other general point I'd make in response to the earlier question is that our intent is to try to support you in your roles, particularly with requests from constituents—that's how the service was set up.

Senator CICCONE: I guess my role will also be to make sure we don't overburden your office, too. We understand how busy you are, but I think you need to help us to help you, in some ways.

Ms Foster: That's right. What I was going to say is that nothing is black and white in this circumstance. We're always happy to talk this through with you, work out what supports you to exercise your functions and how we can best do that within the capacity of the team.

Senator CICCONE: Is that why this online form asks whether someone is a constituent or not?

Ms Foster: That is because it has been our practice to respond to parliamentarians when they are asking on behalf of a constituent. I've just said that we've agreed that we won't make that direct link. If, for example, you send us a request and we've already received the same request 10 times through different avenues, we would simply come back to you and say, 'This is a person who has already accessed the service via other means.'

Senator CICCONE: Maybe something to discuss offline. I would be happy to talk to you, as I'm sure others would be, about how we manage those scenarios where someone has contacted a vast number of parliamentarians trying to pinpoint a particular office that might be better suited, for a variety of reasons, to be the lead individual's office, or something to that effect. Maybe that's a discussion not for now but for another time.

Ms Foster: We'd be very happy to do that. As I said, my objective is to make this service work for you; that's why it exists. We can only do that—

Senator CICCONE: Will that form be amended, then, to remove that aspect of whether someone is a constituent?

Ms Foster: It will indeed. It takes us some time, sometimes, to actually make changes to online things because of the age of our systems. But we will try and make sure that we convey the change in direction.

Senator CICCONE: I have one last question. Going back to the link, it would be great if you could provide us, maybe on notice, with what qualifies or what doesn't. If it doesn't qualify, what response would we get back? Would we get the same response that I, Senator Paterson and others have received, saying that this person is not a constituent?

Ms Foster: No, because I've just said that we won't link your request directly to constituents. We will need to explain to you why it is that we don't consider that this request falls within the purview of the service. In a case where we can see no link between an overseas person and Australia, I would expect we would simply say that to you so that you would have a chance to say, 'Actually you've misread this; there is a link, and here it is.'

Senator CICCONE: I suspect I might have some further questions on this point, but I'm happy to leave it at that.

Mr Pezzullo: Just to give perspective, with the post-COVID bounce-back of visa processing, this year we will grant something like 6½ million temporary visas. We all need to be a little bit careful about what we wish for, because you'll find that, if you open it up completely, without constraint, filter or any way of setting parameters, each office will become a call centre for potentially multiple inquiries. There are more than six million applicants, I can assure you, because obviously we reject some, and, in some cases, people don't proceed with their application. But those are the kinds of volumes we're talking about. Ms Foster is making the point that, in some cases, there are persons in Afghanistan who might claim, at least, that they've got a link—'We've served with

Australian forces,' or, 'We came under the ambit of the locally engaged staff.' We might have a look at that because of the circumstances that Ms Foster spoke about, but I'd certainly be very cautious about throwing out all parameters and filtering. Senator Paterson very helpfully was talking about the support that he's going to give me in ERC for additional resourcing. The amount of resources you'd need for every electorate office to be supported to be a global call centre for six million visa applications would become the work of the department. I don't want to be glib about it, but we've just got to put some scale around this.

Senator CICCONE: I understand. My only concern is that the department is then trying to set parameters around what a parliamentarian can and can't do.

Mr Pezzullo: And we shouldn't do that.

Senator CICCONE: Exactly. That's my concern.

Mr Pezzullo: I think what Ms Foster is saying is that we want to engage in a respectful discussion where perhaps previously we'd taken decisions administratively. I think the better course is to say to all sides of the parliament—the crossbench, the government and the opposition—'What is a reasonable engagement model which allows us to do some filtering?' Otherwise, if you make it unfettered and unfiltered, as I said, we will grant—was it 6½ million or close to that?

Ms Foster: Yes. Since last July, we've processed, I think, over nine million. It's a very large number.

Mr Pezzullo: Anyone on the face of the planet could say, 'I applied for my student visa yesterday; where is it?' and then ring any one of you. We don't want to filter or inhibit the parliament. How you operate is a privileged matter for you as members and senators. All I think Ms Foster and I are saying is: let's have a dialogue about how to set reasonable parameters that will allow the parliament to do its job.

Senator CICCONE: I appreciate that, because I think the fact is that we might have to help. Thank you.

Senator SCARR: At the outset, I want to acknowledge the absence of Mr Kelford and Mr Along. I want to place on the record my appreciation. Over the years I've been on this committee they've been very, very professional, and I wish them all the best.

Mr Pezzullo: Thank you. I suspect they're both watching these proceedings so I'm sure they'll be much touched by that.

Senator SCARR: I want to go to a question which was taken on notice during the last estimates, in relation to the Nauru sunseting situation, which was dealt with in cross portfolio. My question relates to question on notice SE23014. I specifically asked, in the department's engagement with the minister and with her staff, whether they specifically raised with the department what actions needed to be taken with respect to the re-gazettal or reconsideration by the minister of Nauru continuing as a regional processing centre.

The answer the department gave on notice was general in its response. It isn't specific to whether or not the minister or her staff specifically asked the department, given that the minister's decision was integral to the continuation of Nauru as a regional processing centre. It doesn't deal with the particularity of my question as to whether what was specifically raised with the department. Can you provide an answer as to whether the minister or her department specifically raised the issue—

Mr Pezzullo: Or her office.

Senator SCARR: or her office, specifically raised the re-gazetting of Nauru as a regional processing centre, prior to its lapse?

Mr Pezzullo: The evidence that I gave last time stands. The minister relied upon assurances in relation to instruments, regulations or any other legal thing that needed to be done in an environment where the department holds the knowledge, the minister at that stage is still relatively new in her portfolio. I'd be shocked, frankly, for any minister—even if they'd been the shadow minister—to say: 'With particular reference to this gazettal that expires on this day, can you assure me—' So we go through every single section and subsection. A minister is entitled to say: 'Secretary, make sure that all of the legal requirements, whether they're legislated and I've got to get through legislation in the parliament, whether they're instruments that I've got to personally turn my attention to, whether they're regulations that I've got to make or whether they're delegated matters that you or one of your officers can undertake, give me an assurance.' I can't remember what our response said. It might have been half a dozen, seven, eight—something like that—number of times, where the minister and/or her chief of staff and/or her senior advisor said: 'Can we have a list of all the things that need to be done? Can you give us an assurance that they're in hand?'

It was a failure on our part, as I explained at the last appearance in February, to not be able to give that assurance because obviously, in one case at least, we didn't do something. I think that answers your question, but

if you're asking me: 'Did the minister have a schedule and work through the schedule clause by clause, gazettal by gazettal, instrument by instrument,' I certainly don't recall. For me, it's good enough for a minister to say: 'Make sure all the legal requirements are in place and do your job.' She asked for that to be done on a number of occasions. In one case, not others—in one case, with the re-gazettal—we failed.

Senator SCARR: Just putting to one side your views with respect to the obligations on ministers and how they should be discharging their duty. I note that we only have one regional processing facility at the moment. Is that correct?

Mr Pezzullo: Yes, and we have one instrument that has to be made to ensure that its designation is properly founded in law.

Senator SCARR: Correct. With respect to that designation, the minister has a key role from a personal perspective, in terms of making a personal decision with respect to whether it's in that national interest.

Mr Pezzullo: Yes. And that's no different from any number of personal powers that she has to exercise. It's my duty to advise her.

Senator SCARR: I'm interpreting what you're saying to me—and tell me if I'm wrong because I don't want to put words in your mouth and I'm sure you won't allow me to—is that the minister or her staff did not specifically ask: 'What is happening with respect to the Nauru Regional Processing Centre? What do I have to do under the relevant sections, because I note that I have a role to play with respect to that decision?'

Mr Pezzullo: That was asked. What I'm saying is—

Senator SCARR: Specifically with respect to Nauru?

Mr Pezzullo: Yes: to make sure that everything, including the ability to transport persons to Nauru, is in place. If the question you're asking me is then going beyond that and saying, 'Oh, Secretary, by the way, I notice under section X, subsection Y, that I am required to personally remake a designation,' was that ever raised in my recollection? No. But the question as you've phrased it is to make sure that all the things which have to be legally discharged, including decisions that the minister has to make, are done in proper time and order. That was absolutely front of mind for the minister, and stated in those terms.

Senator SCARR: What I grapple with in this respect, and I know that the department has taken the responsibility with respect to the failure for Nauru to be—

Mr Pezzullo: Well, as we should have; it was our failure.

Senator SCARR: Well, the minister also has an overarching responsibility of course. But what I struggle with is the fact that it appears from what you're saying that the minister didn't ask the second question which, it seems to me, flows necessarily from the guarantee or the assurance given by the department: 'How can it be the case that that's all in order, given that I need to make a personal decision, and that it needs to be documented with respect to whether or not the re-gazettal is in the national interest? There are things I need to do; when am I going to do those things? What's the timetable?' It appears from your testimony that that additional question, or subsequent question, was never asked by the minister.

Mr Pezzullo: No, it was—in precisely those terms. What I'm saying is that that was a high-credit-distinction question. An out-of-the-ballpark, high-distinction question asked only ever once by a minister would be: 'Oh, by the way, I can do your job better than you can. When will I get this particular designation on my desk by this particular time?' She was seeking an assurance that all the relevant designations would be put on her desk at the particular time.

Now, I have a minister at the table; I don't know how you approach these matters, Minister, but I assume that you rely upon advice from your departmental secretary and others to say: 'Minister, there's a bunch of things you've got to do that you're going to need to schedule, sequence and diarise. Here they are.' That was on us to provide her with that information. She was asking for that information precisely, and that assurance.

Senator SCARR: Minister, the secretary asked you a question. I would have thought that you would—

Mr Pezzullo: Well, I didn't ask a question; I made a rhetorical comment.

Senator SCARR: in terms of discharging your responsibility, Minister, with respect to something as fundamental as this that you would actually ask the follow-up question. In this case, in terms of the redesignation of Nauru as a regional-processing facility, I think the question would be: 'There are things I need to do and there are decisions I need to make. What is the timetable for making those decisions?' Isn't it reasonable to expect that a minister would take on that responsibility and to ask that follow-up question?

Senator Ayres: I think that Mr Pezzullo has carefully and repeatedly set out the basis for the discussions between the minister and the department. I couldn't put it in a more straightforward way than the way that he just has.

Senator SCARR: Alright. Mr Pezzullo, I'll go to your opening statement—the last paragraph of it, in relation to the National Anti-Corruption Commission. You said, 'I'm giving further thought to how our integrity and anti-corruption settings might be normalised.' How are they not normalised at the moment?

Mr Pezzullo: Up until midnight on 30 June next month, we're the only department of state—inclusive of Australian Border Force, which is, for legal purposes, an entity within the department—that is wholly and solely under the jurisdiction of the Australian Commission for Law Enforcement Integrity. In other words, for the best part of eight years since 1 July 2015, with the integration of Immigration and border protection, the whole department—whether you're a visa officer or a corporate officer supporting visa processing: everyone—came under ACLEI's jurisdiction, which is, as you know, a standing royal commission. It has coercive powers: powers to intercept phone calls—

Senator SCARR: I should say, just for your information, that I used to be chair of the joint committee with oversight of ACLEI—

Mr Pezzullo: Yes.

Senator SCARR: so I'm fully aware of that. It's why I asked the question: it seems to me that in some respects it should be easier for your department.

Mr Pezzullo: I suspect it will be, for the reasons I'm about to advance. That's to say that I made a conscious decision with the then Border Force commissioner, Mr Quadivileg, to say, 'It seems to me that if we're going to be the one department that is under a royal-commission-standard level of scrutiny, then whether you're a frontline officer at an airport; in a cargo examination facility; processing a visa where you might, potentially—at least in theory—be open to an inducement; or whether you're working in one of the corporate areas everyone should be under the same regime. So we're all going to be subjected to drug testing, alcohol testing and integrity testing.' With the entire executive government of the Commonwealth coming in under NACC, it now seems to me that a more targeted, risk based system that says, if there's a greater exposure to criminal infiltration or to inducements, bribes or fraud in a particular area, maybe some more onerous checks and balances need to be put in place. But the idea that the whole department has to stand apart from the Australian Public Service in the way that, frankly, we have for the best part of coming up to eight years because we were the only department under a royal commission for integrity, to me, is illogical. The idea that you need to be drug tested or you need to be alcohol tested, for instance, and you're working in an area where there's a lower-risk profile attending to that area, when the rest of the Public Service is not going to have those onerous standards because we're all coming under one regime, to my mind, requires some thought.

We're going through a strategic discussion amongst the leadership about how to still keep those very strong integrity settings in those areas that matter while not seeking to stand apart from the rest of the Public Service. Up until now, unlike other departments which were not under scrutiny, with some exceptions around the quarantine function of the agriculture department, we were the only ones who had to, if you like, acquit back to an integrity commissioner what we had done about criminal infiltration, fraud, bribes, inducement, selling visas for inducements and the like. Now all of us are going to have to be under that regime, and I don't think the whole Public Service, for instance, is going to introduce mandatory drug testing for everyone. I don't want my workforce to feel: 'Hang on, we're under the NACC, but that now embraces the entire apparatus of government. Why are we still different?' It seems to me that there is a reset that makes sense, but it has to be done in a way that doesn't increase integrity risks.

Senator SCARR: I'm just struggling a bit. You've given the example of the drug and alcohol testing. I must say, during my term as chair of the ACLEI committee, drug and alcohol testing never came across our remit, but you might see it connected to those issues in terms of risk areas.

Mr Pezzullo: It's an integrity measure.

Senator SCARR: Are you implying that there are things you're doing today in the department in this space that you're not going to be doing tomorrow because you don't see the need to do it?

Mr Pezzullo: Almost. I'd put it slightly differently. I don't see the basis, in professional and moral terms, to be saying to my workforce on 1 July 2023, when we've had very onerous standards that apply to everyone, that now those standards apply to the entire government. Across all agencies and departments, we're all going to be grappling with how we introduce checks and balances and verification and assurance processes that are linked to risk. In other words, in some parts of the Home Affairs and Australian Border Force workforce, it probably will

make sense to keep certain checks in place where there is a higher risk, for instance, of criminal infiltration or inducement for the purchase of visas, but that's not going to be applicable to other areas. In terms of, for instance, attraction, recruitment and retention, I'm going to be in a disadvantaged position if I say the NACC covers everyone, but we've got a higher standard than anyone else because for eight years we were under ACLEI. It doesn't make any logical or moral sense to me.

Senator SCARR: I'm still grappling with the areas where—perhaps I shouldn't be interpreting it this way—it almost sounds as if there's going to be a decrease in certain standards that have previously been imposed within the department, whereas I see the introduction of the NACC as meaning other departments should be lifted to the standard that Home Affairs has been operating—

Mr Pezzullo: I wouldn't talk about a relaxation; I'd talk about a more discerning approach to the employment of risk based tools. If there's no mandatory policy but drug testing, for instance, which you mentioned and which I raised, was introduced because, as regrettably came to light through operations Heritage and Marca over a decade ago, some parts of our workforce were engaging in illicit narcotics consumption as part of their engagement with criminal groups. So introduced drug testing not only sends a signal throughout the organisation but also is a check measure. Rather than saying, 'This part of the workforce gets drug tested and that part doesn't,' we decided to go all in. Unless the whole Commonwealth goes to mandatory drug testing, I don't intend to maintain it for the entirety of my workforce, but I do intend to retain it as a tool that we'll apply on a more targeted and surgical basis.

Senator SCARR: I just wanted to say that, in relation to the PLN, I commend the in-person visitation we received at Parliament House from the PLN team. I thought that was excellent. I certainly sat down and had a chat to the team, and I thought that was a really great initiative. I'll ask one last question. Is that something we could have the benefit of in the future, in terms of deepening the bonds and understanding between the PLN team and parliament members?

Ms Foster: Yes. We're also responding to feedback that it's great for us to have drop-ins at Parliament House, but most of the electorate staff aren't there, so we'll make sure that we make them accessible for people all around the country as well by probably complementing the in-person ones with online ones.

CHAIR: The committee will suspend for morning tea now, and we will come back to cross-portfolio for a very brief amount of time before we move on to outcome 1.

Proceedings suspended from 11:01 to 11:14

CHAIR: We'll just resume the hearing. We're still on cross-portfolio, corporate and general matters with the Department of Home Affairs. I want to welcome Senator the Hon. Murray Watt representing the minister at the table.

Senator Watt: It's great to be here.

CHAIR: Senator Paterson.

Senator PATERSON: I have what I hope are two quick matters in cross-portfolio. The first relates to the department's buildings and occupancy. You might remember, Mr Pezzullo, in previous rounds of estimates and in questions on notice your department disclosed that there were two buildings which you operated which had cameras manufactured by Dawei, not Hikvision. I assume, consistent with the government's policy to remove these devices, that's a process that's underway in those buildings now.

Mr Pezzullo: I think it's more accurate to say the buildings are leased accommodation where the landlord has the CCTV camera capability. Ms Saunders can assist me. She dealt with that issue. Ms Saunders, amongst other things, is responsible for internal security within the department.

Ms Saunders: My apologies, I did miss the question. I was outside the room.

Senator PATERSON: I think it's the Dahua cameras that were in two Home Affairs sites. What's the status of them?

Ms Saunders: They've been removed.

Senator PATERSON: Great. On what date were they removed?

Ms Saunders: I'd have to take on notice the precise date, but it was February of this year.

Senator PATERSON: Great, I welcome that. Moving on, I want to follow-up on that document on the Home Affairs website. You said, Mr Pezzullo, you hoped to have that rectified by 11 am.

Mr Pezzullo: It's the minister's document. I know that as a matter of certainty. Apparently, when you download the PDF version, the website referenced that 'the minister today released the following' somehow

detaches. Ms Foster might come forward and explain that. There's an issue to ensure that, when you download the PDF, it's clearly stated to be a document in the name of the minister. Can you confirm that for Senator Paterson, please, Ms Foster?

Ms Foster: The departmental logo was added in error. It should not have been there. We are removing the logo from the website. We're making clear that it's the minister's document on the document home page, and we're recalling the printed copies.

Senator PATERSON: Great. Will the document itself now be amended to say it's the minister's document explicitly?

Ms Foster: It will.

Senator PATERSON: As I understand it, in the current version that's on the website, the word 'minister' doesn't even appear in the document at all.

Ms Foster: We're making it absolutely clear that it is the minister's document.

Senator PATERSON: When will it be done by?

Ms Foster: They're working on it now.

Senator PATERSON: Rather than having me and my staff refreshing the website, when it is done, can you come forward and notify us that it's happened.

Ms Foster: We certainly will.

Mr Pezzullo: Can you tell me as well?

Ms Foster: Secretary, I'll take it on notice.

Senator PATERSON: Just to clarify, you said the department's logo was added in error. By whom was the logo added in error?

Ms Foster: I don't know, but it was an internal issue.

Mr Pezzullo: I think we can give the senator the assurance that the document production is undertaken on the minister's behalf by the department.

Ms Foster: Absolutely.

Mr Pezzullo: There's no question that the content is in the name of the minister. It makes reference to the performance of the previous government. We covered that before. Ministers, as you would be aware, Senator, are entitled to engage in normative and partisan commentary. It's just very important that, when we place such documents on the website, it's clear that either they're a departmental document, which will never engage in any kind of partisan commentary, or they're a document in the name of the government and/or the minister specifically. We make sure that's absolutely clear.

Senator PATERSON: To clarify your evidence, it would've been your department that added the logo in error. I assume the minister's office doesn't have a template.

Mr Pezzullo: We do all the web production. If there's anything that comes to my notice that requires me to adjust my evidence, I will, but we would receive content; the minister's office maybe receives a draft. They might add their own commentary. Because it's in the minister's name, she's entitled to express herself in the terms—

Senator PATERSON: It should be in the minister's name.

Mr Pezzullo: Quite. It is, in actual fact, in the minister's name.

Senator PATERSON: It's just not apparent from reading it.

Mr Pezzullo: We have to signify that. You're absolutely right. We have to signify that, and that's very different from, as your staff hit refresh—if they look at any corporate document, like our corporate plan, the annual report and the like, they conform with the APS standards of impartiality and nonpartisanship. Ministers are entitled to release any kind of policy and say, 'In keeping with the Labor government's policy, this, that and the other.' They're perfectly entitled to do that. It's a web production issue. It is not an issue of any breach of impartiality on behalf of the department.

Senator PATERSON: Sure—I mean, not an intentional one, but it, perhaps, is an inadvertent one.

Mr Pezzullo: Yes, not an intentional one. We seek to meet very high standards in relation to our impartiality, and it's regrettable that what appears to be a production error, which is what I think they call it in newspaper and printing, has led to that, and it won't happen again.

Senator PATERSON: Can I seek to understand the process to how this has occurred. Is no-one reviewing documents that go on the website to check these sorts of things, make sure we're compliant? Who's responsible for that?

Mr Pezzullo: They are reviewed, and, clearly, there's a failure in the production process. But it's the same as subediting or editing in a newspaper; you get errors, and they get corrected. It's not as though people were wilfully—

Senator PATERSON: I'm not suggesting that. I'm seeking to understand how the process error occurred.

Mr Pezzullo: I'll be taking some advice on that, I can assure you. If there's anything I can come back to you on, I will.

[11:21]

CHAIR: There being no further questions for cross-portfolio, corporate or general matters, I will now call officers from the Department of Home Affairs in relation to outcome 1. We're starting the call with Senator Shoebridge because of a timing issue, and then we'll come over to the opposition.

Senator SHOEBRIDGE: Back to VERA-2R and the Corner report, Secretary, when were you first aware of the Corner report? When was it first brought to your attention?

Mr Pezzullo: Me personally?

Senator SHOEBRIDGE: Correct.

Mr Pezzullo: I'd have to check. I would have thought probably soon after the department received it. I'll see if Mr Roy can assist. He's the relevant assistant secretary.

Senator SHOEBRIDGE: As I understand it—and you can correct me if I'm wrong—the department received the draft report in May 2020 and the final report in early July 2020.

Mr Pezzullo: I've got a feeling that's probably been the time period that I've been aware of it. Mr Roy is one of our acting first assistant secretaries but actually owns the area substantively, do you not, Mr Roy?

Mr Roy: That's right; yes.

Mr Pezzullo: So you literally have the assistant secretary who knows all there is to say or all there is to know on this matter.

Senator SHOEBRIDGE: Perhaps he can tell me when you first became aware of it.

Mr Pezzullo: Can you recall—we'll check records—because I was advised contemporaneously that Dr Corner or it might be Professor Corner had provided some advice on VERA? Can you recall when I may have been told that? I just don't have any personal recollection of it, but it'd be around that time because I've known about it for some years.

Mr Roy: It would've been soon after the report was received in second quarter 2020, but we don't have the exact date the senator was specifically advised.

Mr Pezzullo: The secretary—I haven't been promoted!

Senator SHOEBRIDGE: Secretary, you would've, I assume, read it.

Mr Pezzullo: I was briefed on it; yes.

Senator SHOEBRIDGE: You would be aware it concluded, and I'll read from it:

The lack of evidence underpinning both instruments—

And there were two in the other assessment project—

has potentially serious implications for their validity and reliability. Without a strong theoretical and empirical basis for factor inclusion, it is not reasonable to anticipate that the instruments are able to predict their specified risk with anything other than chance.

You must have been shocked at the conclusions

Mr Pezzullo: No; not necessarily shocked. I mean, different academics are going to take different theoretical and empirical viewpoints. I do recall seeking further advice, and I think ultimately we commissioned the Institute of Criminology to do even more work. I take the view that that's an important insight from one particular academic who'd been commissioned. Instinctively, as someone who only has layperson understanding, it's clear to me that all psychological or psychoanalytical models are going to have limitations in terms of their predictive quality, but decision-makers under a CDO regime need to rely upon something. From memory, we went back to the owner of the model, who was steadfast in her view that the analytical capabilities were better than chance. As

I recall it we then commissioned AIC to some more work. That's, in general terms, my recollection of the sequence of events.

Senator SHOEBRIDGE: Your department had at least three separate proceedings in relation to continuing detention orders under the Commonwealth scheme where the VERA-2 assessments were used and you failed to provide to the court or the defendants a copy of the Corner report. Can you explain why you failed to do that?

Mr Pezzullo: I'm going to intend not to, and only for this reason: one of those matters—whether it was three I can't quite recall—is still being agitated in the Supreme Court of Victoria. Affidavits have been lodged which go precisely to the question of nondisclosure. And Chair, I might need to seek some guidance from you. The moment I start to counter-agitate on what the basis for nondisclosure is—I know that these proceedings can't be directly used in the judicial branch—notice or publicity of our exchange will emerge. I'm very happy to talk about VERA-2, as VERA-2. I'm very happy to talk about Corner. I'm very happy to talk about the—

Senator SHOEBRIDGE: But you're not happy to tell us why you didn't give it to any court—multiple Court of Appeal proceedings—

Mr Pezzullo: Not at the moment, no.

Senator SHOEBRIDGE: and not willing to tell us why you didn't provide it to any defendants or to any court.

Mr Pezzullo: Not in these proceedings today, simply because it's a matter that a judge of the Supreme Court of Victoria is still considering. I know that she and other parties in those proceedings have had affidavits. I can't recall whether they've been tendered in open court or whether they've simply been read. I'm just going to be very cautious about agitating a matter that's currently literally before a judge of the Supreme Court of Victoria—on this very question.

Senator SHOEBRIDGE: But you know that you're not telling the Supreme Court either, don't you? You know that you're not giving an explanation to the Supreme Court either.

Mr Pezzullo: No. Affidavits have been tendered on precisely that question.

Senator SHOEBRIDGE: Well, this is what Her Honour Justice Hollingworth said, as recently as 16 May of this year in those proceedings:

I still haven't seen a satisfactory explanation for nondisclosure of the Corner report.

A junior solicitor has largely been hung out to dry ... There is still quite a deafening silence from people high up in Home Affairs about what happened.

You're not telling us—you're not telling parliament—and you're not telling the court. So, who are you going to tell?

Mr Pezzullo: Perhaps I can get some guidance from the chair. It's a matter that's still being agitated in her courtroom. Affidavits have been tendered. I've received no advice as to whether witnesses have been cross-examined on the basis of those affidavits. The hearings are in obedience at the moment. I think they're going to resume—

Senator SHOEBRIDGE: Her Honour has said there is a 'deafening silence'.

CHAIR: Senator Shoebridge—

Mr Pezzullo: I understand what she said. I'm seeking guidance from the chair.

CHAIR: Senator Shoebridge, if you want to hold on for just one moment, I might get some advice for you and for the secretary.

Mr Pezzullo: Thank you.

Senator SHOEBRIDGE: And just as assistance, the Commonwealth is refusing to read or tender the affidavits, and it says they're not relevant to the material.

CHAIR: Please: I'm trying to get advice, and you're speaking over me. I can't hear the secretary speaking. I don't need your assistance. Thank you.

I propose to deal with the matter in this way. There is scope for the committee to consider questions that are asked where it might affect a legal proceeding, and Secretary, you also should consider that in your answers. If you are being asked questions that you do not have the answer to but you are able to provide those answers, I'd seek for you to either take those on notice or come back to the committee when Senator Shoebridge is here later today in outcome 1, to answer those questions that can be answered. From my assessment of your answers, some of the questions you're not sure about but some of them you are. Other than that, you'll have to consider speaking to the minister about a public interest immunity claim, if there is anything outside of those directions.

Mr Pezzullo: Understood.

CHAIR: I hope that assists you, Senator.

Senator SHOEBRIDGE: It does, Chair, and I appreciate it. So, Mr Pezzullo, we're left with this situation: you're not telling the court and you're not telling parliament. Who are you going to tell about why you didn't give a single defendant a copy of the Corner report, despite having it in the department's hands for two years?

Mr Pezzullo: The premise of not telling the court is just factually wrong. Affidavits have been filed but not tendered in court. So the department has explained to Her Honour and, I think, other parties—but I'll need to check with the general counsel—as to the fact that, on advice, it was not, in the judgement of the department, or its counsel, disclosable. The judge will make of that what she will. Chair, I have certainty on that point because I know that we filed affidavits on that narrow point. Where I was less sure—and you make reference to my lack of certainty—was the sequence of events that led to the deployment of the risk assessment tool known as VERA-2, which seeks to model future behavioural risks of, in this case, convicted terrorists who might be subject under the Criminal Code to continuing detention post the expiration of their sentence. As Senator Shoebridge asks, we had some work done on that by an academic known as Dr Emily Corner, who provided a view that there were at least theoretical, if not theoretical and empirical, questions to be raised about that model. Then I said, at some point subsequent to that, we commissioned further work from the Institute of Criminology that came down with further advice. So my lack of certainty had nothing to do with the court proceedings. I am well attuned to those proceedings.

Senator SHOEBRIDGE: Her Honour has read all of the affidavits. They haven't been tendered, but she has read all of the affidavits. I have faith in the Supreme Court of Victoria and Her Honour. She says: 'I still haven't seen a satisfactory explanation for the nondisclosure of the Corner report. A junior solicitor has largely been hung out to dry at the moment. There is still quite a deafening silence from people high up in Home Affairs about what happened.' Her Honour has read the affidavits and has formed the view, quite clearly, that they don't explain why Home Affairs refused to disclose it. So I ask again: why did Home Affairs have this report that was savaging of the VERA-2 assessment tool and why did you not disclose it to any court or any defendant for more than two years?

Mr Pezzullo: Because anything I'm about to say—and perhaps I'm getting to a point where I might need to refer to the minister—will be heard, including by those who might be cross-examined in that very proceeding, and I would want their evidence to stand on its own merits and without any colour or any nudging or shaping from me giving evidence in the parliament.

Senator SHOEBRIDGE: Does the assistant secretary have any explanation for why this was never provided, despite it being absolutely material to these cases?

Mr Roy: I wouldn't propose to add to the secretary's comments, for exactly the same reasons.

Senator SHOEBRIDGE: Her Honour went further, Secretary, and said: 'What happened in relation to the Corner report is a disgrace. The Government Solicitor quite properly concedes it should always have been disclosed. Blind Freddy, looking at the legislation, would have said it should have been disclosed.' Does the department accept the concession made by the Government Solicitor that it should have always been disclosed?

Mr Pezzullo: Counsel has indicated precisely that. We came to that view on advice, and they provided that view to the court as instructed, yes.

Senator SHOEBRIDGE: When did you come to the view that it should have always been disclosed?

Mr Pezzullo: Prior to counsel making that statement but, as to when, I don't know.

Senator SHOEBRIDGE: You'll provide it on notice?

Mr Pezzullo: Yes.

Senator SHOEBRIDGE: Who formed a separate view, then? On what basis did you not disclose it?

Mr Pezzullo: We keep going back to the central question—

Senator SHOEBRIDGE: That you didn't provide the report to three Court of Appeal judges and two other judges of the Supreme Court. That's the question we keep coming back to.

Mr Pezzullo: Yes, and it's a matter that still is yet to be the subject of witnesses appearing in those proceedings and being cross-examined on both their own personal knowledge, their own thinking, and the considerations that they applied in relation to that question.

Senator SHOEBRIDGE: Well, the Commonwealth is refusing to read the affidavits. You understand that? They're refusing to read them. They're not putting them in their case.

Mr Pezzullo: Sorry; when you say 'refusing to read'—

Senator SHOEBRIDGE: They're refusing to tender the affidavits and they're refusing to put them in their case, because they say it's not relevant to the proceedings. You'd be aware of that.

Mr Pezzullo: I might ask Ms de Veau to come up and assist. If there's any advice that we can provide that doesn't otherwise—

Senator SHOEBRIDGE: They're asserting it's not relevant to the case, in open court.

Mr Pezzullo: If it's possible for her to at least open her folder, without offending sub judice, is there anything that we can assist the senator with in terms of our approach to the advancement of these affidavits?

Ms de Veau: The first point is to confirm that affidavits have been filed not only by witnesses from the department but also from AGS. The second point is to confirm that these proceedings are now, of course, being run by the Attorney-General, so decisions made in relation to how the proceedings proceed are a matter for the Attorney, based on instructions given to counsel from the Attorney and the Attorney-General's Department, not from Home Affairs. We are currently witnesses in the proceeding. A third point to make is—of course I have also read the transcript of the directions hearing before Justice Hollingworth that you're referring to—there's a lot more in there that explains what she says is the position in relation to the ultimate admissibility of the points that go to the nondisclosure of the Corner report, having to do with what will ultimately be before the court when it considers the application on 1 June, and whether it's relevant or not to that application. That is not only a matter for the Commonwealth but also a matter for Mr Benbrika's practitioners. That's quite clear from the transcript as well. In any event, all of that was a directions hearing, not the hearing proper, so all of these matters still have the potential of being ventilated in court from 1 June with the potential for witnesses being called and being cross-examined as to the reasons why not.

Senator SHOEBRIDGE: Who in Home Affairs made the decision to hide this report from three Court of Appeal judges, two Supreme Court judges and at least three defendants? Who made the decision to hide it?

Ms de Veau: That's a matter currently before the court.

Senator SHOEBRIDGE: I'm asking it to you now, in estimates. Home Affairs hid it for 2½ years. Who made the decision to hide it? You've hung a junior solicitor out to dry. It obviously wasn't their job. You've hung some poor junior solicitor out to dry. It's only fair that that solicitor and the court and the public hear from the department about who, which senior official, made the decision to hide this from the Court of Appeal and two other judges of the Supreme Court of Victoria?

Ms de Veau: It's not as simple as that. Matters are taken on advice, and in the preparation for the litigation advice is given.

Senator SHOEBRIDGE: Who?

Ms de Veau: That's a matter that's currently before the court.

Senator SHOEBRIDGE: But you haven't told Her Honour. Her Honour has made it clear that you have just hung out some poor solicitor to dry. You're saying it's a matter for the court when you haven't put it before the court. That's not helpful.

CHAIR: Senator Shoebridge—

Senator SHOEBRIDGE: The witness was talking over me.

CHAIR: Everyone's talking over me, and I am the chair! I am going to have to hand over the call in a moment, so if you have another question on this matter, or we can come back to you.

Senator SHOEBRIDGE: You haven't told the court. Her Honour has made it quite clear. You're not telling us. Are you intending to still keep it secret? Is that the department's intention—to play mum and hope this will go away?

Senator Watt: Chair, I think you made a ruling earlier in relation to the fact that this is a matter before the courts. There is a long established rule around sub judice matters. Senator Shoebridge continues to ignore that ruling. I would ask you to remind Senator Shoebridge of that ruling, if you would not mind, and bring that to his attention again.

CHAIR: Minister, if the senator wants to ask repetitive questions and get the same answer I can't direct him in how to ask those questions. I've asked him to wind up his questioning, because I do have to hand over the call. I draw your attention to my previous ruling.

Senator SHOEBRIDGE: You say, Secretary, that you have a further report, I think from the Australian Institute of Criminology. Will you provide a copy of that to this committee today?

Mr Pezzullo: We will take that on notice. I'm not sure we will be in a position to provide each today. Mr Roy, do you have any advice?

Mr Roy: The Australian Institute of Criminology report into violent extremism risk assessment tools was tabled in parliament by the Attorney and is also on the AIC website.

CHAIR: Senator Shoebridge, we will come back to you if you have further questions.

Senator RUSTON: I have some questions in regard to airport security screening.

Mr Pezzullo: That is program 1.1 I will ask Mr Hansford from the cyber and infrastructure security group to attend.

Senator RUSTON: I have a question about the cost of security screening that had previously been picked up after the decision to put screening into regional airports for aircraft over a certain size. An agreement was reached with the Commonwealth where they were continuing to pick up the cost of that screening for a period of time. I'm keen to understand where the decision was made for it now to be a requirement for the airports to start picking up the cost of that screening?

Mr Hansford: The decision to change the framework for screening really emanated back from 2017 and an Inspector of Transport Security recommendation. A body of work then really looked into what the most appropriate framework would be and categorised designated airports tier 1, 2 or 3. The question that then arose was really for tier 2 airports. There are criteria for number of passengers annually, set at 30,000, but also the size of aircraft, so how many people could be housed by an aircraft, under 40 or over 40.

Following that change to the framework, the Department of Home Affairs ran a regional airport security screening fund, which looked at upgrading screening equipment, so effectively the capital issues. That was \$50.1 million with eligible airports, 47 regional airports. Separately the Department of Infrastructure, Transport, Regional Development, Communications and the Arts ran a number of different programs. They went to airport screening infrastructure as well, but also the cost of a support program to assist eligible airports to maintain regulated screening services.

Mr Pezzullo: What year was that?

Mr Hansford: I think the most recent funding was in the last budget. I don't know the particular dates of the funding agreements—they are principally matters for the department of infrastructure.

Mr Pezzullo: We don't fund them, do we?

Mr Hansford: We don't fund them, no. We had one program focused on capital upgrades. That was \$50.1 million.

Mr Pezzullo: So we might refer the senator to the infrastructure portfolio in terms of funding support. Our job is to set the screening standard and to ensure terrorists and others can't penetrate, as best as we can mitigate the risk, airport by airport or region by region. We don't carry a funding line to provide support for those airports. On application, as I recall it, they go to the infrastructure department.

Mr Hansford: The department of infrastructure ran a number of funding rounds.

Mr Pezzullo: On the question of funding we might refer you to the relevant portfolio.

Senator RUSTON: I want to be really clear. In questioning the other portfolio in previous estimates, they have been very good at duck-shoving it back to you, so I wanted to make sure that I had this really clear so that when I turn up and speak to Infrastructure that it is very clear.

Mr Pezzullo: I'm absolutely comfortable and confident in saying to you that we set the standard. Mr Hansford can speak to detail about what the screening requirements are. If any references are made back to us, I'm sure that department would do so on the basis that we own the security settings. I'm not seeking to deflect responsibility other than to say that this is an estimates committee, I know what my appropriations are, and I think I'm right in saying that we don't have any funding lines to support regional airports. Is that correct?

Mr Hansford: We have one small funding line in relation to screener accreditation, and historically we had had a screening fund, but we don't currently have any.

Mr Pezzullo: I think the senator was asking about capital equipment and upgrades.

Senator RUSTON: No, I wasn't.

Mr Pezzullo: You weren't? I would just limit our responses to what we are appropriated for.

Senator RUSTON: What I'm trying to understand is: was there a regulatory impact statement undertaken prior to the determination for your framework changes?

Mr Hansford: I'll have to go back in time and have a look at whether or not there was, so I'll take that on notice.

Senator RUSTON: If there was one, I'd be really keen to understand whether the broader costs to the community were considered as part of that. If you didn't undertake a regulatory impact statement, I'd be keen to understand why you didn't and how on earth we would have determined the disproportionate impact on rural and regional communities. I'm putting on the record that, in terms of the cost recovery, you're talking about an airport like Whyalla, which is costing \$54 per passenger, whereas it's probably 25 cents in Sydney. I'm wondering if that had been considered as part of it. You made the decision around the changes to the framework on the basis of the security requirements at airports, so I'd be keen to understand what your decision was around the size of the airport, why you made a decision that a 40-plus aircraft required screening, whereas an under-40 didn't and what your understanding was in terms of how that was going to be managed within the various communities. Clearly the question is in relation to the inequity that is being delivered by this government.

Mr Pezzullo: If it assists you: we've given evidence previously—indeed, in the last parliament—because I know that Senator Patrick was ventilating the Whyalla issue. It goes back at least to then. There was a transport security inspectorate report in 2017. I stand to be corrected, and we'll come back to you on notice, as to whether it was in the 2018-19 budget or the 2019-20 budget—I can't quite remember which—but new screening standards were applied. As you said in relation to regional airports—Whyalla being one example, as long as four or five years ago, that was saying this—it does create this inequitable burden because you've got a higher per-passenger cost to put a big machine in, with all the capital works you've got to do and so on and so forth. We've given evidence before, so we might come back to you on notice to answer the question about the higher security standard that flowed from the 2017 inspectorate report. It was the inspector of transport safety, wasn't it?

Mr Hansford: Security.

Mr Pezzullo: My apologies. In which budget round was the funding and the standard married, if you will? There was a grace period, as I recall, and there was some funding provided for a grace period. We can take you through the history of that, and we'll focus on that in our response. But we will consult with our colleagues in infrastructure. We'll focus on the security standards.

Senator RUSTON: I'm just trying to understand what consideration was given to the clear inequity proposition that was being put forward and what the considerations were around the access to health services, as an example, into the regions. FYI: apparently the office of best practice was consulted about these regulations and advised that a regulatory impact statement was not required. So I'd be very keen to understand why that—

Mr Hansford: It's also worth saying that, when the airport tier model came in, the revised one came into effect on 19 December 2020. Together with the department of infrastructure, we did undertake an economic modelling exercise and got an economist to look at, particularly, regional airports. We conducted a survey to inform the decisions about whether or not there were any requirements to look at regional airports. We did that together with the department of infrastructure and have a good understanding of the security requirements and the cost broken down by individual regions—to the extent that they contributed to the survey. So we did do economic analysis post the change of the airport tier model, but I'll check on the regulatory impact statement.

Senator RUSTON: Finally—and you may not be able to answer this straightaway either—I'd would be very keen to understand whether there was any consideration or any modelling done around the possibility of making a general passenger uplift charge which would have seen everybody in Australia paying the same amount, as opposed to the clear inequity that is happening. Just for the record, one airline has ceased flying into Whyalla as a result of the fact that this is about to occur.

Mr Pezzullo: Understood. We'll come back to you in one omnibus response with a time line. I do caution that there might be some restrictions on whether options considered by the previous government through its cabinet process—I do recall that this is a matter agitated, in fact, across two terms. The transport security report came out in 2017, and I'm thinking that there probably would have been at least one, if not two, terms of parliament through which this process had been worked through. If there are restrictions in terms of respecting the confidence of previous cabinet deliberations, I just—

Senator RUSTON: No, I'm more interested in this: obviously, there was a decision taken after the determination on the change in the framework whereby the government continued to pay the cost of that uplift charge. Clearly, this government has decided not to continue to do that, and I'm interested to understand whether there was any consideration around that equity—

Mr Pezzullo: With the funding support coming off.

Senator RUSTON: and the position whereby they made the decision to bring in these charges on these regional airports that are about to come into effect.

Senator Watt: Could I just add something here, Senator Ruston? Obviously, a number of these questions really need to be put to the infrastructure department, as has been discussed.

Senator RUSTON: And I'll do that.

Senator Watt: But my understanding is that the funding that was provided by the former government was one of those now famous terminating measures, so there was no ongoing funding provided for this by the former government.

Senator RUSTON: Clearly, you need to understand that budget process measures often terminate and get reinstated because they roll through on estimates.

Senator Watt: Thank you for explaining that—

Senator RUSTON: Thanks very much, Mr Pezzullo.

Senator Watt: but it was your government that made that decision. It's just worth noting that.

CHAIR: Senator Polley.

Senator POLLEY: I have some questions in relation to the ASD and their takeover powers.

Mr Pezzullo: The ASD?

Senator POLLEY: Yes.

Mr Pezzullo: The Australian Signals Directorate?

Senator POLLEY: Yes. That's in 1.2?

Mr Pezzullo: The Australian Signals Directorate?

Senator POLLEY: Yes.

Mr Pezzullo: To the extent that there's a crossover, in the sense that the Minister for Home Affairs can make a request to the Australian Signals Directorate under a particular provision of the Security of Critical Infrastructure Act—or SOCI, just to use the shorthand—I'm happy to speak about how that regulatory framework works. But as to how ASD would respond or how they would exercise their powers, I would of course refer you to the Defence portfolio.

Senator POLLEY: Yes. I can ask my questions and we'll see how we go. Does the ASD have the power to take over a company's computer network following a cyberincident?

Mr Pezzullo: There are limited circumstances under legislation passed in the previous parliament known as a government assistance measure, or a GAM—it might just expedite things if I use the acronym hereto. That's where in very specific circumstances—where there's exceptional harm to Australia's economy, society, national security or defence—the Minister for Home Affairs can make a request, which from memory has to be sanctioned by the defence minister and the Prime Minister, for the Australian Signals Directorate to provide unique assistance in the defence of critical infrastructure networks. Those networks have to have been designated as systems of national significance by the Minister for Home Affairs; they can't just be any company.

There are 11 sectors under SOCI, the security of critical infrastructure, whereby systems of national significance designations can be made. The onus under the legislation is for all other measures to be otherwise employed. So the company—let's say it's a water company, or a bank or financial institution—has to exhaust all other means using its own incident and cyber-responses. Those could involve technical assistance from ASD, such as was provided last year in the cases of Optus and Medibank, for instance, or more recently in relation to Latitude Financial Services. But to be able to come into the network, physically, to provide that last line of defence under a government assistance measure which hasn't been used, it would have to meet all of those exceptional standards under the act.

Senator POLLEY: Are there any other safeguards that the government has to ensure that those powers aren't used liberally?

Mr Pezzullo: Aren't used?

Senator POLLEY: Liberally: they're not overused.

Mr Pezzullo: In the terms of the act, it's one of the most onerous thresholds. You have to have exceptional circumstances—the phrase 'grave' might be involved in the act; I don't have the statute in front of me. It's where the country is at risk of losing its power generation distribution system, or its banking system or there are significant impacts—for instance on the hospital network, where lives are in danger. And the company must be

employing its own internal defences or employing cybersecurity firms to assist and no-one can break the attack—no-one can, if you like, deal with the attack. It's in those very limited circumstances.

In your question you talked about the liberal use of the powers. I would contend that this power, the government assistance measure power, was very closely scrutinised by the parliamentary joint committee in the last term of parliament; I spent many hours appearing before the chair and his committee. You would almost be looking at situations near to or related to conflict or similar, where no other defensive measure can break the attack or can restore services. You might have a city that hasn't got power, for instance.

I don't want to speculate too openly, and certainly not in open proceedings, as to the sorts of scenarios that might have been modelled or thought about as we thought about that legislation, but the phrase I'd use, Senator, in responding to your question is that the request being made of ASD—in so many requests, they still have to go through their own legislative procedures to acquit the request, and the minister has to make it in consultation with the Prime Minister and, from memory, the defence minister. They would have to be pretty exceptional and extraordinary circumstances.

Senator POLLEY: How often have government assistance powers under section 35AB been used, and what's the process to use them?

Mr Pezzullo: I think I've largely given the answer, but I might just ask Mr Hansford to attend. I think the answer is: no government assistance measures have been triggered. From memory, they would have to be reported to the parliament under the statute in any event. To the other part of your question, there's a process of designation of critical infrastructure as a system of national significance, and then there's a further process whereby the minister, I think, has to get the agreement of the Prime Minister and the minister to make the request. Mr Hansford, on the first question, I think no instances of government assistance measures have been triggered—is that right?

Mr Hansford: Correct.

Mr Pezzullo: So no requests have been made to the Australian Signals Directorate. That answers the first part of your question. In terms of process, do you have anything to add, Mr Hansford? Without the benefit of the law that you've now got in front of you, I've given a sketch answer, but is there anything you wish to add?

Mr Hansford: Just the fact that a cyber incident has to have, obviously, occurred or be imminent and is impacting Australian critical infrastructure, as defined by the act. It's actually having a relevant impact, so there's an impact to infrastructure and there's a material risk that the incident has seriously prejudiced Australia's economic or social stability, defence of the nation or our national security.

Mr Pezzullo: I wasn't far off.

Mr Hansford: Very, very close. And then, as the secretary said, no other existing regulatory system of the Commonwealth or states and territories can be used to provide a practical or effective response. Those are really the criteria. And then, in some of the explanatory material, it does talk about their last resort powers. There are three powers: an information-gathering power; an action direction power, which is for the Minister for Home Affairs to direct a response to a cyber incident in a certain way; and then an intervention power, as the secretary said, on the agreement of the Minister for Defence and the Prime Minister. I guess the other safeguard is that you can't ask for personal information. It's really about systems and infrastructure and responding to a cyber incident, and, in the scenario where nothing else has worked, this is a regime that could be deployed, particularly in a significant cyber incident.

Senator POLLEY: How often have powers requiring the installation of system information under section 30DJ of the SOCI Act been used, and what's the process for them?

Mr Hansford: Again, those powers have not been used, and the particular reference relates to the enhanced cybersecurity obligations for systems of national significance. Again, in the explanatory material for the reforms to the Security of Critical Infrastructure Act, it was then set as a last resort power. Really, it's a power to provide systems information to the Australian Signals Directorate if and when that is required, and then, if a critical infrastructure provider is technically unable to provide that information, the secretary can then direct the installation of a sensor. But, again, it is a last resort power and it is to be used sparingly, as defined in the explanatory material, and, as such, has not been used.

Senator POLLEY: In light of recent events, how is the government ensuring that private companies are doing all that they can to protect the critical infrastructure?

Mr Pezzullo: Before you get to the kinds of scenarios, thresholds or incidents that Mr Hansford and I have been speaking about, the act itself requires a whole series of measures to be—and I'm limiting these remarks just

to critical infrastructure. There's a broader question of the economy at large, which is currently the subject of policy development through the process that the minister is leading of the development of a new cybersecurity strategy. I'll caveat my answer by saying that, in terms of economy-wide standards, everything I'm about to say is in the process of policy development, with a panel led by Mr Andy Penn that's assisting Minister O'Neil with the development of the strategy and assisting the department. That might be in the future, as to whether there are standards about the Internet of Things, product labelling and the like.

But, on critical infrastructure, which I think I heard you mention in your question, Senator, the critical infrastructure act requires a whole lot of things to be done, including the tabling of risk management plans where the minister so directs them. The boards and management teams within companies of the 11 specified sectors, such as banking, financial services and telecommunications—I won't list them all, but you get the general idea—have to assure the government, in the form of the minister who's the principal decision-maker, that, if you've been designated as owning or operating a critical infrastructure asset, for instance, you have to table risk management plans to say, 'Here's how I'm managing the risk of cyberattack, physical disruption and sabotage, insider threats and protective security threats.' So it sets out a regulatory scheme which sets a lot of benchmarks.

From time from time, the minister of the day might place more onerous obligations, say, on particular sectors or particular asset classes within those sectors. The explanatory material that accompanied the legislation makes it clear that we operate in what I would describe as a co-regulatory model. For instance, with relation to prudential supervision of banks, if the instrument or the requirement that's better levied on a bank is better placed coming from APRA or the Reserve Bank, we will consult with our co-regulator to say—and we have, I think, in the case of cybersecurity, have we not?

Mr Hansford: We have.

Mr Pezzullo: With one of the prudential standards.

Mr Hansford: That's right.

Mr Pezzullo: In that case, the sector regulator would take the lead and say: 'If you're a bank, as a condition of your licence and a condition of the regulatory obligations that sit with the licence, here are the things you've got to do. We've consulted with Home Affairs and the Australian Signals Directorate, and here's what you've got to do to run a cybersecure bank, for instance.' What SOCI then provides is a trumping or a step-over or step-in provision that potentially says, 'Because of the limitations of the Banking Act 1959, here are some other things I want you to do.' Or it might say: 'Here are the things that I've authorised my secretary to ask you to do. He or she might put in an information request to better understand how you're managing that risk, because we're not satisfied on the basis of the risk plan that you've labelled.'

I think it's fair to say that, unlike in other areas of national security, this has to be done as a private and public partnership model because the deep understanding of networks, devices, systems, operating technology and ICT technology is typically vested in the company. They'll know their system and their architecture. They'll know where their servers are and where their routers are. They'll know who's got access rights and who's got administrator rights, for instance. So the legislation is predicated on putting the burden of accountability very much on the industry participant first and foremost, then on a co-regulator, like APRA, for instance, to do with banks, and then, if we need to step in, we will. Our step-in is itself graduated until you get to those very exceptional circumstances that we discussed earlier.

CHAIR: This is your last question, Senator Polley.

Senator POLLEY: For all of those 11 identities—

Mr Pezzullo: Sectors—sorry, Senator.

Senator POLLEY: Yes—sectors. Have they all come to the party, and are there any that have been lagging in coming to the table and meeting their obligations?

Mr Pezzullo: I think it's fair to say there's been very full engagement. Each of the sectors have now got assets identified and systems of national significance identified, have they not?

Mr Hansford: That's right; everyone has been quite collaborative. But the point I'd like to highlight is that different sectors are at different levels of maturity, and they have different challenges. For example, if you have been prudentially regulated and have had quite stringent banking requirements on you for many decades, you're starting from a different place than an entity that has lots of Internet of Things devices that are open to the public. There's been good engagement. We even held a conference on 24 March that brought critical infrastructure providers together for the first time, and there was great feedback about the types of issues, how to think about

best practice, how we learn from incidents that have occurred but also that they are at different levels of maturity, and that requires a different response.

CHAIR: Thanks very much. I'll hand the call back to Senator Paterson.

Senator PATERSON: My questions are about cybersecurity as it relates to the budget, so you may again need the assistance of the CFO. I've been looking at the portfolio budget statements and [inaudible]. Does the government anticipate that the cybersecurity threats facing Australia are going to decline significantly in the financial years 2024, 2025 and 2026?

Mr Pezzullo: To the contrary, the minister has made it clear that the challenge that's before our economy and our society at large, whether it's large firms or the most vulnerable people, will continue to metastasise as the attackers become more savvy. The whole premise of doing a new cybersecurity strategy is to try to anticipate and futureproof to the point where we can say that we're the most cybersecure nation on earth by 2030. If you're going to ask me about funding declines, I've got every confidence that the government will attend to the need to spend more on cybersecurity. That is in noting, of course, Senator—I might be pre-empting where you're about to go—there's a very significant investment through the REDSPICE program, in the defence department, that will very significantly enhance Australia's national cyberdefence. They're the operators of that technology and those capabilities—

Senator PATERSON: Yes, I do know that.

Mr Pezzullo: whereas we're the policy and regulatory arm. But you haven't asked me yet.

Senator PATERSON: No, I haven't asked the question. You were anticipating my subsequent follow-up questions—

Mr Pezzullo: I've jumped ahead.

Senator PATERSON: which is very kind of you but not necessary. I can ask them on my own, and perhaps you can—

Mr Pezzullo: Thank you, Senator. I was getting ahead of myself.

Senator PATERSON: answer them when they're asked, rather than—

Senator Watt: I think I thought he was heading where you thought he was heading. Are you heading where I'm heading?

Senator PATERSON: Thanks, Minister. How about we have an approach where you answer the questions that I ask you, instead of the ones that you think I'm going to ask next.

Mr Pezzullo: I think that's a good idea.

Senator PATERSON: But you have accurately anticipated my next question. The budget forecasts a significant reduction in funding for the department on cybersecurity, from \$38 million in the next financial year, 2023-24, to \$15 million in the subsequent year. If it is, as you say and the minister has said, that the cybersecurity challenges are getting greater, not lesser, how is the department going to do with about half, or in fact less than half, of the funding in the subsequent financial years?

Mr Pezzullo: Thank you, and I do apologise for anticipating, but I must have fluked it, because I thought you might be going to that funding item. There is a particular provision that I think is exclusively in support of Mr Hansford's discharge of his responsibilities, which partly relates to what I was just discussing with Senator Polley—that is, the cyber and infrastructure security function that sits under Mr Hansford. We do have an authorised return to government to proof up the level of resourcing that we're going to require as these risk management plans and these other SOCI related designations and cybersecurity related responses become more evident. I think it's fair to say, Ms Cargill, that we're extended for some funding that was otherwise going to terminate—sorry; I don't want to trigger that. There was some funding for the SOCI function that came to an end. We've been given some additional funding so Mr Hansford can get on with it, and we've been asked to come back with some more science and some more particulars.

Senator PATERSON: Thank you. I will come to that additional funding.

Mr Pezzullo: Have I got that right, Ms Cargill?

Ms Cargill: Certainly. I can explain the drop-off, Senator, if you—

Senator PATERSON: Please.

Ms Cargill: The reduction in the funding between 2023-23 and 2024-25 is the \$24 million specifically—or \$23.8 million. It's predominantly related to the additional funding in this year. The funding we received this year under the cybersecurity measure was a total of \$37.3 million over the forwards but was \$27.9 million in 2023-24.

It was made up of four components. There was the SOCI SONS—sorry; I'm not allowed to say 'SOCI SONS'—component, at \$19.5 million. There was the cyber hubs component, a measure from ASD in relation to Act Now, Stay Secure, and the hosting of the certification framework. Only one of those items is continuing over the forwards. The item Act Now, Stay Secure is consistent over the forward estimates. The other three are funding for 2023-24, and, as the secretary has noted, we have comebacks to government. So that's the drop-off.

Senator PATERSON: Sure. I imagine, Mr Pezzullo, that as you did when we were talking about the department's overall funding—in anticipating your answer to my next question, as you anticipated my questions—you'll say that you'll go to government and seek more funds and that you're confident you'll get them. But, as it stands, the only available information we have today is that the government plans to cut the amount of money it spends through the department on cybersecurity almost in half.

Mr Pezzullo: Could I add one particular. I did make that general statement to you under Corporate, before the break, but there's a particular additional element here. The minister is leading, as I've indicated, a cybersecurity strategy. The government took the view—it's not for me to determine whether it was reasonable, but I will add 'the not unreasonable view'—that when that cybersecurity strategy comes back we want to see, for all of the funding items, including what we have funded, what the threat landscape is, what strategic priorities the minister has, and then what the funding envelope looks like. So, rather than just giving you a general answer that I'm confident that we can demonstrate in the general, I'm saying that in this case there's going to be a specific vehicle, called the 2023-2030 Cyber Security Strategy, where all of these questions will need to be ventilated for the decision-making of government—it's subject to, of course, their decision-making—but it certainly won't be deficient in any advice around either the threat or the strategic environment that we face.

Senator PATERSON: Is it your evidence to the committee that we need not worry and that, in actuality, this cut won't materialise before that financial year, that it will be rectified and there won't be a \$24 million cut to cybersecurity funding at the department?

Mr Pezzullo: As Ms Cargill said, there are a number of items overall. I think, from memory, you said there were four sub-elements.

Ms Cargill: Correct.

Mr Pezzullo: One of the sub-elements, and the largest component of it, is the ongoing funding and resourcing for our critical infrastructure security regulatory function—

Senator PATERSON: Sorry to stop you there, but that's, as Ms Cargill said, in this financial year. I'm asking about future financial years.

Mr Pezzullo: From 2024 onwards?

Senator PATERSON: Exactly.

Mr Pezzullo: I have every confidence—subject to what they decide, and it's not for me to direct or determine how they decide these things—that well before the start of the financial year on 1 July 2024 we'll have certainty and clarity around our resourcing. That will be either as a result of the standard budget process, so MYEFO and budget, and/or as modified or as decided through the Cyber Security Strategy.

Ms Cargill: Can I just add that it's not just about confidence; it's about track record as well. As an example, I can give you the amounts that have been supplemented year on year to the department's operating budget every year. They average at \$300 million between the year previous and then when we get to the next budget year there's additional funding provided of approximately \$300 million every year into our budget.

Mr Pezzullo: But you're making a general statement on that.

Senator PATERSON: Yes, of course, that would then have wider implications for the government's forecasting of its expenditure in subsequent years. Are you saying we shouldn't trust Mr Chalmers' forecasts—

Ms Cargill: No.

Senator PATERSON: for budget surpluses or deficits, and will need to factor in a \$300 million increase or thereabouts to the department?

Ms Cargill: I'm saying each year we have annual amounts that we prosecute through each budget process and that's been the case for some time. If I'm talking about the specific departmental operating budget in 2019-20, for example, the 2020-21 baseline that budget was supplemented by \$242 million, the next year was \$283 million and the next year was \$300 million. It is standard that we have a number of annual components of our budget.

Senator PATERSON: Great. We'll look forward to watching that in subsequent financial years. Ms Cargill, you talked about some additional funding in this budget for cybersecurity and, as you say, most of it's acquitted in

this coming financial year. How much of that additional funding has come from either cuts or reprioritisation of other parts of government, other agencies or other programs?

Ms Cargill: I couldn't answer that.

Mr Pezzullo: We wouldn't know, would we?

Senator PATERSON: To go back to the traditional estimates question: how much of it is new money and how much of it is money that's come from elsewhere?

Ms Cargill: For example, the amounts I just quoted to you, the \$37.3 million that was related to the cybersecurity additional funding that we received, this is all new funding.

Senator PATERSON: What about the \$12.3 million which was cut from the ASD to fund part of that?

Ms Cargill: The ASD was a measure, and the funding was transferred from the ASD to us.

Senator PATERSON: Correct, which is a cut.

Ms Cargill: It's new money for us.

Senator PATERSON: It's not new money for ASD. This is my point. Some of this new funding you are talking about has come, in fact, from another agency.

Ms Cargill: That's the only component that's a transfer.

Senator PATERSON: In this case, it's from ASD—our premier cybersecurity agency of government—so it's not actually new funding for cybersecurity. It's funding for cybersecurity that's come from one part of government to another.

Mr Pezzullo: I think it's commonly understood that if there's a transference of functions with the people and the dollars that are associated with that function it's not a cut, as such, because the function, to your point, is still being performed. It's just a transferral of the funding.

Senator PATERSON: It's also not new money, though, is it?

Mr Pezzullo: What did you say, Ms Cargill, it's new money for 'us'?

Ms Cargill: I was giving you the departmental funding we received in funding.

Senator PATERSON: I'm interested in whole of government. The ASD, I appreciate, is not in your portfolio but it would be the agency outside your portfolio you would probably work the most closely with, given the functions of the cybersecurity centre.

Mr Pezzullo: That is true.

Senator PATERSON: What I'm trying to ascertain is how much of this is genuinely new money that hasn't just been taken from another department or agency or another program within your department?

Mr Pezzullo: I think of the four measures that was the only transferred measure.

Ms Cargill: Correct.

Mr Pezzullo: So, one.

Senator PATERSON: None of those other funds have come from elsewhere within the department or the portfolio?

Ms Cargill: That's correct.

Senator PATERSON: Why should the ASD be relied upon to fund 'increases in cybersecurity'? Is that not a 'rob Peter to pay Paul' situation if we're taking from a cybersecurity agency to fund a cybersecurity program?

Mr Pezzullo: In the case of the measure in question, it was a decision taken by the government that this is for cyber awareness. Can you just briefly describe to the senator what the function is?

Mr Hansford: Sure.

Mr Pezzullo: I don't think anyone has been robbed. It's a decision taken by government that this function is better performed in a policy department or a department of state, shall we say, so I think you've had both a transference of people and dollars. Essentially it is a public awareness function, is it not?

Mr Hansford: The Act Now, Stay Secure campaign is a direct transfer of the function between ASD and Home Affairs to support the National Cyber Security Coordinator's role to look at national related awareness and to think about how we bring together our awareness campaigns on cybersecurity across the Commonwealth, with particular focus on that funding. It was an additional function that the government decided in the context of the stand-up of a coordinator.

Senator PATERSON: Just to clarify, it's your evidence that people who were working at ASD or ACSC, other than people who may be transferred, now work on this same project, but for the department instead—

Mr Pezzullo: With funding.

Senator PATERSON: Yes, with this funding that has come over—and that the ASD won't be required to make any other cuts or reduce its staffing levels in order to accommodate this transfer?

Senator Watt: That is a probably more a question you would need to put to ASD, I would have thought.

Senator PATERSON: I plan to. Of course, it is not the only cut to ASD's funding in this budget. There is also a cut in the Attorney-General's portfolio to fund greater oversight of the intelligence agencies from ASD. We are not just using ASD as a bit of a piggy bank that can be smashed when other departments need money.

Mr Pezzullo: I can't speak to ASD's resourcing. The one measure that I'm clear about is that there's been a transference without a cut to either people or dollars, as far as I know. It's just a straight transfer of six staff members plus the associated—they must have some money to spend on—

Mr Hansford: That's right, of the campaign money, so \$1.8 million.

Mr Pezzullo: Yes, campaign money. As to your assertion that ASD has been otherwise cut is something you'll need to put to the director-general and her minister in another committee.

Senator PATERSON: I will look forward to doing that. Moving onto the Cyber Security Strategy—

CHAIR: You just have a couple more minutes and I then I'll hand over the call.

Senator PATERSON: Thanks, Chair. What is the total cost to date of the development of the Cyber Security Strategy?

Mr Pezzullo: Mr Hansford, there are some departmental resources, some expert advisory resources. Do you have anything?

Mr Hansford: I don't have an overall quantum. We've got staff associated working for the strategy and we have some targeted consultancies as well.

Senator PATERSON: Could you come back on notice with total expenditure and also break it down to compensation for the expert advisory board, any costs of current or planned travel for the expert advisory board—

Mr Pezzullo: We will come back on notice.

Senator PATERSON: any consulting or advisory services that have been brought in to assist in the development of the strategy, and an itemised list of those services, any external services provided, and any other costs associated with the development of the strategy? How much new money has been directed under the Cyber Security Strategy so far?

Mr Pezzullo: The strategy hasn't been finalised or brought to government by the minister, so—

Senator PATERSON: So none?

Mr Pezzullo: What was the question? How much new money—

Senator PATERSON: Yes.

Mr Pezzullo: has been—

Senator PATERSON: Directed under the Cyber Security Strategy.

Mr Pezzullo: Sorry: directed to what purpose?

Senator PATERSON: To the strategy. How much money has been spent on the strategy?

Mr Pezzullo: We'll come back to you on notice on the cost of developing the strategy, which is the itemised list you have just read out. The strategy itself, like any strategy or government plan, will need to be finalised in the minister's own mind as to what she wishes to bring forward to cabinet and/or the NSC. There will be a budget process associated with that and there will be, no doubt, measures, programs and projects that arise from the Cyber Security Strategy that she will announce, when she announces the strategy.

Senator PATERSON: Have any of the initiatives from the previous strategy announced in 2020 been cut or discontinued?

Mr Pezzullo: No decision has been taken as to the final shape of the strategy, so anything that we are funded to do or we're required to do, or anything that we are rolling out, either pursuant to SOCI or the 2020 Cyber Security Strategy or, indeed in some cases, there are some enduring measures from the 2016 strategy, they are all in-flight—

Senator PATERSON: So no measure under the 2020 Cyber Security Strategy has been brought to an end?

Mr Pezzullo: Unless it had a terminating or lapsing character—can you think of anything that has been changed?

Mr Hansford: Of the \$1.67 billion in the strategy, \$1.35 billion related to ASD, so that's probably a question to ask them. There are some elements which were grant rounds, for example, which are time limited. Principally, from the department of industry, there was funding for the Australian Federal Police, which I believe was over a four-year period. There was funding for IDCARE and a range of initiatives, some of which are 10 years in length, some of which are four years in length and some of which are time limited. So I'd just have to check on whether or not any of those have actually finished, given the time limited nature of some of them.

CHAIR: Senator Paterson, I do have to hand the call over.

Senator PATERSON: Can I just ask one last question on this area?

CHAIR: No, you can't. I gave you a warning two minutes ago.

Senator PATERSON: It's a direct follow-up.

CHAIR: No. I have to hand the call over because we're about to go to lunch at 12:30.

Senator PATERSON: Thanks, Chair.

CHAIR: Senator McKim, you have the call.

Senator McKIM: I've just got some questions around national security and resilience. Mr Pezzullo, I noticed in your opening statement you've confirmed that national resilience includes climate change. I just wanted to start by asking: does the department have a view on whether biodiversity loss and ecosystem collapse are not issues of national resilience? If you do think they're issues of national resilience, why haven't they been included?

Mr Pezzullo: Whether they relate to climate or indeed any other natural risk factor, our job is not so much to treat the issue in its first instance. If Australia is suffering biodiversity collapse or degradation, or if Australia is experiencing more extreme weather events, I would leave it to the owning department, whether it's the environment department or the energy department, to deal with the risk in issue. Our role is to step in, typically, though not always, with our colleagues in the National Emergency Management Agency, NEMA, and, on occasion, with our colleagues in the Defence Force and other stakeholders to deal with those risks when they materialise as a crisis in a community—a flood, a fire, a cyclone et cetera. These are things that have got a longer—I don't want to say 'burn'; that's the wrong phrase—time horizon, such as the degradation of soil or the loss of species. I'm conscious that I've got the Minister for Emergency Management next to me, and he'll no doubt assist me in this regard. When they create a community impact which is catastrophic or crisis-like at a particular moment in time, typically temporally and spatially bounded—such as when a community has lost access to exits so it can't get goods in—that's when we step in under the leadership of the emergency management minister and the coordinator-general. The ADF sometimes will step in at that crisis point.

The work of the resilience task force is to try to anticipate—I think this is what you're asking me or potentially a feature of what you're asking me—these resilience shocks, be they climatic in nature, naturally induced or, as I said in my statement, geo-economically induced or potentially geopolitically induced. For instance, you have a war in Ukraine that has got a supply chain reverberation that goes right around the world. How can we serve government through both the Minister for Emergency Management on one front, which is typically climate and natural, and the Minister for Home Affairs, in relation to security risks? How can we better forecast, anticipate and, if you will, do some futures work to try to anticipate the magnitude, frequency and occurrence of those shocks? How can we think about the capacity to respond, to deal with the communities that are being most impacted?

Senator McKIM: Thanks.

Mr Pezzullo: I should stress that no risk, natural or otherwise, is out of scope.

Senator McKIM: Understood.

Mr Pezzullo: My statement was just really abbreviated. I could have said climate or any other natural hazard. We think about solar weather, for instance. A solar weather event that knocks out telecommunication satellites would be something else in scope, as an example.

Senator McKIM: That's clear, thanks.

Mr Pezzullo: I couldn't have listed them all, because it would be a very extended statement.

Senator McKIM: That's fine. Spare us for now! There may be opportunities for the minister to organise a question for himself in the Senate if he wishes to list them all.

Senator Watt: I would never do such a thing!

Senator McKIM: I wanted to ask specifically about my home state of Tasmania and fire risk—

Senator POLLEY: A beautiful state it is.

Senator McKIM: A beautiful state it is, thanks to a lot of people looking after it so well and protecting it against the degradations of the Labor and Liberal parties for so long. I want to ask about fire risk in the Tasmanian Wilderness World Heritage Area. When questions were posed to the Department of Climate Change, Energy, the Environment and Water in the previous round of estimates, I asked eight questions around various scenarios of fire risk in the Tasmanian Wilderness World Heritage Area, what are the resourcing and capability increases and implications of those risks. I just got a one-line answer back saying the Tasmanian government has responsibility for fire response in the Tasmanian wilderness.

I would argue, and I don't think anyone would disagree, that the fire risk around many parts of the country, including in the Tasmanian Wilderness World Heritage Area, has increased as a result of climate change. Given the inclusion of climate in national resilience, how does that response from the climate and environment department, that it's just a matter for the Tasmanian government, how does that sit with you, Minister? Do you think it's just a matter for the Tasmanian government, how well prepared we are for fires in the Tasmanian Wilderness World Heritage Area?

Senator Watt: I obviously can't answer for an answer that's being provided by another department that isn't actually the subject of these estimates. But what I can say is that, as Mr Pezzullo has said, the work that's being done through this department around national resilience, including climate and the effects of climate change, doesn't anticipate that the federal government would take complete ownership or responsibility around disaster management, whether it be climate induced or otherwise.

Disaster management of course is a shared responsibility, primarily led by states and territories. Whenever there is a flood or a fire, it is primarily state and territory agencies that respond, obviously with local government and community members. The federal government has a role in backing in that work. So I would take a punt that the answer that was given to the question on notice reflects the fact that it would be primarily the role of the relevant state and territory government to prepare for and respond to natural disasters. But that's not to say that those sorts of things won't be considered in this National Resilience Taskforce.

Senator McKIM: Does the Commonwealth have any interest whatsoever in assessing fire risk, given it's the state party to the World Heritage Convention? I might put that context around this question. Does the Commonwealth have any interest whatsoever in assessing fire risk in the Tasmanian Wilderness World Heritage Area, in assessing what resourcing implications increased fire risk in the Tasmanian Wilderness World Heritage Area is driving and how the Commonwealth engages with state departments around that? You have said it's a shared area, Minister, but when I asked the climate change department I was basically told to go and talk to the Tasmanian government. You're here now, and I'm asking you: do you have an interest in those things? If so, what's the nature of the interest and how are you ensuring that the federal government's responsibilities as a party to the World Heritage Convention are actually being recognised and that you are taking those responsibilities seriously?

Senator Watt: The Commonwealth of course has an interest in increased risk of natural disasters around the country, whether it be in Tasmania or anywhere else and whether that be fire in Tasmania and world heritage listed forests or whether it be floods in suburban Brisbane. Of course we have an interest. The risk of increased weather and the effects on people and the natural environment is exactly the work that is being led through this department in a general sense, planning for the future. If you had some specific questions around what exactly is being done to prepare for fires, then I would recommend maybe posing those questions to NEMA when they're here tomorrow morning. There's a separate session when NEMA are here. We can talk in a general sense about what the climate resilience task force is doing through this department, but in terms of specific areas and preparation. Again, I would make the point that I would like to think that people have noticed that our government has stepped up when it comes to disaster management, compared to what we saw before the election, but we still see that states and territories have lead responsibility for preparing for and responding to natural disasters.

Senator McKIM: I will follow up tomorrow morning, Minister. Thanks for that. But my final question is, though, you wouldn't suggest that those questions would be out of scope for NEMA, would you?

Senator Watt: It would depend on exactly what the question is. If you want to ask questions about how does NEMA see fire risk in those forests and what work is occurring with the relevant state government to prepare for that, that's exactly the kind of thing that NEMA could prepare for. I give them a hint that they should come prepared.

CHAIR: The committee will now suspend for lunch until 1.30 pm and will return to outcome 1.

Proceedings suspended from 12:30 to 13:31

CHAIR: The committee will resume its hearing. We are questioning officers from the Department of Home Affairs in relation to outcome 1. Senator Paterson, you have the call.

Senator PATERSON: I want to resume where I left off previously on the cyber strategy, so Mr Hansford might be required at the table to assist. While he's coming to the table, I was just reflecting over the lunch break, Mr Pezzullo, on your agreement with my observation that ASD and the ACSC are probably the department outside the portfolio that you work most closely with. I wonder, have you ever turned your mind to whether the ACSC would be better at home in the Home Affairs portfolio rather than the Defence portfolio?

Mr Pezzullo: I can't say that I've turned my mind to that in a way that's caused me to give advice. In any event, that would be a matter, ultimately, for machinery matters that are in the hands of the Prime Minister. The fact that we cooperate across a clearly defined set of distinctions—not dissimilarly from other jurisdictions where, for instance, the National Cyber Security Centre in the UK is an integral part of the GCHQ. Indeed, it's branded as such and known as such. The equivalent function in the US is slightly different, but there's a cyber defence function, for instance, that sits within the National Security Agency, the NSA. I think it would be unusual for a department of state to start to become drawn into highly technical capabilities and matters. But you asked if I've turned my mind to it—not in a way that would have caused me to give advice one way or another.

Senator PATERSON: I'm not necessarily advocating it myself, but I was just reflecting, given that we have this one function which has moved from ACSC to Home Affairs as a result of the budget, whether you'd ever previously advised government on the merits of this, whether you'd ever advocated for it or considered it.

Mr Pezzullo: The function that's been moved across is the public awareness and engagement function that could logically sit in a number of areas—at least two. But whichever way this is sliced and diced, you're always going to have to have legal distinctions—

Senator PATERSON: Of course.

Mr Pezzullo: that relate, for instance, to the AFP's criminal investigation authorities. Whether the relevant minister is the Attorney-General, who's the agency minister for the AFP under this government, or whether it's the home affairs minister, as was previously the case, you wouldn't merge those functions either. So you're always going to have to have a degree of division of responsibility with, if you like, horizontal unity and integration of effort that will need to span several agencies.

Senator PATERSON: All good. I was just curious. Returning to you, Mr Hansford, at the end of my last bracket of questioning you were going through some elements of the 2020 Cyber Security Strategy, which has been discontinued. Could you just refresh my memory as to what they were, so I could ask the follow-up question I had planned for that?

Mr Hansford: Certainly. You talked about the funding provided for the cybersecurity strategy, the 2020 one. I answered that there's \$1.67 billion worth of spend; \$1.35 billion of that funding relates to ASD-related measures. I think I said that that's funding over a prolonged period of time. There were other initiatives, such as the AFP-funded law enforcement function for a four-year new policy proposal. There were a number of industry related measures that went to different aspects of everything from skills to amplification of messages through peak bodies to a whole range of initiatives there, and then a couple for the department, one of which was a dedicated cybersecurity awareness program, which was expended, I think, in the financial year after the strategy, or within the strategy. So that was a kind of example of a one-off funded initiative.

Senator PATERSON: Just to be clear: no decision has been taken by government to discontinue any of the measures in the 2020 Cyber Security Strategy.

Mr Pezzullo: The only material adjustment that you'll need to speak to and need to raise with the Australian Signals Directorate is—and this was, I think, conveyed in the budget papers at the time—a decision taken by the former government in considering the REDSPICE program to consolidate and integrate—what did you say for ASD: 1.3—

Mr Hansford: \$1.35 billion.

Mr Pezzullo: The government of the day—this is expressed in the public papers—merged and consolidated some programs that were 2020 cyber capabilities and REDSPICE. But you really will need to address that to ASD.

Senator PATERSON: These questions don't really relate to ASD at all. What I'm getting at is that in August last year, in an interview with the *Australian* newspaper, the minister said that she had scrapped the 2020 Cyber

Security Strategy. It's not clear to me what, if any elements, of that cybersecurity strategy have been scrapped, as she said it was.

Mr Pezzullo: I do recall those comments, and I didn't take—nor, more importantly, because I have the privilege of being able to speak to her directly—any direction as saying, 'Stop the deployment of funded or appropriated programs.' You've heard about grants programs. You've heard about the funding that went to ASD, which again I'd caveat by reminding you that REDSPICE to some extent consolidated, built on and overtook that funding. I think I would take the minister's public comments, certainly to align with her very direct guidance to me, that she wants to build out a new strategy that will, in effect, supplant, take over from, replace the 2020 strategy. In that sense, we're starting again, the 2020 strategy being a document of the Morrison government. But other than an awareness campaign and maybe some grants projects that had time-limited funding associated with them, there was no decision, if you will, pursuant to those remarks or, indeed, any other remarks, to withdraw, modify or change funding. So I take the rhetorical reference 'I have scrapped'—or words to that effect—'the previous strategy' as being 'I'm going to do a new strategy', not 'I've suspended or indeed abolished any program or project items'.

Senator PATERSON: Yes. Well, the minister is lucky to have you to explain so carefully what she intended by her comments in various interviews and instances. Because it's not clear to anyone from a plain-language reading, what 'scrapped' means—that it in fact means 'continue and build upon', as you've characterised it. Anyway, on that cybersecurity strategy and its development, I'm interested in consultation. How many times has either the expert advisory board or the department itself met with Optus, Medibank or Latitude Financial, either directly one-on-one or as part of a small group or as part of a broader forum that I know the department often runs as part of consultations in the new strategy?

Mr Pezzullo: You asked about the expert advisory board and/or the department?

Senator PATERSON: Yes.

Mr Pezzullo: I think to the extent to which—

Mr Hansford: For those particular three companies? I'll have to check—

Mr Pezzullo: We'd have to check, wouldn't we?

Mr Hansford: We'd have to check the records.

Senator PATERSON: But you'll come back to me on notice?

Mr Pezzullo: You were asking separately from any engagement we might have had with one or indeed each of those companies in relation to incident management. You're not asking about that—

Senator PATERSON: I know that is voluminous. I'm just interested in relation to the strategy.

Mr Pezzullo: The strategy—okay, we'll come back to you.

Senator PATERSON: How many times have either you or the board have met with them? Also, and I imagine this will also have to be on notice, but if not, feel free to answer it straightaway. How many times have either the expert advisory board or the department met with victims of the Optus, Medibank and Latitude Financial data breaches?

Mr Pezzullo: We'll take that on notice. I would think the answer is we haven't met, because it's not the role of the strategy development process to engage with, if you like, real-world incidents. They might be deriving some learnings from that, that the department can impart, but there is separate team that supports you, Mr Hansford, to deal with the incident.

Mr Hansford: That's right. I should outline for clarity that some people, in the context of our discussions and round tables, have identified themselves as victims of some of those cyberincidents. The question I think you're asking is around direct engagement on victims, as opposed to people who're doing their day-to-day job and might otherwise have also been a victim.

Senator PATERSON: Yes. Nearly all of us are incidentally victims—but, yes, people who were specifically sought out because of their experience as victims of the data breaches.

Mr Pezzullo: We'll respond in those terms.

Senator PATERSON: Have there been any public forums, either by the advisory board or the department, which are generally open to members of the public to participate in this process, or have they all been closed forums where the department has chosen the participants?

Mr Pezzullo: The submission process has certainly been open to any member of the public. In terms of the town halls or the largely virtual town halls, have they been targeted by-invitation events?

Mr Hansford: They're largely targeted by-invitation events. I don't think we've held any public town halls or gatherings.

Mr Pezzullo: Can we check? When you say 'largely', can we just check?

Mr Hansford: I'll check, but I don't believe so.

Senator PATERSON: If there were any of these public forums, I'd be interested in the number of dates, locations and the approximate number attendees at the forums.

Mr Pezzullo: Your reference to 'public' means open to all comers, as distinct to by invitation'?

Senator PATERSON: Correct. How many times has the minister, board or department met with either state or territory governments as part of the consultation for the cyberstrategy?

Mr Hansford: The expert advisory board, or members of it, have met with state and territory governments at least twice. I've been present on both of those occasions. I'll check on the minister as well. Although I know she's a member of an interjurisdictional committee, I'll refresh my memory about the content of that meeting.

Senator PATERSON: Thank you. On notice, could you come back with the dates of those meetings, as well as who attended—was it public servants, was it ministers? Who were the participants? Will the submissions that were made to the discussion paper be made public?

Mr Hansford: It depends on whether or not the person or organisation who submitted it has requested that the submission be confidential, but I think the government's intention is to make those public. I'll check on whether or not that's accurate.

Senator PATERSON: And on what dates will they be made public?

Mr Hansford: I'll work that out.

Senator PATERSON: You'll take that on notice? Thank you. There's a reference to a ministerial advisory council in the terms of reference of the Cyber Security Strategy. Who are the members of the ministerial advisory council?

Mr Hansford: What terms of reference, Senator?

Senator PATERSON: The terms of reference to the Cyber Security Strategy Expert Advisory Board.

Mr Hansford: I'll check that too. I'll take it on notice.

Senator PATERSON: Thank you.

Mr Pezzullo: It would be fair to say it's a wideranging remit to assist the minister in the development of the strategy, isn't it?

Mr Hansford: Yes.

Mr Pezzullo: We'll look at the specific artefact.

Senator PATERSON: I'd be interested to know on notice who the members of that advisory council are and what the process was to appoint them, how many times it has been convened—

Mr Hansford: It's either the board or the global advisory committee.

Mr Pezzullo: Sorry, Senator, so that we're clear on what we're taking on notice and checking. Are you referring to the expert advisory board that you previously asked about?

Senator PATERSON: No. I know, because that's public already, the three members of the expert advisory council. They apparently have a ministerial advisory council. I'd like to know who the members of that are and how they were appointed.

Mr Pezzullo: Sorry, who has the ministerial advisory council?

Senator PATERSON: The expert advisory board has a ministerial advisory council, as I understand it.

Mr Pezzullo: Not in my awareness.

Mr Hansford: There's also a global advisory panel helping the minister with the Cyber Security Strategy. We definitely know the members of that panel. We'll check on the wording.

Mr Pezzullo: Is there anything that meets the characterisation of a ministerial council?

Mr Hansford: Advising the expert advisory board?

Senator PATERSON: If I'm wrong, I'm happy to be corrected.

Mr Pezzullo: We'll check the details.

Senator PATERSON: Again, in the terms of reference on the Cyber Security Strategy board, there's an attachment B called 'Core Cyber Security Strategy deliverables', and there's reference to workshop papers in item 4. Could the workshop papers be tabled?

Mr Hansford: I think that's the work of the expert advisory board, and one of the papers was the discussion paper released publicly on 27 February. All of their subsequent work, on which we've been working together with them collaboratively, effectively leads towards a decision by government on what's in the Cyber Security Strategy, so I'll just reflect on whether or not any of that might be able to be made public, in consultation with the minister.

Senator PATERSON: Thank you. Are you able to table the interim report to the minister, which is referenced at item 5?

Mr Hansford: Again, I'll have to seek advice on that as well.

Senator PATERSON: Okay. The table indicates that the Cyber Security Strategy and implementation and evaluation framework are due in July of this year. Is the department on track to deliver that on time?

Mr Pezzullo: Can I be clear, Senator? I don't have the document in front of me. What's the document to which you're referring?

Senator PATERSON: It is the Cyber Security Strategy board terms of reference.

Mr Pezzullo: The board that pertains to the 2020 strategy or the—

Senator PATERSON: No, the 2023 strategy, the one that's under development.

Mr Pezzullo: The expert advisory—can you advise me?

Mr Hansford: They've got terms of reference for the expert advisory board, which I think the senator's reading from.

Mr Pezzullo: Yes, and there are attachments clearly pertaining.

Mr Hansford: There are attachments to that, yes.

Senator PATERSON: I appreciate you can take it on notice.

Mr Pezzullo: We will.

Senator PATERSON: I am interested to know because we have a due deadline of July 2023. Are we on track to meet that deadline?

Mr Pezzullo: Well, the deadline that we're tracking is the delivery of the strategy to the minister for her consideration, and that's well in hand for that time period.

Senator PATERSON: Great. The minister's been promising action to address the problem of ransomware since the Optus and Medibank data breaches last year. There's no legislation which has been introduced. Is the government still working on legislation to further criminalise ransomware? There was, of course, a bill in the previous parliament which wasn't put to a vote.

Mr Pezzullo: The minister's made clear—I can't quite recall to mind the specific public reference or its time—that her consideration of these matters will be a function of her considering the advice of the expert panel and the advice of the department and, when we come forward with a draft strategy for her to consider, I'm sure that ransomware will be one of the matters dealt with, at least insofar as this government or this parliament has got the ability to do something unique. I mean, there are ongoing counter-ransomware operations that particularly the Federal Police and Australian Signals Directorate and Cyber Security Centre are engaged in. I'm the global lead for the International Counter Ransomware Task Force, which is now up to something like 40-plus countries. We're meeting again at the counter-ransomware summit at the end of October, chaired by the Americans.

Senator PATERSON: Thank you. This is all very interesting, but extraneous to the question I asked.

Mr Pezzullo: It all means that pressure is being kept on the gangs, pressure is being kept on the criminals, and then, as a separate parallel track of what the Australian parliament might do or what the Australian government might do, the minister's consideration of counter-ransomware initiatives will be done as part and parcel of the strategy.

Senator PATERSON: So we can't expect any action from the government on that issue until the wider Cyber Security Strategy?

Mr Pezzullo: Things like, for instance, whether you legislate to ban payments, whether you legislate to ban intermediary action, whether you take action in relation to crypto while it's in relation to ransomware, I think it's

fair to say it's been one of the main work streams that the expert advisers and the department have been working on.

Mr Hansford: Indeed.

Mr Pezzullo: I don't think I've misspoken in saying that the minister has both given us direction and, more importantly, said publicly that her consideration of these matters will be in context of the strategy. I'll check that I haven't misspoken.

Mr Hansford: Indeed, it features as part of the discussion paper released by the expert advisory board.

Senator PATERSON: Let's hope there are no more ransomware attacks between now and then. Chair, I'll move to a similar but slightly different topic. Should I do that now or wait for the call?

CHAIR: You have the call. In the interests of your own internals, you might want to share the call. I think Senator Antic has been waiting for a while. Government senators have questions but are happy to give the opposition most of the call.

Senator PATERSON: Thanks, Chair. I'm happy to share with Senator Antic, then go to my next topic.

CHAIR: Thank you. Senator Antic.

Senator ANTIC: Thank you, Chair. Thank you, Senator Paterson, as well. I want to turn to a different topic. I have a document in front of me called the Online Content Incident Arrangement procedural guidelines in documents provided to me on Friday under Freedom of Information. The document has been redacted, all 28 pages thereof. This is version 1.3, dated November 2022. Who was this arrangement with?

Mr Pezzullo: That's an internal procedural instruction to our staff about how to go about their engagement with the technology companies—Meta and companies of that nature. Mr Roy will come forward, head of our counter-terrorism centre. That gives instruction and guidance to our staff. When you say an 'arrangement with', it doesn't form a legal agreement—

Senator ANTIC: But there is an arrangement with social media companies?

Mr Pezzullo: There's an arrangement outside the remit of the Online Safety Act. I'll go through this in components. The parliament, of course, has legislated in some cases direct legal powers that fall to the eSafety Commissioner. She can use powers in very particular circumstances under the Online Safety Act. Some of those assist us in our mission in terms of countering terrorist and violent extremist content, or TVEC, to use the acronym. A number of agencies and departments that operate in this space, where the legal thresholds of the Online Safety Act are not triggered, have got arrangements in place whereby, if we see something that might not quite fit or meet the thresholds of the Online Safety Act, we can engage through mutual benefit with those companies to say there's abhorrent material or terrorist or extremist content and, according to your own conditions—whether it's Facebook or one of the other major technology providers—you may wish to consider a takedown outside the remit of the Online Safety Act. I think it's fair to say, Mr Roy, that that document is a procedural instruction to our own staff about how to both trigger those arrangements and how to go through the steps mandated.

Senator ANTIC: When did this arrangement with social media companies first kick off?

Mr Pezzullo: Do you have the history, Mr Roy?

Mr Roy: I do. The OCIA, the Online Content Incident Arrangement, was established in early 2020, I think, in part as a response to the Christchurch attack, where there was a significant online element, as you'll no doubt remember. As the Secretary rightly says, it is a non-binding procedural advice for Home Affairs staff and also some other Commonwealth agencies on how to respond.

Senator ANTIC: So you effectively have a back-door portal to the ear of social media companies to ask them to remove content or to request that they remove content on a range of issues? I accept terrorism; that's a very legitimate one, of course. But somehow that has drifted into COVID related posts.

Mr Roy: A couple of things. Firstly, there's nothing 'back-door' about it. It's an agreement with social media companies either for the relevant agency, in the case of the eSafety Commissioner, to refer matters to providers under the eSafety Commissioner's own powers, or for other agencies to refer directly through a public referral that any citizen can make to social media companies.

Senator ANTIC: I also asked the question of the numbers of matters that were being referred. I was told that, through a five-year period, 1 January 2017 to 15 December 2022—that's just because that was around the time that I made the FOI request—there were 13,636 referrals to digital platforms. 9,423 related to terrorists and violent extremist related referrals. Fair enough. But 4,213 related to COVID-19 related content. In relation to

those we haven't been provided with any clarification as to what they were. Were any of those referrals relating to, I think, matters which have now been debunked and disproved, like for example the effectiveness of the COVID vaccines on transmission?

Mr Roy: I would refer to one of my colleagues to deal with the question on COVID referrals. I do want to clarify that the OCIA, as the Secretary has noted, is specifically in relation to abhorrent violent material or terrorism and extremist violence.

Senator ANTIC: Why has it drifted into the matter of public health, then?

Mr Roy: It hasn't. I suspect those things were connected in the FOI response to you, but the OCIA does not deal with matters of COVID referrals.

Senator ANTIC: So the Department of Home Affairs has not been making requests to social media companies?

Mr Pezzullo: I might ask Ms Hawkins from our strategic communications area to come forward. There are two different things at play here. In answering, very literally it would seem, the question that you asked, our staff very helpfully—I won't say 'conflated', but that's indicative—combined two different tracts of activity. The work of the counterterrorism centre, which Mr Roy is the acting head of, solely and exclusively concerns itself with terrorist and violent extremist content, TVEC. Following a decision of the Morrison government in the early part of the pandemic—I'll have to get the dates—Mr Hunt announced some work that Health, in conjunction with other partners and departments, would undertake from about March or April of 2020. I stand to be corrected on the dates—it's about three years ago. The Department of Home Affairs, because we're scanning social media for other purposes—terrorist incidents being live streamed and the like—if we came across material that, in the department of health's view, offended, or potentially offended, the disinformation and misinformation standards that the technology companies themselves have in place around COVID, as an assistant or an adjunct to the department of health—typically, I don't know if they've since built a 24/7 referral capability—we would take that on as, if you like, a utility player able to assist the department of health. So I just want to distinguish between—

Senator ANTIC: I've got that, but what you're describing there is effectively a censorship industrial complex that arises out of the department of health, presumably ATAGI and the Therapeutic Goods Administration directing traffic through the Department of Home Affairs to enforce that.

Mr Pezzullo: I'm not going to accept the characterisation. You'll have to ask Mr Hunt what was in his mind when he announced the counter COVID disinformation and misinformation initiative. We were then funded, as I recall it, Ms Hawkins. We got dedicated funding subsequent to that early emergency period. Initially, when the department of health was mobilising in relation to all sorts of things that were flying around the fringes, shall we say, of the internet, the government of the day was concerned to ensure that citizens—particularly in cultural and linguistic difficulties but otherwise—would have advice from the department of health. Because they didn't have a counter misinformation capability of any note, they would be assisted by the Department of Home Affairs to then trigger these referrals to Facebook and the like to say, 'You might want to consider taking this—'

Senator ANTIC: I understand the process. I'm concerned about the concept, in the sense that the Department of Home Affairs is effectively, under what you've described, almost the enforcer of various different parts of the narrative from different parts of the department. For example, if people are posting things disagreeing with climate alarmism, is the Department of Home Affairs going to interject and ask social media companies for that to be removed as well?

Mr Pezzullo: We had a particular role that arose from a Morrison government decision to lean in on COVID disinformation and misinformation. You used the term 'enforcer'. I just want to be clear. Unless something is triggered under the Online Safety Act, where there are legal powers that are vested in the eSafety Commissioner, the only thing that we can do is by way of mutual agreement and by way of these approaches to the companies to refer these instances of content to their own terms and conditions. So we enforce nothing.

Senator ANTIC: I get that, but this requires your staff to make a value judgement about matters of freedom of speech and then refer them on to others.

Mr Pezzullo: I cannot accept that characterisation. The work that we've done in COVID—is the funding drawing to an end at 30 June?

Ms Hawkins: It is.

Mr Pezzullo: That work is solely driven by the expert advice that we rely upon from the department of health. We don't have a separate view on the truth claims. If we're asked by the department of health, for instance, to look at claims that bleach will protect you from COVID—

Senator ANTIC: But that's not what we're talking about here. We're talking about—

Mr Pezzullo: I'm not sure what these referrals consist of, but—

Senator ANTIC: If you have a spreadsheet of these, can you disclose that?

Mr Pezzullo: We can take on notice the types, the instances. But they are take-down requests. There are no enforcement powers. They are requests to the company, be it Meta or any of the other companies. Ms Hawkins runs our strategic communications function. Am I right in saying to the senator—I don't wish to inadvertently mislead—that we don't have our own scientific unit or our own internal capability to adjudicate on the truth value or the claims that are contained in these referrals, and we rely, presumably, on advice that we take from Health?

Ms Hawkins: That is quite right. We're not the arbiter of truth, and of course we have no coercive powers and we are not in the business of being the arbiter of truth. Senator, I would just add to the evidence already given that, as the secretary says, we provide referrals to the platforms for them to consider taking down material against their own terms and conditions. In terms of what we're looking at, Facebook, Meta—to use an example—has got a policy about misinformation and disinformation as it relates to COVID, and so we have been working with the platform. We have got a service provider that looks across various platforms. They identify misinformation and disinformation as it might infringe, for example, Facebook's own policies. Then we provide that to the platform and say, 'For your consideration, against your own policies.'

Senator ANTIC: But, Ms Hawkins—

Ms Hawkins: That was part of work where, early on in the piece—

Senator ANTIC: But misinformation on whose terms? This is the point, right? We're now seeing a lot of things that were done at the time that are now considered to be incorrect—not disinformation or misinformation—that may or may not have been pulled down at the request of the department. How does the department—it's still going on—assess posts for misinformation or disinformation? How is that done? How are they identified?

Ms Hawkins: As I said to you, we have a service provider that we have contracted to do that. We then look at the proposed referrals that they provide to us. We look at the policy—and I'll just keep using the example of Facebook, as they are the platform to whom we made the most referrals—and we look at how those posts actually fit with Facebook's own misinformation and disinformation COVID policy, and then we make the referral—

Senator ANTIC: So the Department of Home Affairs is the whistleblower for big tech censorship.

Ms Hawkins: I wouldn't characterise it as that, Senator.

Senator ANTIC: But you're using the tools to identify posts that don't fit within the regime's narrative when they may be totally wrong—

Senator Watt: You said 'regime'.

Senator ANTIC: Yes, the regime!

Senator Watt: Is that a reference to the Morrison government, which brought in these changes?

Senator ANTIC: Well, no, you're in government now, Senator Watt.

Senator Watt: But this was introduced by the Morrison government.

Senator ANTIC: But it's also happening now, Senator Watt.

Senator Watt: The—

Senator ANTIC: Do you endorse censorship of social media? Is that—

Senator Watt: Are you accusing the Australian government, under either party, of being a regime?

Senator ANTIC: That's a broad term. Do you endorse the process—

Senator POLLEY: You used the term—

Senator ANTIC: We're not talking to you. Do you endorse the process? You're quite comfortable for government departments—unelected bureaucrats—to make value judgements about freedom of speech—

Senator Watt: No, no—

Senator ANTIC: and then refer them to the heavies in social media?

Senator Watt: Well, I know that—

Senator ANTIC: Is that what you're saying?

Senator Watt: I know that you've built your career on this stuff, and I don't particularly want to encourage that, but I'm comfortable—

Senator ANTIC: Well, I've been subjected—

Senator Watt: with governments providing and ensuring that the Australian public receives information based on science rather than—what was your phrase, Mr Pezzullo?—'on the fringes of the Twittersphere', or the fringes of the internet—

Senator ANTIC: Well, we know that you're from the left faction of the Labor Party. You love the uniparty totalitarian approach. We get that—we get that! There's only one truth in your world, Senator Watt.

Senator Watt: Oh, okay.

CHAIR: Senator, Minister, if we could just—

Senator Watt: Sorry. We don't all live in *Animal Farm*—

Senator ANTIC: Well, I wasn't directing questions to Arthur Dunger here. I was—

Senator Watt: Nonetheless, I think *1984* is nonfiction and—

Senator ANTIC: Yes, that's right.

CHAIR: Okay. We'll get back to questions, thank you—

Senator ANTIC: You're much less agreeable since you've been sitting in that chair. You should get some exercise!

Senator Watt: No, I think it was a really good thing that the Australian government, whether it was a coalition government—

Senator ANTIC: To censor people's freedom of speech?

Senator Watt: or a Labor government, provided factual, science based information to the Australian public about COVID.

Senator ANTIC: Under this, will you be directing the Department of Home Affairs to interject in the Voice, and to take down posts in relation to the Voice—

Senator Watt: This is just a nonsense!

Senator ANTIC: Well, yes or no? Will you?

Senator Watt: This is just complete nonsense!

Senator ANTIC: Well, that doesn't sound like a no. Will you be directing the department too—

Senator Watt: Senator Antic, I'm not going to—

Senator ANTIC: on the matters of hate speech—

Senator Watt: contribute to your conspiracy theories, which you've built your career on.

Senator ANTIC: It's not a conspiracy. Well, what's a conspiracy? So you're denying that this is what took place, that the Department of Home Affairs blew the whistle on people who were—

Senator Watt: I'm denying that your conspiracy theory exists. That's what a conspiracy theory is.

Senator ANTIC: posting about matters that have now been proven to be correct.

Senator Watt: That's what you say.

Senator ANTIC: That's what I say.

Senator Watt: I'll leave it to the Australian public to decide whether they want to listen to you or to the Department of Health.

Senator ANTIC: They don't want to listen to you! No-one's heard of you!

CHAIR: Senator!

Senator Watt: Well, I'm really hurt. I'm really, really hurt by that—

Senator ANTIC: You should be!

CHAIR: Senators—

Senator ANTIC: Anyway, my final questions are for the secretary. Could you please produce the document—sorry, this is the OCIA; I'm not good with acronyms. And could you also produce the spreadsheet that relates to the 4,230—

Mr Pezzullo: Senator, if I might? We took a decision and a viewpoint under the Freedom of Information Act but, given the privilege of the Senate, where of course the withholding of such information really is a matter for

the Senate, based on potential claims we might make, I'm going to look afresh at the document and see if there's more of the document that I can provide to the Senate through the on notice process.

As to the sheet: are you referring to COVID? You asked about that spreadsheet—

Senator ANTIC: Yes.

Mr Pezzullo: Whether we aggregate a table of 13,000 entries—I don't know if it would make much sense. But is there some way that we can perhaps come back with some aggregated data on the types of referrals?

Ms Hawkins: Yes.

Mr Pezzullo: Senator, if I can give you an absolute assurance—it just troubles me and I want to leave you with peace of mind—on your reference to censorship and the like, COVID was a public health emergency. There was a task that the government of the day asked us to do to assist in the amplification of counter-messaging that might be unhelpful to people's health. I take your point that subsequently other scientific research is done, things are adjusted. You take a time in point view, so, if we're working with the Department of Health and say Facebook under its COVID policies, our staff diligently apply the terms and conditions that are applicable at that time. My final point on this: you've said several times that we've got a role to play in thwarting free speech. The internet itself is governed by some restrictions that are contrary to free speech. You cannot live stream a terrorist attack; it's actually a criminal offence. You cannot produce and peddle abhorrent neo-Nazi or anti-Semitic material. You cannot live stream, for instance, the abuse of a child, so any suggestion that the internet is just this freewheeling—

Senator ANTIC: No-one's suggesting that.

Mr Pezzullo: discursive platform—

Senator ANTIC: No-one's suggesting that. We all know there are limits on freedom of speech.

CHAIR: Senator—

Mr Pezzullo: Then it becomes a question of where you start to draw lines.

Senator ANTIC: Sure.

Mr Pezzullo: It's not an absolute moral judgement. It's potentially a relative judgement.

Senator ANTIC: Understood, and I accept your point. What I'm troubled by—

CHAIR: This is your last question, Senator Antic.

Senator ANTIC: Thank you—is the interjection of unelected bureaucrats into the realm of freedom of speech and into the realm of publishing. That's what troubles me because—

Mr Pezzullo: I would contend we haven't done that.

Senator ANTIC: and of government departments generally, regardless, Senator Watt, of the government of the day. I speak on behalf of the Australian people, not just one colour, like you.

CHAIR: Senator Antic, thank you. I'll just remind all senators to direct your questions through the chair. Senator Roberts, you have a question.

Senator ROBERTS: Thank you, Chair. And thank you for appearing today. Just to clarify, I looked up the definition of regime, and it includes the government of the day, so, Senator Watt, you are a part of the Albanese regime.

CHAIR: Have you got questions?

Senator ROBERTS: Yes, I have, I just wanted to clarify that. Mr Pezzullo, counterterrorism is important; I want to say that up-front. Extremists can pose a threat; I want to say the up-front. But labelling and categorising people, anti-vax etcetera—that is not okay. What has been the arrangement between Home Affairs and social media platforms to intervene or censor or block posts related to COVID-19 that were or are contrary to government policy? Was it purely being the conduit from the department of health to the media platforms?

Mr Pezzullo: And also making judgements against the platforms' own policies, but to answer the senator's question, I said earlier that we're not the arbiters of health science. Can you describe what might have triggered action on the part of our staff to start a to draft up a referral, for instance? Ms Hawkins?

Ms Hawkins: Senator in terms of the way I was answering the previous senator's question, I would say to you that the government was concerned about instances of harmful mis- and disinformation in relation to COVID. This line of effort was set up in 2020 and, as the secretary has said, it came out of the fact that we had been doing referrals in relation to terrorist and violent extremist content. As I understand the secretary's evidence in terms of having conversations with the department of health early in the piece about the fact that we could use that same kind of mechanism to provide referrals about harmful mis- and disinformation in relation to COVID, we could

use a similar technique that we had been using in the context of terrorist and violent extremist content, and we could use that same kind of technique in relation to harmful mis- and disinformation in the context of COVID. For example, in relation to Facebook's policies on mis- and disinformation, we scanned the environment, we identified where there were harmful instances of mis- and disinformation in relation to COVID, and then we provided those referrals to platforms, such as Facebook, for them to determine against their own policy about not allowing COVID mis- and disinformation on their platforms. So, in relation to their own policy, we then made referrals to say, 'You might want to look at these posts, in the context of your own policy, about not having COVID mis- and disinformation on your platform.' That's what we have been doing since 2020, and, as the secretary said earlier, we will finish doing that on 30 June this year.

Senator ROBERTS: Mr Pezzullo, your department has been a conduit between the department of health and Meta and other platforms, and those platforms have been funded by big pharma to shut down posts that raise any questions about the COVID-19 injections. So you're actually aiding and abetting censorship of relevant and scientifically correct information. As Senator Antic pointed out, much of what was labelled misinformation by people like Meta is now found to be correct and true. So you aided and abetted in the injection of Australians that led to 30,000 excess deaths in 2022.

CHAIR: Senator Roberts, do you have a question?

Senator ROBERTS: Yes, I did.

CHAIR: The officials are here to answer your questions.

Senator ROBERTS: You were a conduit from the department of health to Meta and other platforms. Are you a conduit for any other departments? Do you follow their instructions just like you followed the department of health's?

Mr Pezzullo: On the question of health, 'conduit' may not be the right phrase, because that would imply that an action was initiated in the Department of Health, sent to us as, if you like, a clearing house and then forwarded on. I think the evidence you've heard is that, in order to relieve the Department of Health at the time when we were dealing with the front end of a public health crisis, we stepped into that breach to say: 'We've got the capability. As long as we can understand from ATAGI and others what the broad parameters are of health information the public should be advised of versus harmful misinformation, we'll run with that'. And we put in place a program that allowed us to do that. As to your characterisation of the COVID-19 response and the efficacy of vaccines—you made reference to Australians being injected—I ask you to direct those questions to the department of health.

Senator ROBERTS: I will be.

Mr Pezzullo: I'm sure you will be. They're better qualified to give you a better view, certainly, than I can, about the efficacy of that advice. We're not a health department. We don't have an independent way of saying to the—

Senator ROBERTS: So you're a conduit.

Mr Pezzullo: Well, 'conduit'—again, I'll just repeat what I said.

Senator ROBERTS: You take orders from the department of health.

Mr Pezzullo: A conduit implies that an action is initiated in one department, it comes through a middle broker, such as ourselves, and ends up in Facebook. Other than the policy settings being made known to us by the department of health, this was an area of action, like so many other things in the early days of COVID, where we didn't need any instructions; we were just told to get on with a function, which we performed. Occasionally there would be engagement with Health, to make sure that we weren't operating off obsolete information.

Senator ROBERTS: So you were just told to do it. Who was the service provider advising you on what was or wasn't misinformation?

Mr Pezzullo: We use the service provider to do the scanning, do we not?

Ms Hawkins: That's right. The service provider that we have used is M&C Saatchi.

Mr Pezzullo: Who do the scanning.

Ms Hawkins: Who do the scanning. They—

Mr Pezzullo: They're not scientific advisors, as such.

Ms Hawkins: Exactly. They're scanning the platforms and then providing us with proposed referrals that they consider are in breach of the platform's own policy on misinformation and disinformation in relation to COVID.

Then there would be staff in my team who would consider that, and, after considering Saatchi's proposed referrals, we would decide whether or not to pass it on to the platform.

Senator ROBERTS: Is it not true that it was said in past Senate estimates that Home Affairs considers that a significant threat to Australia is that of domestic terrorism?

Mr Pezzullo: I'm sorry?

Senator ROBERTS: Isn't it true that in past Senate estimates Home Affairs has said that it considers a significant threat to Australia is that of domestic terrorism?

Mr Pezzullo: Most certainly.

Senator ROBERTS: I was hoping you'd say that.

Mr Pezzullo: It's one of the key risks that we seek to manage.

Senator ROBERTS: Do you consider that those who would challenge the safety and efficacy of COVID-19 vaccinations are domestic terrorists—if they challenge government policy?

Mr Pezzullo: Not if it wasn't associated with any extremism, politically motivated violence or planning to attack institutions of society, no.

Senator ROBERTS: Do you consider that those senators who have posted comments opposed to the COVID-19 mandated vaccines—injections—are domestic terrorists?

Mr Pezzullo: Senators?

Senator ROBERTS: Yes.

Mr Pezzullo: You can post whatever you like, Senator. You have the privilege of being a senator.

Senator ROBERTS: I'm pleased that you just said I can post whatever I like, but Meta will not let people like Senator Antic and myself, and Senator—

Mr Pezzullo: If they, with their own service conditions, take your post down, then you can you deal with them as an elected representative. If you want to contest their takedown, then feel free.

Senator ROBERTS: Are you aware of any social media posts by elected members of this Senate that have been secretly censored through this arrangement?

Mr Pezzullo: I have no advice or information on that.

Senator ROBERTS: Interfered with in any way?

Mr Pezzullo: I don't know.

Senator ROBERTS: Limited in reach? Not just censored, but limited in reach, so we can get to fewer people?

Mr Pezzullo: A posting by a member of the House or the Senate? I don't know. I will check. When we come back to Senator Antic, will I be surprised to learn that there were any referrals that related to a member of parliament?

Ms Hawkins: I hope not.

Mr Pezzullo: I'll check, but I'm rather thinking I won't be surprised.

Senator ROBERTS: Are you aware of any posts by members of parliament that were taken down as a result of your actions?

Mr Pezzullo: That was a side discussion I just had. I don't even know that we made any referrals that related to parliamentarians.

Ms Hawkins: I would have to take it on notice, Senator.

Mr Pezzullo: I would be surprised and verging on disappointed if we had.

Senator ROBERTS: Could you find out in particular if Home Affairs has been involved with or responsible for any of the posts that have been taken down from my media pages and also restricted in any way.

Mr Pezzullo: That, in effect, is a subset of the question asked by Senator Antic, but we'll make a particular effort to check. I'm interested as well. There are questions of privilege that I would be much more respectful of than Facebook might be. It might well be, if we have made such a referral, that it's something that I'll need to reflect on. But I will check. In fact, why don't I come back to you directly in relation to your own personal circumstances, on notice?

Senator ROBERTS: Thank you. Several MPs, in both the Senate and the House of Representatives, have been heavily censored for posting material that was classified by social media platforms as misinformation and has now been found to be true.

Mr Pezzullo: Regarding the latter part of your assertion—in what might have been a question; I'm not quite sure—I don't have any basis for thinking that something that was considered to be misinformation at the time under social media policies is now, through some kind of scientific evolution, considered to be true. I just don't know.

Senator Watt: Senator Roberts, would you mind clarifying who it is that you say has found these comments to be true?

Senator ROBERTS: The government itself. Pfizer itself has admitted itself that the COVID-19 injections are not safe and effective. Yet the government, the previous regime, under Morrison, said that they were safe and effective. They're neither effective nor safe. They have negative efficacy. That's proven.

Senator Watt: That's always been your opinion. I'm wondering which authority you're pointing to that has deemed—

Senator ROBERTS: Pfizer vice-presidents.

Senator PATERSON: A point of order. It's not appropriate for a minister to ask a senator a question.

Senator Watt: One of your senators was asking about this as well.

Senator PATERSON: No. A minister is directing questions to a senator. I don't think that's the usual order of—

Senator Watt: Well, when an assertion is made that things are true—

Senator ROBERTS: Mr Pezzullo, are you aware that—

CHAIR: Senators! I think the minister is actually trying to assist Senator Roberts, as I think most of us do. Senator Roberts, if—

Senator Watt: If an assertion is going to be made that something is untrue, I think someone—

CHAIR: Minister! I'm speaking. Thank you. Senator, you have one last question.

Senator ROBERTS: How many other senators have had their media posts censored through these arrangements? Could you get back to me on that one as well, please.

Mr Pezzullo: I will, as a further subset of the question taken on notice from Senator Antic, make a particular point of checking whether any referrals related to members of the House or the Senate—inclusive of you, but others as well.

Senator ROBERTS: Thank you. Minister, if senators have had their media posts censored by Home Affairs being a conduit to Meta and other platforms, then I call for a full royal commission to get to the bottom of this gross breach of freedom of speech at the highest level. The Labor Party itself—

Mr Pezzullo: I'm so sorry, Senator, I missed the first part of your question.

CHAIR: I don't think it was a question.

Senator ROBERTS: The Labor Party has already said—Anthony Albanese said, before the election, that he committed to a royal commission. Will we now have a Labor Party royal commission?

Senator Watt: The whole thing is based on a hypothetical about whether senators or MPs have had their social media interfered with. Let's wait and see what the answer to that question is. Let's continue the questioning with Senator 'Professor' Rennick.

Member of the committee interjecting—

Senator Watt: I don't spread COVID misinformation.

Senator RENNICK: We're not the ones spreading misinformation, Murray.

CHAIR: Senators! I can suspend the hearing, if you'd like to have a discussion outside. I don't think that's helpful for anyone. Senator Polley, you had a point of order?

Senator POLLEY: I'd just like to remind committee members to use the proper titles of people from the other place. It's 'Prime Minister Anthony Albanese'.

CHAIR: Thank you, Senator Polley. Senator Paterson, I think you have a question.

Senator PATERSON: I have a couple, in fact. I have some questions about the Cyber Security Strategy, specifically the National Office of Cyber Security, which the Minister for Home Affairs and the Prime Minister

announced, on 27 February, the government would establish. If the relevant officials are making their way to the table, I'll just start some questioning and see how we go. Was it a Department of Home Affairs recommendation that a national cyber coordinator role be established?

Mr Pezzullo: I'm in that rather delicate area of particularising the specifics of the advice tendered. I think the practice—and the chair will assist me—is that if advice has been given then officials are fairly obligated to respond, but, if you start to get into the specifics of advice given as part of a cabinet process, I think typically, Chair, the ruling would be—

Senator PATERSON: I haven't yet. I may do, and we can litigate that issue if I do, but at this stage I'm just asking: did the Department of Home Affairs recommend that a national cyber coordinator be established?

Mr Pezzullo: You're asking me directly on options provided by the department in relation to a whole-of-government process. I can advise that advice was given. I've been appearing many years at this table, and typically—in fact, I think I used to say it to you, Minister—

Senator Watt: I was having déjà vu.

Mr Pezzullo: the nature of that advice is confidential to the government of the day, and it's really either for the government to disclose—through a cabinet disclosure process subsequently, when the archives are opened up—or otherwise. It's really for the minister to particularise.

Senator PATERSON: I'll press on and see how we go. When was the advice provided?

Mr Pezzullo: In the lead-up to the consideration by government of cyber coordination arrangements that were announced by the Prime Minister on 27 February. So there would have been some weeks, or perhaps even several months, leading up to that consideration. I'm happy to answer questions on process—the length of time that we took to develop advice, working with other departments and agencies, and the giving of advice—but I'm just drawing a line on the particulars of the advice. Otherwise we get into: 'What was in that cab sub? What was agreed? What wasn't agreed?'

Senator PATERSON: I haven't asked anything about any cab subs. I may yet but I haven't yet.

Mr Pezzullo: Well, we're getting very close, Senator.

Senator PATERSON: Well, let's deal with that when I do, if I do.

Mr Pezzullo: Okay. Thank you. So, as to the amount of time, it took some weeks in the lead-up to the announcement on 27 February to work through the interagency process—as I recall it, Mr Hansford?

Mr Hansford: Indeed, and it was a whole-of-government process that we fed into. The majority of our advice was provided in February 2023.

Senator PATERSON: Perhaps on notice you can come back on the date advice was provided about the cyber coordinator role specifically. You mentioned an interagency—

Mr Pezzullo: Sorry, Senator, I need to ask, 'To whom?' because, as was just mentioned, it was an interagency process—

Senator PATERSON: I'm coming to that.

Mr Pezzullo: led by the Prime Minister's department.

Senator PATERSON: The advice either to the minister or to the cabinet—I'll let you decide on notice. You mentioned an interagency process. Which agencies were consulted on this proposal?

Mr Pezzullo: We didn't lead it. The process was led by the Prime Minister's department.

Senator PATERSON: Was it the Prime Minister's department that originated this proposal, and not Home Affairs?

Mr Pezzullo: The question of cybersecurity governance arrangements was a matter commissioned by the Prime Minister and led by the Prime Minister's department. I think they were at the memorandum, from memory, Mr Hansford?

Mr Hansford: Yes.

Mr Pezzullo: So the Prime Minister's department led a whole-of-government interagency process to say: in light of Optus, Medibank, the developments in cyber otherwise, and having regard to the Cyber Security Strategy, which the cybersecurity minister is leading, in terms of whole-of-government governance, what are the best arrangements that are fit for purpose between the criminal element, the cybersecurity element, the policy element and the regulatory element? And we certainly—very actively, I think it's fair to say—fed into that process.

Senator PATERSON: Right. So, if it was the Department of the Prime Minister and Cabinet that led that process, from which this recommendation came, am I right in assuming that it was as a result of the Mrdak review?

Mr Pezzullo: I think that's been announced, hasn't it, Mr Hansford? I'm trying to remember.

Mr Hansford: I think so.

Mr Pezzullo: There was a review into cybersecurity coordination done by former secretary Mrdak, and the government has responded to that by way of the series of announcements that you saw outlined on 27 February.

Senator PATERSON: Right. So it sounds to me like this might have been a recommendation of the Mrdak review, which then PM&C led, rather than Home Affairs. It doesn't sound like it originated from Home Affairs.

Mr Pezzullo: We don't have a remit to lead a whole-of-government process on whole-of-government processes. That's what the Prime Minister's department is for.

Senator PATERSON: Have you seen the Mrdak review?

Mr Pezzullo: Yes.

Senator PATERSON: Do you have a copy of the Mrdak review?

Mr Pezzullo: Not with me.

Senator PATERSON: I didn't ask you if you had it with you. I don't assume you literally carry it with you in your pocket.

Mr Pezzullo: I've read it. It's not a report to me or to my minister; it's a report to the Prime Minister and his department. Questions about the Mrdak review should properly be directed to that department.

Senator PATERSON: But do you have a copy of it?

Mr Pezzullo: Yes.

Senator PATERSON: Could you provide it to the committee?

Mr Pezzullo: I will seek some counsel based on the chair and the minister. It's not my report.

Senator PATERSON: You can take that on notice. When did Home Affairs first become aware of the decision to establish the office for cyber security?

Mr Pezzullo: We were part of the interagency process.

Senator PATERSON: On what date did you first become aware of the proposal?

Mr Pezzullo: We can come back with a broad chronology.

Senator PATERSON: Thank you; that would be good. Has it been established?

Mr Pezzullo: The office has been established. There's no current occupant. The minister and I are going through a process. It was a government decision to make it a cabinet appointment, so it'll be an appointment by way of either contracted engagement or public service appointment to my department. The occupant of it has to be someone I'm prepared to appoint.

Senator PATERSON: Understood. So the coordinator has not yet been appointed?

Mr Pezzullo: Correct.

Senator PATERSON: But it's your evidence that the office is running, even without the coordinator?

Mr Pezzullo: The function is being performed in the interim by Mr Hansford in terms of the broad remit of the office, which is: coordinating incident response, consequence response and assisting the minister with the cybersecurity—

Senator PATERSON: How many people are working in the office?

Mr Hansford: I've got a small team working on issues that would form part of the National Office of Cyber Security, and my team are working on those products before a coordinator is appointed and before the coordinator can set up the formal office. I have people working on the issues.

Senator PATERSON: But they're generally in your team. They don't specifically have the hat that they're working in this role.

Mr Hansford: They're working on office related functions.

Senator PATERSON: From your existing staff?

Mr Hansford: That's correct.

Senator PATERSON: So no new staff have been hired to work in the office?

Mr Hansford: Not at this stage.

Senator PATERSON: So the office has been established but, really, it's just the people that were already there who are already reporting to you?

Mr Hansford: That's right.

Senator PATERSON: Okay. On 27 February the minister said that the cyber coordinator would be in place within the next month. It's three months since the minister made that announcement. Why is the position still vacant?

Mr Pezzullo: There's still a recruitment process underway. Some decisions will have to be made about the right fit of the skill set and the applicant we're looking at. There are different ways to approach this. It could be a deeply technical person or a person who can get things done within government systems. The minister and I are still in a discussion about the person who might best fit that role.

Senator PATERSON: Have interviews taken place for the role?

Mr Pezzullo: Yes.

Senator PATERSON: Is there a shortlist of candidates?

Mr Pezzullo: There is a selection report that the minister and I are in discussions about.

Senator PATERSON: And you mentioned it's a cabinet appointment.

Mr Pezzullo: It'll be an appointment that she will take to the cabinet. In legal terms, unless the government is of the mind to create a statutory or executive agency position, in which case ministers make the appointment, this will be a departmental appointment—so it's something that she and I agree that I can make lawfully. It'd be foolish of me to give her a recommendation that I couldn't then follow through on with a lawful appointment. She will have names made available to her that I can lawfully appoint. Then the cabinet will select someone—it's a cabinet appointment—and then I will appoint them.

Senator PATERSON: So there's a shortlist of names, and you and the minister will come to an agreement about the preferred candidate from that shortlist of names—which you have not done yet?

Mr Pezzullo: Correct.

Senator PATERSON: And then once you've done that you'll take it to cabinet—

Mr Pezzullo: She will. I don't take things to cabinet; the minister will.

Senator PATERSON: I didn't literally mean you; you know what I mean. The portfolio will present it to cabinet, and, assuming that cabinet agrees, it can then be announced.

Mr Pezzullo: Correct.

Senator PATERSON: Do you have a time line for when you and the minister will resolve it?

Mr Pezzullo: The minister is very keen, as am I, to resolve it as soon as possible. I've got no doubt we'll move quickly on it.

Senator PATERSON: What does 'move quickly' mean, given we're two months overdue? It's three months since it was announced, and it was supposed to be in place within one month.

Mr Pezzullo: I accept that description of the background. It's been a question of lining up interviews and thinking through the skill set we want and the occupant relative to the applicants who came forward. I can't imagine it will take much longer. That's all I can really advise you of.

Senator PATERSON: Good. What role did the National Office of Cyber Security play in relation to the Latitude data breach?

Mr Pezzullo: The cyber incident response staff—who are, in a surge, up to 55 or so—will be available to the coordinator. They're the staff who are working on that incident now. Mr Hansford is performing very valiantly. There are only so many hours in the day.

Senator PATERSON: I don't doubt that at all.

Mr Pezzullo: He's currently covering the role. The staff who will be part of the 55-strong action team that will surge to deal with incidents and consequences—they are the staff, presumably, assisting you?

Mr Hansford: Correct.

Mr Pezzullo: Did you ask about Latitude?

Senator PATERSON: Latitude specifically. Mr Hansford's a busy man. He's got a substantive role which is big enough already. This is an additional very substantive role which the government has recognised needs to be

standalone. I'll leave this as a comment rather than a question: hopefully he doesn't have to do both roles for too much longer.

I've asked about the Mrdak review. As I understand it, there was also the review—commissioned by the department in this instance, rather than PM&C—of Rachael Falk into the Optus and Medibank incidents.

Mr Pezzullo: Yes.

Senator PATERSON: On what date was Ms Falk commissioned to undertake that review?

Mr Hansford: I'll have to check on the actual date she was commissioned.

Senator PATERSON: This will probably also have to be on notice: on what date was it given to the minister?

Mr Pezzullo: We'll come back in the same response.

Senator PATERSON: Thank you. Did Home Affairs develop recommendations or advice in response to Ms Falk's review?

Mr Pezzullo: Have we finalised our advice?

Mr Hansford: We haven't finalised it. We've developed advice, and we're working with government to try and get that agreed.

Senator PATERSON: So there will be a government response to the Falk review, which you're working on?

Mr Pezzullo: Yes.

Senator PATERSON: Will the review itself be made public when the government response is made public?

Mr Pezzullo: That'll be a matter for the minister.

Senator PATERSON: What's the minister's intention? Have you discussed it with the minister? Do you have any knowledge of her intention?

Mr Pezzullo: Do we have any clear advice, or is it something we need to take on notice?

Mr Hansford: The government will have to consider the response and work out what they do in terms of the specific policy initiatives and then whether or not the review will be released publicly in that context.

Senator PATERSON: Is there any reason why it wouldn't be released? It's a taxpayer funded review. Ms Falk is an eminent cybersecurity expert who also publishes her views publicly through her other role. Is there any reason why this one wouldn't be public?

Mr Pezzullo: It's not a report to me or the department; it's a report to the minister.

Senator PATERSON: But commissioned by the department, presumably?

Mr Pezzullo: It'll be a matter for the minister as to whether it's released at the time the government's response is made known or at some other time.

Senator PATERSON: When will the department's advice to the minister be finalised? What's the time line for that? When has the minister asked you to finalise it by?

Mr Hansford: We've provided the minister with some advice already about the recommendations. We've been engaged in discussions with the minister. Ultimately, it is a choice for the minister when she might decide to take that to a broader government audience. Just circling back on the Falk appointment: it was 4 November 2022.

Senator PATERSON: That was when it was commissioned?

Mr Hansford: That was when she was appointed.

Senator PATERSON: Thank you.

Senator Watt: Can I add one thing, Senator Paterson. I think you asked Mr Pezzullo for a copy of the Mrdak report. It probably is more appropriate that that question go through PM&C, given it was their—

Senator PATERSON: It's also being asked there. For the avoidance of doubt, I'm just covering all bases.

Senator Watt: Sure.

Senator SHOEBRIDGE: Secretary, in the exchange earlier today you indicated that, as part of the response to the Corner report on VERA-2, the department had engaged the Australian Institute of Criminology to do a review; is that right?

Mr Pezzullo: Yes.

Senator SHOEBRIDGE: I assume you're talking about the Cubitt and Wolbers report delivered last year?

Mr Pezzullo: I might just ask Mr Roy to return to the table. I don't know who the authors were.

Mr Roy: Yes, it's the Australian Institute of Criminology review into violent extremist risk assessment tools in divisions 104 and 105A of the Criminal Code, published on their website this month.

Senator SHOEBRIDGE: It was because of the very hard questions raised in the Corner report, about the lack of academic credentials, the lack of adequate source materials and studies to underpin VERA-2R—that was the position put forward in the Corner report—that led you, as I understand it from the secretary's evidence, to get the review.

Mr Roy: The Australian Institute of Criminology report actually arose out of a recommendation of the PJCIS in September 2021, I think, into the examination of divisions 104 and 105A of the Criminal Code. It was a recommendation that further work be done on the VERA tool and also an examination of other similar risk-assessment tools. That comes from a recognition that the field of violent extremists risk assessment is still quite new, and the limitations that go along with that are well known.

VERA is what's referred to as a structured professional judgement tool. By virtue of that, it's because the dataset from which these tools are generated, terrorist offenders, just by sheer number are low compared to other crime types. So you can't get the level of predictive validity that you might find in tools that assess risk across other crime types.

Senator SHOEBRIDGE: The engagement with the Australian Institute of Criminology happened in the second half of 2021. Is that right?

Mr Roy: The report was commissioned in February or March 2022, and it was tabled in March 2023, so they've worked on it throughout that period.

Senator SHOEBRIDGE: In February to March of 2022, you'd had the Corner report in your hands for over a year and a half. Is that right?

Mr Roy: That's right, yes, and it was provided to the AIC to inform their own review.

Senator SHOEBRIDGE: Can you explain why there's not a single reference to the Corner report in the Australian Institute of Criminology review, not one single reference?

Mr Pezzullo: They operate under their own act, don't they? Is that question not better directed to the institute?

Mr Roy: It was provided to them for their consideration. It was not a public report at that time. The reason it wasn't a public report is because some of the content in that report goes to the way both VERA and radar tools are scored. There is a concern that, by making the methodology behind the scoring public, potentially, clients or future clients, subject in future to that risk assessment, would be able to manipulate the outcome—

Mr Pezzullo: Before we get to that point, I think the senator's asking about why the AIC report contains no public reference to Corner. I think that was your question?

Senator SHOEBRIDGE: There are 128 separate references to academic articles and journals.

Mr Pezzullo: In the AIC report.

Senator SHOEBRIDGE: There's a 61-page report, and there's not a single reference to the Corner report that shreds the VERA-2R assessment tool. How can you explain that, and how can you rely upon it, given that?

Mr Pezzullo: As Mr Roy said, the report was provided to the experts who undertook the work for the AIC. It seems to have been provided on the understanding that it would not itself be a public reference but would be drawn upon by the experts, I assume.

Mr Roy: That's right.

Mr Pezzullo: So if you found 128 footnotes and you don't find Corner then, properly, in the first instance, that's a question for the institute. But I do acknowledge—because we're before you now, not them—that we had a discussion with them about the provision of the document. I assume that was in full, without redaction?

Mr Roy: That's right, yes.

Mr Pezzullo: And I presume they could look behind—

Mr Roy: There were no limits placed on the AIC in their interactions.

Mr Pezzullo: So is it fair to say that we had an understanding with the AIC that they could draw on it but not refer to it?

Mr Roy: Yes.

Mr Pezzullo: I think that half answers your question. In the end, the ownership of the document, the academic integrity of the AIC work, is really a matter best directed to the institute itself.

Senator SHOEBRIDGE: Are you telling this committee that you directed the Australian Institute of Criminology that they could not refer to the Corner report? Is that the department's evidence, that they could not refer to the Corner report?

Mr Pezzullo: They operate under the statute—I don't concur with the description of 'directed'—

Senator SHOEBRIDGE: 'Told' is probably a—

Mr Pezzullo: Did you advise me that it was an understanding?

Mr Roy: It would be more accurate to say that we advised them that it was not a publicly available document, and for the reasons I described before, because it went into detail around the scoring of the tool.

Senator SHOEBRIDGE: So the primary response that Home Affairs has to the Corner report, that shreds the VERA-2R tool, is a report from the Australian Institute of Criminology—that there was a nod and a wink on—that it would make no reference to that Corner report. There was this nod-and-a-wink understanding that they would not reference the Corner report. That's where we've got to, is it?

Mr Roy: I wouldn't characterise it that way. There would have been a number of documents, that were not public documents, that were provided to support the AIC in its review. They were not limited, in any way, in how they interacted with those documents. Those reasons would have been good reasons, to preserve the operational integrity of those particular tool I would also clarify that the AIC report was not the primary response to the Corner report; it was in response to the PJCIS recommendation. And the AIC was able to interact with the breadth of studies on the VERA tool, not just limited to the Corner report, and it could interact with the full range of academic and practitioner works that relate to VERA.

Senator SHOEBRIDGE: Without engaging with the Corner report, which is the only credible, serious review of VERA-2R prior to the Cubitt report, doesn't that make the Cubitt and Wolbers report basically worthless? It's not worth the paper it's written on. It hasn't engaged with the only other serious critique of VERA-2R.

Mr Pezzullo: Sorry, Senator, so that I'm clear, what do you mean by 'engaged with'? They had the report. They could discuss the report in detail with our officers. When you say 'not engaged', it's not as though we handed it to them and said, 'Now, forget you ever saw that.'

Senator SHOEBRIDGE: I'm talking about the nod-and-a-wink understanding you had that they wouldn't reference it. I'm talking about the nod and a wink that said, 'Please, nobody mention the war.'

Mr Pezzullo: A public reference to confidential academic research is one thing. When you say 'don't engage', what that gave rise to in my mind was an inhibition or restriction placed on the AIC experts to look into these structured analytical techniques mentioned earlier. And as far as I'm aware and concerned, they engaged on the content of these structured judgement tools fully. Whether it appears in a footnote or not is important, but the second question—

Senator SHOEBRIDGE: It was not mentioned once in 61 pages, 128 reference points. It's such a glaring mistake that it makes the Australian Institute of Criminology report not worth reading.

Mr Pezzullo: You need to ask them what their own judgement is about their own report. The officer has just advised you—

Senator SHOEBRIDGE: How much did you pay for it?

Mr Roy: The AIC conducted the review at their own expense.

Mr Pezzullo: It was at their own expense. I'm just contesting, if I can do so, the reference you make that we somehow made them aware of a report, but can't touch it, can't engage on it, can't even look into it—that just simply didn't happen. The fact that it might not be referenced in the academic footnotes or the list of publications is a fair point. If you can't see it, I can't see it; fine, it's not listed.

Senator SHOEBRIDGE: It's not there. It's not that I can't see it; it's just not there.

Mr Pezzullo: Senator, with all due respect, I'm agreeing with you, but that doesn't mean that the experts who did the work on the other 128 academic references didn't also, in their mind, have, as front of mind, Corner's critique.

Senator SHOEBRIDGE: So if we read it under low candlelight in a dark corner somewhere, we'll get that vibe from it, will we? Are you saying there's a Corner vibe in it?

Mr Pezzullo: Well, you can characterise however you see fit. I've given you a straight and frank answer.

Senator SHOEBRIDGE: Secretary, I asked you earlier who in the department made the decision not to provide the Corner report, and I'm going to ask you again.

Mr Pezzullo: The Corner report, to whom?

Senator SHOEBRIDGE: To any one of the defendants whose matters through Home Affairs were progressing for continuing detention orders or to the Court of Appeal or to either of the Supreme Court judges. I'll ask you again. Who in Home Affairs made that decision?

Mr Pezzullo: My first response is: I don't know. It's not in my knowledge, so it certainly wasn't a decision taken by me. At the very least, it would have been an officer no higher than the rank of deputy secretary. Secondly, for the reasons Ms de Veau spoke about, these are matters that are ventilated in the affidavits that might well be the subject of cross-examination and the examination of witnesses in the not-too-distant future. And thirdly, as a consequence, my preference is to let those legal proceedings play out before I turn my mind to how I might respond to you on notice.

Senator SHOEBRIDGE: That may be your preference, but I'm pressing for an answer. You have an obligation to provide an answer. If you're wishing to make a public interest immunity claim through the minister, I suggest now is a good time.

Mr Pezzullo: Thank you, Senator. I thought we might come to that. Minister, the dilemma I'm faced with is that I know for a certain fact that these matters are ventilated in a series of documents that have been filed but not yet tendered in court. Her Honour, in the Supreme Court of Victoria, has indicated that this is a matter that she wishes to see examined in proceedings that involve the cross-examination of witnesses. I'm very reluctant to be more particular. I thought a respectful way of dealing with this would be to take it on notice so that we can let the effluxion of time deal with the judicial proceedings, and then I might be in a better position. But the senator, as you have just heard, isn't willing to accept that. So I seek some guidance from you about him pressing the question.

Senator SCARR: In this very public forum!

Mr Pezzullo: I thought I'd be very clear about the question I was asking my minister.

Senator SHOEBRIDGE: Minister, you would be aware of the provisions in *Odgers'* that say that when a matter is before a superior court of record, ordinarily, questions of sub judice would not prevent the answering of a question. You'd be aware of that—chapter 19 of *Odgers'*.

Senator Watt: I am, Senator Shoebridge. We've traversed this ground quite extensively now, including earlier today. I think Mr Pezzullo has been as helpful as he can be in the circumstances. He has taken your question on notice, and that may give rise to a PII claim. I think that's the appropriate way of handling it.

Senator SHOEBRIDGE: Minister, I'll ask you: who in the department made the decision not to provide the Corner report to the Victorian Court of Appeal, to Victorian Supreme Court judges or to three defendants in the criminal cases?

Senator Watt: Well, my answer is the same as Mr Pezzullo's, which is: first of all, I don't know, and, second of all, I'm happy to take the question on notice.

Senator SHOEBRIDGE: Are you seeking to make a public interest immunity claim?

Senator Watt: No. I'll do it through the correct procedure, which is first of all to take the question on notice.

Senator SHOEBRIDGE: Mr Pezzullo, does the department fund the centre of excellence that is reviewing, amongst other things, the high-risk offender scheme? Is there a centre of excellence being reviewed?

Mr Pezzullo: There's a centre for countering violent extremism, is there not?

Mr Roy: That's right.

Mr Pezzullo: Mr Roy has funding appropriated by government to establish and to underpin the operations of a centre for countering violent extremism.

Mr Roy: That's right. Senator, within the CVE branch, there is a centre of excellence for research, risk assessment and training, which has been funded by government over a number of years. One of the principle roles of that centre is to continue to commission research and validation studies on the range of risk assessment tools that are used by CVE practitioners nationally and to conduct training in those risk-assessment tools.

Mr Pezzullo: Does that pertain to high-risk terrorist offenders? Was that—your question was about high-risk terrorism?

Senator SHOEBRIDGE: HRTTO. Yes. High-risk terrorism offenders.

Mr Roy: The HRTTO regime is administered by the Attorney-General's Department. However, because some risk-assessment tools are used in the context of the HRTTO regime, then we do support training and research insofar as those tools support—

Senator SHOEBRIDGE: What's this year's budget, and what's next year's predicted budget, for the centre of excellence?

Mr Roy: I would have to take that detail on notice.

Senator SHOEBRIDGE: Has the centre of excellence been tasked with undertaking a review of the Corner report?

Mr Roy: Not a review of the Corner report specifically. It was the centre that referred the Corner report to the VERA tools author for her response. But also the AIC review of risk-assessment tools recommended further validation studies be conducted, including on the VERA tool, and it will be the centre of excellence that funds future independent validation studies of that tool.

Senator SHOEBRIDGE: Will you provide this committee with a copy of the response that the author of VERA-2 provided?

Mr Roy: I don't know that the author provided a formal response to the Corner report, but I can take that on notice.

Senator SHOEBRIDGE: So the centre for excellence asked for a response and didn't get one—is that your understanding?

Mr Roy: The Corner report was provided to her for her consideration in approving the tool. I would expect a conversation was had with that author in the context of providing the Corner report. I just don't know the form that the author's response takes, so I'll take that on notice.

Senator SHOEBRIDGE: Chair, I'm about to move on to another matter.

CHAIR: I do have to hand the call back to Senator Paterson. For ease of topics, I might go back to Senator Paterson, then we can come back to you as well, and I'll see if anyone else is seeking the call.

Senator PATERSON: Thank you, Chair. Thank you, Senator Shoebridge. I have some questions about the Chinese-headquartered technology company DJI, if any relevant officials need to come forward. Firstly, is the department aware of the developments in the United States, in particular last year, in relation to the company?

Mr Pezzullo: Which particular developments?

Senator PATERSON: In October last year, the Pentagon blacklisted DJI from providing any of its drones to the US military on the basis of a Pentagon assessment that the company is secretly controlled by the People's Liberation Army.

Mr Pezzullo: Yes.

Senator PATERSON: That followed previous sanctions from the US government more on human rights grounds, because they assessed that DJI is complicit in the surveillance and repression of Uighur people in Xinjiang.

Mr Pezzullo: Yes.

Senator PATERSON: Is the department aware of those developments, and has the department had any communication with your American counterparts on those issues?

Mr Pezzullo: I'll see if Mr Hansford can come forward, as this relates to critical technology that's got national security implications and applications. Now that you've reminded me, I'm certainly familiar with those developments. I'll see if Mr Hansford's about. In terms of whether we've directly engaged with counterparts, our counterparts wouldn't be the Pentagon; our counterparts would be the Department of Homeland Security. That's the first point. The second point is that we operate in our system of protective security governance slightly differently, I suspect, from how the US government works. We have a central framework known as the Protective Security Policy Framework that is vested currently with the Attorney-General's Department. It's their job to provide guidance for all agencies to give consideration, whether it's social media applications, cameras, drones and the like. So we would work, in the ordinary course, with the Attorney-General's Department, I think it's fair to say. Mr Hansford, the senator asked two questions. Are we aware of those American developments? The short answer is yes. We can deal with that. Have we had any contact with those departments? My sense would be probably not because we wouldn't deal ourselves with the Department of Defense, but we might have had dealings with the Department of Homeland Security. Can you shed any light on that, Mr Hansford?

Mr Hansford: Not on the specific company. We talk with Homeland Security and Quad and Five Eyes partners about critical technologies more generally on a very consistent basis. Even in the last month I've spoken to Homeland Security on critical tech and cybersecurity issues.

Senator PATERSON: Has the government sought any advice from the department about DJI?

Mr Pezzullo: The advice that we would provide would go to a broader interagency—

Senator PATERSON: Sorry to interrupt. That wasn't my question. My question was: has the government sought any advice? I will come to what advice, but, just as a threshold issue—

Mr Pezzullo: I understand that, but, even in terms of the process whereby advice is provided, the minister who owns the protective security framework is the Attorney-General, so questions regarding protective security in the first instance should be directed to the Attorney-General's Department.

Senator PATERSON: I plan to pursue this issue with them as well, but this is in part a cybersecurity issue—

Mr Pezzullo: Understood.

Senator PATERSON: and so I'm interested—

Mr Pezzullo: Our expertise in this instance is focused in the cyber area: the back links et cetera. We would, in the ordinary course, provide that advice to the Attorney-General's Department.

Senator PATERSON: Yes. Has either the Attorney-General's Department or the minister sought your advice on cybersecurity risks?

Mr Pezzullo: Yes, we've engaged with the Attorney-General's Department on the drones.

Senator PATERSON: They have. When did they seek that advice?

Mr Hansford: In relation to—

Senator PATERSON: DJI specifically?

Mr Pezzullo: The drones.

Mr Hansford: Sorry, I thought you meant just generally. I haven't received requests for advice on DJI from the Attorney-General's Department.

Senator PATERSON: How about from your minister?

Mr Hansford: I'll have to go back over our records and check to be precise. But that's in relation to the policy mission. There's a separate discussion about whether or not the department, to support our corporate area, including in the discussions through the Government Security Committee that the COO would talk to the Attorney-General's about—so there are two issues here, and we just have to make sure we provide an accurate answer.

Senator PATERSON: I'll accept that answer on notice.

Mr Hansford: Thank you.

Senator PATERSON: As you'd be aware, you've received questions on notice from me about whether your department uses these drones or other devices made by the company. They make a range of technology devices, including gimbals, which are for filming videos. The answer has come back that both the department itself, including its communications function, and the Border Force have a number of these drones and other related accessories. Now that you're aware of the US government blacklisting in two respects, do you think it's appropriate, first, that the department itself continues to use these products?

Mr Pezzullo: In short, no, but internal usage is a matter for the chief operating officer, so I'll get Ms Saunders to address that. Then Mr Hansford engages externally with the Attorney-General's Department and others on policy settings. Ms Saunders, in relation to the question on notice that we provided?

Ms Saunders: Senator, going directly to your question in terms of whether it is appropriate for us to be using the capability in light of the concerns that have been generated over recent weeks, we have actually suspended the use of that capability.

Senator PATERSON: I really welcome that. I'm pleased to hear that. We'll come later to a more holistic way of dealing with this other than you just responding reactively to questions on notice that I and others submit, but that's welcome. Does that answer apply to the Border Force as well?

Ms Saunders: Yes, it does.

Senator PATERSON: Great. So Border Force has stopped using the drones?

Ms Saunders: Correct.

Senator PATERSON: As of when did Border Force stop using the drones?

Ms Saunders: I'll have to take on notice precisely when. We have had conversations with the ABF this week in terms of a departmental position which they have responded to. So I actually issued a directive this week indicating that they are not to be used. When ABF actually ceased using them I would have to confirm.

Mr Pezzullo: I'm not sure if it was this week or—

Ms Saunders: Last week.

Senator PATERSON: It might have been last week. Thank you. Again, that's very welcome. I'm very pleased to hear that. That wasn't Border Force's initial response when I first put the question on notice as to this. They just came back and stated that they were using them. Then, in response to subsequent media inquiries, they again said they were going to continue to use them as part of a trial. What has changed between then and now? What has led you or the department to make this decision and direct Border Force to stop using them?

Ms Saunders: It's a combination of factors, but obviously we've been closely monitoring the reaction across government. We are all alive to what Defence's position has been in regard to this matter, and we've been engaging with Defence in regard to the review they're undertaking. We'll be working with them and other partners to satisfy ourselves as to the implications of the use of this technology before it is used.

Senator PATERSON: You mention Defence. The article about Border Force was subsequent to the Defence announcement that they had suspended their use of it. I think it was on a Saturday. It was Ellen Whinnett in the *Australian* who published an article on a Saturday saying Defence had stopped using it. In response to that, I called on ABF to stop using it. It would have been the Monday or the Tuesday of the following week that ABF provided their quote to the *Australian* that they will continue to use it. So they still had the benefit of the Department of Defence's position at that point and were continuing to use it. So obviously something subsequent to that article appearing has changed.

Ms Saunders: We looked at it from a portfolio perspective and took a departmental view that we would suspend that capability, and ABF have adhered to that direction.

Senator PATERSON: Great. As I said, I really welcome that. Do you have any visibility—maybe this is a question for Mr Hansford—as to whether this is going to be a government-wide directive, whether other departments and agencies are also going to cease using the drones?

Mr Pezzullo: That's a question better directed to the owner of the Protective Security Policy Framework.

Senator PATERSON: I'll ask them too, but I'm just asking for your level of awareness. Has it been discussed with other departments? Are they contemplating doing what you've done? Are you unilaterally doing this?

Mr Pezzullo: We don't chair the government's Security Committee, but maybe Ms Saunders can shed light on the discussion currently underway on the government's Security Committee, which tends to be all of the protective security advisers across departments and agencies. But I'd be reluctant to get too far ahead of where the Attorney-General's Department may wish to explain their thinking when they appear on Tuesday and Wednesday.

Ms Saunders: The secretary's comments are correct. AGD has the lead. But there is a technology committee that has been formed to which Home Affairs contributes. We'll participate in those conversations as they progress.

Senator PATERSON: Alright. I will pursue that with AGD, because, as you note, they are the Protective Security Policy Framework holder now post the machinery-of-government changes. Let's talk more broadly about the policy issue here—

Mr Pezzullo: Sorry, Senator. Just to be clear, the Protective Security Policy Framework has been vested with the Attorney-General's Department from day one. It was not transferred back.

Senator PATERSON: Duly noted. Let's talk about the wider policy issue here, which is that, in part, the department has made this decision in response to revelations in the United States. But that happened in October last year. It seems that this particular action for the department is more linked to me putting questions on notice on it earlier this year and, had I not done so, it's possible that this would have gone unaddressed. Don't we need more of a proactive approach in assessing cybersecurity and technology risks posed by companies like these so we're not just reliant on a question on notice being fired through the Senate?

Mr Pezzullo: In short, I wouldn't dispute that premise or the characterisation. Technologies, particularly platform based and cloud based technologies, have moved rapidly. A number of us across the Five Eyes, particularly, are engaged on this very question. Those sorts of decisions and choices will come with a cost because, in some cases, the use-case tallies and the cost from a value-for-money point of view would suggest that you use a particular type of technology. One thing I can say in relation to critical technology, cybersecurity and new and emerging technology is that we're engaged very closely with our partners in the defence department and intelligence agencies, as well as with the Attorney-General's Department.

The question that I think governments of all persuasions and across democracies generally will have to confront is how directive they start to become in terms of saying: 'Here is a type of kit or a type of technology that you will not use. What that means in terms of extant contracts and soon-to-be-finalised trials that might lead to a

procurement or future procurement all has to be managed by you as the accountable authority.' You saw Secretary Jones, for instance, make a very clear direction recently in relation to the removal of a particular social media application from all government devices and systems. I don't want to speak for her—it's really her call, not mine, because she's the delegated authority under the PSPF, or the Protective Security Policy Framework—but I suspect we're going to have to consider that approach more ubiquitously, simply because of the connectivity of devices, the connectivity of technologies, the way in which a drone or a camera or some kind of imaging device could potentially send its data back to a host server. I suspect—this is a degree of conjecture on my part—you will find more uniform and more ubiquitously restrictive approaches being considered. But that said, we're working through it very carefully and purposefully across all the range of risks and the benefits of the different approaches.

Senator PATERSON: I really welcome that. I think that is the right direction to head in. I look forward to following up with you on that in subsequent rounds of estimates to see how we've gone in putting that in place. I have a follow-on question, which is particularly relevant for Mr Hansford. Government has obviously made a decision in relation to these devices but also the cameras, Hikvision and Dahua, and social media applications—you referenced TikTok, Mr Pezzullo—that they're not safe to be in Australian government premises or on Australian government devices or used by Australian government departments and agencies. Have you turned your mind at all, Mr Hansford, as to whether or not that requirement should be pushed out through critical infrastructure providers as well? If it's not safe for government, because it presents a data security or espionage risk, is it safe for critical infrastructure providers to be having these cameras or these apps or these drones?

Mr Hansford: I think in terms of market interventions, our first piece of intervention in a regulatory sense was on 15 November 2021, when we put out Critical Technology Supply Chain Principles, which effectively says for the entire economy: here are some security elements that should be considered in procuring, particularly in the supply chain. Subsequently, for critical infrastructure on 17 February, Minister for Home Affairs put out the risk management program requirement for critical infrastructure. The overwhelming evidence we got for the parliamentary committee that you were previously a chair of, Senator, was to create principles based regulation in the first instance to really make sure that at a principles level across multiple infrastructure assets people were looking at security, so we can think about the framework. One element of which is the definition of material hazards. Then, within that, there are different material hazards which go to the protection of the functioning of infrastructure, one of which is the storage of data offshore as a consideration as a material risk. Another one goes to the remote control or the ability to access an infrastructure asset from offshore, and it's at that principles level that that program goes to, rather than specifically prohibiting or being more directive on particular types of technology. Then, finally, there's also a supply chain element, particularly for those large suppliers who might fundamentally impact the functioning of infrastructure. So the government has kept it at a principles level, and that's in direct response to the evidence before the parliamentary inquiry.

Senator PATERSON: If the government made a decision that this should be required, that this should be mandated, that these products shouldn't be used by critical infrastructure, does the legislation as it stands give the government sufficient power to do that, or would amendments be required to provide the government with that option?

Mr Pezzullo: For infrastructure operators or in relation to the government itself?

Senator PATERSON: For infrastructure operators. If you wanted to mandate that critical infrastructure providers, or a subset of them—SONS, for example—should not have TikTok on their work issued devices, should not have high vision cameras, should not have DJI drones, does SOCI allow you to impose that requirement, or would amendments be required to the act to facilitate that?

Mr Pezzullo: Without giving legal advice, Mr Hansford, I think you and I have discussed this. We think there's sufficient ambit, do we not?

Mr Hansford: I think in terms of the risk management program, a minister of home affairs could declare a particular device to be a material risk, then a company would have to mitigate, so I think it could be done in that construct. Just noting my previous advice that it's kept it at principles based, I think it would be open to a minister to consider that, pending any legal issues that might arise.

Senator PATERSON: Can I commend—for your consideration and the government's consideration—considering whether it's appropriate to do that. It seems to me, as a matter of logic, that if these products are not safe in the Australian government we shouldn't be comfortable about them being used in critical infrastructure providers either, especially in SONS as a subset, which, as you know, is the most sensitive component of them.

Mr Hansford: The other available technique might be using section 32 of the Security of Critical Infrastructure Act, which is a ministerial direction dependent on an adverse security assessment from ASIO.

Senator PATERSON: That's a good point. And, of course, nothing precludes critical infrastructure operators in the meantime taking their own initiative and sensing the tea-leaves and getting rid of these themselves. I would encourage them to consider doing that before any punitive or regulatory action is necessary.

Mr Pezzullo: Without extending on that very point, I would draw attention to the Quad agreement, struck just over the weekend, whereby the four Quad partners, for instance, in each of our jurisdictions have agreed joint principles to secure software supply throughout our supply chain. If I were looking to vend to the government, I'd be reading those principles—

Senator PATERSON: Indeed!

Mr Pezzullo: to say, 'If the government is not going to tolerate high-risk software in the development of code that is in services and products that I vend to government then, as a vendor, I need to smarten up.' And, whether by principle or by direction, they'll probably impose that on banks and telcos et cetera. So the signals are out there. That one instance of secure software, for instance, was announced by the four Quad leaders in Hiroshima just 24 hours ago.

Senator PATERSON: A point well made. Thank you, Chair.

Senator SHOEBRIDGE: I thought I'd moved off VERA-2R, but I can't help myself. I have two more questions, Secretary.

Mr Pezzullo: In that case I can't help but call up Mr Roy.

CHAIR: You're in fine company with people who can't help themselves!

Senator SHOEBRIDGE: They will be quick, I promise. The first one is: what is the department paying? What's the annual licensing fee for VERA-2R? Do we know?

Mr Pezzullo: What's the licence fee for VERA-2R, Mr Roy?

Mr Roy: I would need to take that on notice.

Senator SHOEBRIDGE: Is there just a single licensing fee for VERA-2R, or do you pay for different versions, in which case can you give me answers for the full suite of expenses?

Mr Roy: I would need to take that on notice as well. I don't have that before me. I do—while I have you—have an answer to your previous question about the Centre of Excellence funding for this year and next year.

Senator SHOEBRIDGE: Thank you.

Mr Roy: It was 2023-24 you were interested in; is that right?

Senator SHOEBRIDGE: It was. It was 2022-23 and 2023-24.

Mr Pezzullo: It was the current year and next year.

Mr Roy: Funding in 2022-23 for the Centre of Excellence is \$2.4 million, and in 2023-24 it is \$2.1 million. That includes staffing costs.

Senator SHOEBRIDGE: I think you indicated that the genesis of last year's AIC report was a recommendation from the PJCIS. Was the Corner report provided to the PJCIS?

Mr Roy: I don't believe the Corner report was provided in the context of the PJCIS hearing into 104 and 105A.

Mr Pezzullo: Could we check, though? We shouldn't make that a matter of belief. Let's just check that.

Mr Roy: I can confirm that. I'll come back to you on notice, Senator.

Senator SHOEBRIDGE: If there's any difference to that answer you've given, could let us know this afternoon? I'd appreciate that.

Mr Pezzullo: Of course.

Senator SHOEBRIDGE: So far as I understand, I'm 'VERA-2ed out' for the moment. The department has given advice about security concerns involving TikTok on government devices; is that right? I think there were some questions about it earlier.

Mr Pezzullo: I'm not sure if you caught the cross-discussion, but it's the Attorney-General's Department that provides the definitive advice to departments and agencies. They do rely upon advice and input, including from the home affairs department, yes.

Senator SHOEBRIDGE: You're on the committee and feed into that?

Mr Pezzullo: On the relevant interagency committees, yes.

Senator SHOEBRIDGE: As part of Home Affairs' contribution to that interagency committee, there are concerns about the data security, amongst other things, of TikTok—that would be a fair position?

Mr Pezzullo: Amongst other things, yes.

Senator SHOEBRIDGE: Are you aware of the steps that France has taken in relation to data security on government devices?

Mr Pezzullo: France, specifically—no. Perhaps you might give me a lead here.

Senator SHOEBRIDGE: I'm happy to. We'll go straight there. France announced a ban on Tik Tok but also Twitter, Instagram, Netflix, Candy Crush and dating apps, all of which were found and identified by the French government to have similar data security risks to Tik Tok.

Mr Pezzullo: I see. Does this relate to government devices?

Senator SHOEBRIDGE: It does.

Mr Pezzullo: The question of high-risk application turns in part on the judgements you make about who is the provider—where is the data going back to. In the case of Twitter, for instance, they'd have arrangements that relate to being domiciled in the United States. The advice I got from the Secretary at the Attorney-General's Department, who has provided directive guidance for us all, is to take action on Tik Tok. As to whether she's considering other applications, you'll need to direct that question to her.

Senator SHOEBRIDGE: Has Home Affairs undertaken any due diligence? France is an ally, it's a substantial economy, and this is a significant announcement. Has Home Affairs undertaken any due diligence on any of those other apps?

Mr Pezzullo: I'm not sure if they've banned any French social media applications. There might be a degree of—

Senator SHOEBRIDGE: Do you think it's French chauvinism and not actual data security?

Mr Pezzullo: No, I wouldn't apply that French-derived word at all in this circumstance—

Senator SHOEBRIDGE: It would be sinister to do so.

Mr Pezzullo: It would be. It might be a question that they've decided for their own sovereign reasons not to have government officials' data beaconing back to any domicile. Twitter, for instance, is domiciled in the US.

Senator SHOEBRIDGE: But you say that purely on a speculative basis. You haven't undertaken, as far as you're aware, any due diligence of the data security reasons?

Mr Pezzullo: I haven't read the French instruction, no. I didn't come prepared with knowledge of what risk assessments or judgements the French have made.

Senator SHOEBRIDGE: But I'm asking you, in light of what France has done, has even the most basic due diligence been done by Home Affairs?

Mr Pezzullo: I understand. In short, the answer is yes as a matter of—where's Mr Hansford? I think we can give the senator advice that we're one of the contributing departments and agencies that assist the Secretary of the Attorney-General's Department in formulating the decision that she makes under the PSPF—that's point 1. Point 2 is we have looked at social media applications in the round or at large—I'm not sure about dating sites, which was one of the questions asked—and we've provided advice that relates to some high-risk data vulnerabilities. Would that be fair to say?

Mr Hansford: That's correct. We have looked internationally at what other jurisdictions are doing—everything from India, which has a complete ban on some applications economywide, to the French government, which looks at banning recreational applications, as you've outlined, to individual governments that have banned particular applications. That was in the context of our work in a review of social media issues generally, presented to the government on 16 March.

Senator SHOEBRIDGE: So you've looked at France, you've seen that France saw substantial data security concerns in relation to—amongst other things—Twitter, Instagram and Netflix. Did you form a view about the security risks from those apps?

Mr Hansford: We've formed a view which is articulated in a review that was commissioned by Minister O'Neill and that we've provided to the government. We've also been, as the Secretary said, involved with the Attorney-General's Department, given their whole-of-government collaboration in developing particular directions and elements of the PSPF, and have provided advice to them both in the context of consulting the Attorney-General's Department on our review that we've provided to government and also in the context of their development of advice. We've provided comments, for example, on the draft PSPF-related direction.

Senator SHOEBRIDGE: So you say you have a view: what is the view?

Mr Hansford: The view is articulated in the review that was undertaken by the department and provided to the government.

Senator SHOEBRIDGE: What is the view on the data security concerns in relation to Twitter, Instagram and Netflix on government devices?

Mr Pezzullo: I understand. I think the officer has made clear that advice was sought; advice has been provided. Procedurally, we're obligated to provide this committee with advice. Once you start to characterise the nature of the advice, particularly matters that have not yet been considered by the minister, a group of ministers, a committee of the cabinet or indeed the cabinet itself, we are starting to stray into the provision to this committee of substantive advice that forms policy advice. My understanding, and you read out the instructions again at the start of the proceedings that go back to the Senate resolution of 2009, is that an official will not attempt to thwart the committee's investigation into whether advice exists, and we have clearly said that such advice exists. But when a senator starts to canvas 'Have you recommended this?' or 'Is the minister considering that?', you start to get into the substance of the advice. I'm afraid I have got to the limits of how much I can advise you because then I start to offend that standing order of this committee.

Senator SHOEBRIDGE: I'm going to ask again and reference, you'll be pleased to know, chapter 19 of *Odgers*, that says that that is not a proper basis upon which to provide answers to the committee; simply that it's advice to government. What was the advice from the department in relation to the data security of Twitter, Instagram and Netflix?

Mr Pezzullo: I will seek guidance again from the chair. I'm very well versed in the advisory and guidance and precedence value of *Odgers*, but the Senate does make resolutions. As I do recall it, an official is obligated to provide advice on things like the timing of when advice was sought, when it was provided, the fact that advice exists. I had that exchange with Senator Paterson earlier. I don't think we're obligated or required by resolution of the Senate and its committees to then start to canvas the particulars of that advice. Otherwise, I may as well simply talking about cabinet submissions and recommendations here.

CHAIR: The secretary has asked for my guidance and I can provide that to you as well.

Mr Pezzullo: Thank you so much.

CHAIR: The senator is right. The resolution doesn't protect you in the sense that you can just claim that advice is advice. But in the same vein, it is not appropriate for witnesses or officials to provide information about advice unless it relates to a policy that has been adopted by government. So we need to be very careful about what you're asking and where the time line of that policy is up to. It is definitely a difficult situation for you, Senator Shoebridge, because there appears to be a time line in place that's preventing finalised advice being given to you. From a chair's point of view, my advice to you would be to request the information either be taken on notice, or you can ask for the details of when advice was provided and who it was provided to.

Senator SHOEBRIDGE: Well, here's a surprising question: When was the advice provided and who was it provided to?

Mr Hansford: It was 16 March, Minister for Home Affairs.

Senator SHOEBRIDGE: So 16 March to the Minister for Home Affairs. Has a decision been made by the Minister for Home Affairs following the provision of that advice?

Mr Pezzullo: She's still giving consideration to taking this forward through a governmental process.

Mr Hansford: That is correct.

Senator SHOEBRIDGE: So is the answer no—a decision has not been made following the provision of the advice?

Mr Pezzullo: Sorry, provision to whom?

Senator SHOEBRIDGE: The minister.

Mr Pezzullo: It's been provided to the minister.

Senator SHOEBRIDGE: I am asking you: Has a decision been made by the minister following the provision of that advice?

Mr Pezzullo: No. It's still, in her mind, something which she wishes to canvas with her cabinet colleagues. I think that is right.

CHAIR: To assist both the secretary and the senator, I don't know if we're going there. But whether something is cabinet deliberations or could be is actually a ground for PII. I'm just explaining why the officials are trying to assist you in giving you as much information as possible.

Senator SHOEBRIDGE: I'm going to ask again: can you provide a copy of the advice or details of the advice. If you wish to take it on notice and consider whether or not you wish to make a PII claim, because now would be a useful time to indicate that.

Mr Pezzullo: I appreciate your assistance. I will take the question on notice about the provision of the social media applications risk review. I can amplify my earlier answer that the minister has made a decision to bring this forward to her colleagues. It's currently the subject of consideration across government. You asked about whether she had made a decision about taking it forward. She has, and has sought approval for the matter to be considered through cabinet processes. As to the provision to this committee of the report itself, I will take that on notice and seek guidance from the minister herself.

Senator SHOEBRIDGE: Secretary, do you accept that there's a significant data risk from apps like Twitter, Instagram and Netflix?

Mr Pezzullo: I will couch it in these terms, without referring to the findings of what was an internal departmental study: obviously it illuminated me and educated me on some of the issues that I wasn't necessarily attentive to. All applications, whether they're from one country or another, require a degree of data exposure and a degree of privacy trust, because you have to beacon data back when you first subscribe to the application or as you continuously use it. It would not be sensible to have no apps on our devices—Google maps, for instance. There are limitations placed on the use of a device.

Senator SHOEBRIDGE: None of us would be here.

Mr Pezzullo: No-one seems to be able to read a street directory any more or know how to get about. But you place limitations, for instance, on location services being restricted for the period in which the app is being used. Mr Milford, Ms Saunders and others can come forward and speak about some of the restrictions we place on apps. I'm fairly certain—although Mr Milford will correct me—through white listing and black listing processes, we wouldn't allow dating apps. I am fairly confident in saying that. If there are any dating apps, they will be deleted this afternoon, I can assure you. All apps come with a degree of data exposure. You have to tell the app where you are, who you are et cetera. Sometimes there's—

Senator SHOEBRIDGE: What your favourite movie is.

Mr Pezzullo: I would be surprised any of our officers have got time to be watching Netflix on their government devices. I hope—

Senator SCARR: What about the movies you referred to in your Anzac Day speech?

Mr Pezzullo: That was in my own time in my personal viewing. To your larger question about data, all apps carry data management issues, all of them. It doesn't matter what country they're in, it doesn't matter where they are domiciled and it doesn't matter where the servers are. The question then becomes: Does the benefit of the app available for government use on a laptop or a device—including the devices you all have—outweigh the risks? If the benefit is still material enough, can the risks be managed in such a way the application can be safely used? For instance, a locational app, like a mapping app: Can the locational services be just solely limited to the time when that app is being used, or are they constantly going to be beacons off your phone to know where you are? I think within the PSPF framework, we make our own decisions—do we not, Mr Milford—about those kinds of restrictions? Please help me out here on dating apps. Can we give a straightforward answer on dating apps, at least?

Mr Milford: If I can make one comment on apps—

Mr Pezzullo: And then we will get to dating apps.

Mr Milford: and I will get onto dating apps and other apps more broadly.

Senator SHOEBRIDGE: The lonely life of a senior bureaucrat.

Mr Milford: On our phones there is departmental data, which is in a compartment and then there is the phone, which obviously enables you to have apps and a variety of things, your contact list, et cetera. We are confident that the departmental information—that is, protected information—can't be accessed through the phone.

Mr Pezzullo: Sorry, you might explain what compartmentation means.

Senator SHOEBRIDGE: I understood.

Mr Milford: It's an end-to-end encryption to the app on your phone. With the apps though, clearly, any data that's collected by the app, which is your geodata, your personal data et cetera, becomes available to the app and the community of the app more broadly; therefore, there's an individual risk. There's not necessarily collated risk that we see from the department perspective—that is, they would need to go to every phone to get that data, just as they would have to go to every individual's phone for those who have personal phones.

Senator SHOEBRIDGE: That sounds like no ban on dating apps to me.

Mr Milford: I haven't got to the apps that we have. We do review apps when there is reporting of a security vulnerability, we receive intelligence from either the broader intelligence community or ASD where there's been a data breach, or indeed when it's been determined that vendors may be subject to extrajudicial direction from other governments. In that case, we specifically target them for risk assessments, risk assess them. Then if they're deemed to be unsuitable, we black list them. There is a set of other apps which we would talk about more under reasonable personal use, which falls into gambling apps, obviously pornographic websites, dating apps et cetera, which are banned.

Mr Pezzullo: So we can block them from getting onto the device.

Mr Milford: We can. We can blacklist apps. There is a game of Whac-A-Mole here; you can blacklist them, but other ones pop up. But we do blacklist them.

Senator SHOEBRIDGE: Is there a list of banned apps?

CHAIR: Thank you, Senator Shoebridge. Senator Roberts, you have a call.

Senator ROBERTS: Just a few questions for clarification, Mr Pezzullo. I will read from your website:

Home Affairs brings together migration, cyber and infrastructure security, national security and resilience, and border-related functions, working together to keep Australia safe.

You've been credited, justifiably, I would say, with the success in closing our borders after your appointment to Immigration in 2014. You have also been the inaugural and only secretary of the Department of Home Affairs, which is seen as crucial in that role. Is that correct?

Mr Pezzullo: Well—

Senator SCARR: He's too humble to say!

Senator ROBERTS: I didn't mean about the praise; I meant about the roles.

Mr Pezzullo: I have occupied the office for the time period you have spoken about. As to whether I have achieved any success in the role—

Senator ROBERTS: You have been widely credited with a lot of success, so we appreciate that.

Mr Pezzullo: That's for others to determine. I've certainly been the occupant of two secretaryships over a decade, yes.

Senator ROBERTS: And key in security. Do you consider that elected representatives who challenge government policy are domestic terrorists?

Mr Pezzullo: I just go back to my earlier evidence. Terrorism has got a particular definition under our Criminal Code. Under the heads of security power set out in the ASIO Act, if any person, elected or otherwise, is acting in contravention of the criminal law, acting as terrorists—they are of course subject to a judicial process finding them so. Your question relates to elected members, I think you said, challenging government policy. All other things being equal, that's just called democracy; that's not called terrorism, no.

Senator ROBERTS: Do you consider it legitimate to deliberately or inadvertently censor elected senators who are duly elected representatives of the people, if their social media statements differ from government policy?

Mr Pezzullo: I took on notice, both at a general aggregated level from Senator Antic and from you specifically in relation to your own personal circumstances, whether we had—I think you might be going to COVID here, but I just want to be clear about what you're asking about. I took on notice earlier that we would look at the COVID related referrals, the so-called takedown referrals, the 4,000 and some other number associated, and check that there were no members of the House nor members of the Senate included in that list. If the answer is no, zero, then the question, in a sense, becomes void because we haven't done anything. If, frankly, regrettably, we've accidentally, without identifying the person's name—I don't know if you self-identify as a government senator, but if we have taken a view of Malcolm Roberts—

Senator ROBERTS: Not a government senator but as a senator.

Mr Pezzullo: Sorry, as a member of the Senate, I should say. I do apologise.

Senator Watt: We've got some standards.

Mr Pezzullo: If we've inadvertently—and it would be inadvertent—made a referral of a sitting member or a senator, then I would find that regrettable because, in a sense, you're held to account by your peers and by your electors; it's not my job to hold you to account. There is a grey area. If you, whether you're a senator or otherwise—and I couldn't imagine for a moment that you would do this, Senator, or that any other senator would do it—inadvertently disseminated terrorist or violent extremist material, notwithstanding the privilege of a senator, my staff would take the view that there's a referral here. On matters of COVID, which related to a public health emergency that was catalysed as a direction to us about three years ago by the then Morrison government, if one of your tweets or postings has been inadvertently swept up in our referral process, we'll get to the bottom of that on notice and get back to you through the notice process.

Senator ROBERTS: So I'm assured that if I were a terrorist or engaging in terrorist activities or promoting terrorism, you would treat me no different from a terrorist.

Mr Pezzullo: Your status as a senator in those circumstances would provide no protection at all.

Senator ROBERTS: That's very reassuring. Thank you. It's also reassuring that if you inadvertently caused me to be censored in any way, you would also protect my rights to free speech.

Mr Pezzullo: I'm distinguishing here between the service that we were providing in support of the health department on a public health emergency—which is really not about terrorism; it is about public health advisories. I'll examine the data when Ms Hawkins and her people assemble it for me. I would take the view that we should not be doing referrals of sitting members or senators on public health issues. Terrorism? Acts of incitement to violence? Then we are in an area where the privilege that you have as a senator might well be thwarted by the criminal law, let's say. But I can't imagine that that circumstance would arise in relation to COVID.

Senator ROBERTS: I'm reassured, because privileges do come with responsibilities. I'm reassured by what you're saying.

Mr Pezzullo: Thank you.

Senator ROBERTS: So do you not believe that Australian people have the same right to freedom of expression as I have?

Mr Pezzullo: I thought I'd answered this before, but let's just recap. Even on the internet, which is considered to be untrammelled and unfiltered and uncensored, there is no accepted absolute freedom of expression, because you've got laws—for instance, you cannot stream the abhorrent abuse of a child.

Senator ROBERTS: Accepted.

Mr Pezzullo: But once you accept that there is some constraint at the outer edges—self-evident cases of child abuse, a terrorist's live streaming of an abhorrent act—

Senator ROBERTS: But questioning government policy? That's okay.

Mr Pezzullo: I was going to get to that, Senator. But then you start to get into distinctions and lines of definition. We're not arguing the principle anymore about censorship because, even on the internet, which is thought to be this untrammelled, utopian public square of enlightened discourse and conversation, it's been many years, if not several decades, since that view went out the window, because there have been laws, there are treaties, there are international understandings that say, no, there is certain content that is so vile and so unacceptable that it will be taken down by those providers who are acting responsibly. Now, you can't get to every app and every dark website and every provider, particularly on the dark web, and they do peddle abhorrent material, so you're not going to regulate that world; you've just got to go hunting and take other actions in relation to, if you like, what's under the clear web.

Senator ROBERTS: I understand that there's a lot of grey area there. But what you're saying is that I have a right to speak but everyday Australians do not on COVID matters.

Mr Pezzullo: I'm struggling to understand how you've jumped to that conclusion.

Senator ROBERTS: Let's go to two more points of clarification. In Australia in 2022 we had more than 30,000 excess deaths. That's the equivalent of two Dreamliners crashing with total fatalities every week. Would you inquire into the crashing of two Dreamliner aircraft every week for 52 weeks?

Mr Pezzullo: My remit in that instance would be related to terrorism or related acts of violence or sabotage that caused those aircraft to go down, so of course I would get involved. I know it's a hypothetical question that you're putting to me but, as a matter of principle, that would fall under our remit of aviation security as well as

counterterrorism. If you're putting to me, by way of analogy, some kind of quantitative analogy that says this many people died who otherwise would not have died because of the advent of COVID vaccinations—you used the term 'injection'—I would really urge you to direct that question to the secretary of Health and his officers, because (a) it's not my responsibility to give you advice or evidence on public health issues; it's—

Senator ROBERTS: No, I accept that. What I'm getting at is: would it be part of your remit to at least question what was going on with 30,000 deaths? That's more than 10 times—

Mr Pezzullo: Sorry, is that 30,000 deaths in relation to COVID or in relation to airline crashes?

Senator ROBERTS: COVID injections.

Senator Watt: Again, that's an assertion from you, Senator Roberts.

Senator ROBERTS: That's 10 times the level of deaths from the Twin Towers World Trade Center collapse.

Mr Pezzullo: If there's a question of an abnormal rate of premature death, which is to say death beyond normal morbidity statistics—and I don't know what the science or the evidence is; I don't know what data you're pointing to—

Senator ROBERTS: Would it raise questions in your mind?

Mr Pezzullo: It might raise questions for the secretary of Health, so I'm suggesting that that's appropriately directed to him.

Senator ROBERTS: He'll be getting it. I take my responsibility to serve the people because they pay my salary. Taxpayers pay your salary as a public servant. Just as a final point of clarification, do you work for the government or for the taxpayers?

Mr Pezzullo: Well, I'm a public servant employed under the Public Service Act, so ultimately I work for the public. In fact, as a matter of law, I'm required to be impartial, I'm required to be apolitical and I'm required to serve the government of the day responsively—because that's in law—but also in a way which is apolitical. For instance, if issues arose as to the records of former governments or if issues arose in relation to the observation of the caretaker conventions, I would stand my ground and, potentially, provide difficult advice or decisions to the government of the day. Generally speaking, by law, we are required to be responsive to the government of the day. That's in the Public Service Act. On those rare occasions—and in my experience it doesn't happen very frequently—that a government of the day might do something inadvertently that relates, for instance, to the records of decisions of previous governments or to the application of the caretaker conventions, I've got a duty not simply to say, 'Well, I work for you, so we'll just do whatever you say,' but to say, 'Hang on—that is unlawful,' or, 'That is contrary to Westminster conventions.'

Senator ROBERTS: Final question: would you fully cooperate with the royal commission which Mr Albanese promised before he was elected if it were tasked with examining these take-down notices around COVID?

Mr Pezzullo: I would cooperate with any commission of inquiry, royal or otherwise, commissioned by the government and instituted pursuant to letters patent. It wouldn't matter what the topic was. We would always engage dutifully and conscientiously with any commission of inquiry.

Senator ROBERTS: Thank you very much, Mr Pezzullo.

Senator PATERSON: I have some further cyber questions. This relates to a report in the *Australian* newspaper by Natasha Bitá on 7 March entitled 'Australian universities schooling Chinese students in cyber warfare tactics'. Are you aware of that reporting?

Mr Pezzullo: I do recall reading, if it wasn't that article, then certainly an article on that topic. Mr Hansford, can you assist?

Mr Hansford: I recall generally the topic. I can't recall the article specifically.

Senator PATERSON: Were you concerned to learn that Australian universities might be teaching offensive cyberhacking techniques to students in China through teaching arrangements with Chinese partner universities, including methods for doing harm to critical infrastructure?

Mr Pezzullo: Did the media report evidence that? I can't recall. I'll have to go back and either read the article fresh or reread it.

Senator PATERSON: I can assist you with that. The article came about because whistleblowers within the higher education sector who were uncomfortable with this course content made it available to the *Australian* newspaper. They also made that course content available to me, but they asked me not to share it because it would identify which universities they came from, which I of course wouldn't want to do. But I can, for your benefit, say

that the course content had a range of quite specific and detailed cyberhacking techniques, including detailing how harm could be done to physical assets—real-world critical infrastructure assets—which these Australian academics were being required to teach to students in China through these arrangements.

Mr Pezzullo: Some cybersecurity courses require—it's like any defence training: you've got to understand how offence works. Without looking at the course content itself and without looking at the particulars, it's hard for me to give you an answer of any great particularity. Generally speaking, the ability of the department to either deny such training in the first instance, say, through the visas—

Senator PATERSON: I'll come to that. You're anticipating my questions again, Mr Pezzullo. I just want to resolve this threshold in-principle issue. You're not uncomfortable with academics who are funded by Australian taxpayers teaching foreign students, in this case from a country which is a top source destination of cyberattacks on Australia, how they could attack and destabilise our critical infrastructure?

Mr Pezzullo: I'm saying that without looking at the detail of the course content it's very hard for me to answer you.

Senator PATERSON: So you're not willing to answer at a principles based level about whether we should be happy or unhappy about that.

Mr Pezzullo: As a matter of principle—and I'm going to use this characterisation to speak in the hypothetical—should we be training anyone to attack our own infrastructure? Of course, the answer is no as a matter of principle.

Senator PATERSON: That's what I was looking for.

Mr Pezzullo: Then you'd have to look at the course content itself to see if it actually met that threshold.

Senator PATERSON: Exactly. I wasn't asking you to pass comment on course content you haven't seen, just for that high-level in-principle agreement, which we are on the same page about. Has the government requested any advice from Home Affairs about this issue?

Mr Pezzullo: On the issue of high-risk tertiary education, yes, and advice is with government on that. When you say 'this issue', if you're referring to what was in the article—

Senator PATERSON: Before you go on, why don't you just expand on that piece of advice that has been requested of you. What is the nature of that advice?

Mr Pezzullo: There is a public interest criterion that the government is examining to tighten up our ability to scrutinise both visa applications and visa grants. Mr Hansford, where is that at?

Mr Hansford: The government has signed off on regulations under the Migration Act to manage the risk of unwanted transfer of critical technologies. They subsequently expanded it to other visa classes on 6 October. Then, the government has asked us for advice about an instrument which underpins that public interest criterion and regulation as to which technologies that would apply to.

Senator PATERSON: That was another topic of questioning I had. I might come back to that if I have time. That, of course, would only deal with students who are coming to Australia, where we have an opportunity to review their visa applications and approve or deny them based on what they may be studying here. These arrangements that I'm referring to are teaching cooperation arrangements between Australian universities and partner universities in China. They are teaching students who are in China the course content delivered by Australian universities.

Mr Pezzullo: Oh, I see—through some sort of online—

Senator PATERSON: Typically online, yes. I don't think it would be too much of a leap to say that some of those graduates from those universities might end up working for the People's Liberation Army cyber units or the Ministry of State Security or Ministry of Public Security cyber units.

Mr Pezzullo: Understood, thank you. That wasn't so clear in my mind when you started down that line of questioning. We provide advice, presumably, to the sector as well as to the Department of Education and to the University Foreign Interference Taskforce. Perhaps you might pick up that thread for the senator, Mr Hansford.

Mr Hansford: For a number of years, the department has been collaborating with universities generally on the foreign interference related threat, including through the university foreign interference working group. Coincidentally, that's the working group that we used to consult on the regulations for critical technologies. It's that working group that really forms a good basis for collaboration on all sorts of issues, including the one that you mentioned.

Senator PATERSON: Has this specific issue been discussed by UFIT?

Mr Hansford: Not to my knowledge, but I'll check on that and provide you with an answer. But I think that the general issue of technology transfer has self-evidently come up through the University Foreign Interference Taskforce.

Senator PATERSON: No doubt. So, as of today, the department hasn't taken any action in response to this media report to address this issue, not through UFIT or any other mechanism?

Mr Hansford: I think that's accurate in the specific example of the media article, but more generally we've been consulting on security issues with the university sector across a whole range of issues, which would help in discharging responses to the issues that you've mentioned.

Senator PATERSON: You mentioned the public interest criterion to protect Australia's critical technology. Am I right in understanding that the list of critical technologies that was published by Minister Husic last week—I think it might have been Thursday or Friday—was a necessary precondition for the department updating its screening of visa applicants?

Mr Hansford: Well, a necessary precondition is to have an instrument that specifies the kinds of technologies that would be in scope as critical technology for the purposes of the regulations.

Senator PATERSON: Do you have that instrument now?

Mr Hansford: The instrument has not been signed, so it is not active, but we are working with our colleagues in the Department of Industry, Science and Resources on what would constitute that list and advising ministers on that particular issue.

Senator PATERSON: What is the delay, then?

Mr Hansford: We're working out the scope of intervention, if you like, in what constitutes critical technologies, balancing the appropriateness of the types of technologies. If you cast it too widely, you might then inadvertently have a delay in the visa processing of people trying to study or work in Australia through those particular visas. So we're trying to work on that particular list at the moment.

Senator PATERSON: But it's industry which is responsible for producing that list. Is that right?

Mr Hansford: The department of industry has a list of critical technologies. The policy choice for government is what list they might codify in an instrument for the purposes of the visa regime in relation to critical technologies. Obviously, that's a very good starting point, but the government might make a choice to make it that list or a subset of the list.

Mr Pezzullo: So the challenge, Senator, for our officers will be—having a generalised reference to a very advanced technology as a one-liner is not necessarily going to be granular enough to give guidance to our officers. To your earlier point, this is not for online learning—I accept that caveat—but for course content that might relate to an honours or a masters or a postgraduate or postdoctoral piece of study, you might say, 'This course or this dissertation topic appears to be connected to general AI.' Is it sufficiently high risk to deny the visa, or do you need a level of granular subidentification of what the course content that's high risk might be so that our officers don't have to become experts at postdoctoral level quantum mechanics, for instance? You need something that's an actionable guide for our officers.

Senator PATERSON: So would it be fair to say, then, that the list released by the minister last week was a necessary but not sufficient precondition?

Mr Pezzullo: It's a very important input to the process, I think it's fair to say. We then need to figure out how that maps to the types of courses out there. Generally speaking—this potentially answers the question you asked earlier, but maybe it doesn't—and this is just a rule of thumb: typically, in your first-, second- and even sometimes third-year course of study you might have very general course content that relates to physics or chemistry or biology or computer science. It's really when you're starting to get to more applied third- and fourth-year content, masters content, postgraduate content, and certainly postdoctoral content, that applications that might have a nefarious dimension attached to them really start to come into view.

Senator PATERSON: Sure. I do understand that. My time's a little bit limited. I'm trying to establish: now that you have this input, which you were waiting for because, as you said, it's very important input, how much longer should it take to get that further level of specificity and get that instrument signed?

Mr Pezzullo: Mr Hansford, what do you think?

Mr Hansford: We're working every day with the department of industry. We'll obviously take a position to ministers and then, ultimately, it's a decision for them to then take it forward and agree amongst their colleagues.

Senator PATERSON: Okay. Moving on to another topic, on 12 November last year the minister announced this initiative to 'hack the hackers', which was described as a joint initiative of AFP and ASD. What's the legislative basis for this task force? What legislation does it utilise?

Mr Pezzullo: Both of those agencies have their own powers. In the case of the Australian Signals Directorate, and you'll need to speak to them about this, those powers flow from the Intelligence Services Act. As a matter of public record, they undertake cyber effects and provide technical cyber assistance to any lawful partner that seeks their assistance, and that would include the Australian Federal Police. The Federal Police themselves have got powers that arise under both the Criminal Code and their own act, as well as the relevant surveillance legislation amendments that were put through in the last term of parliament. But as to the specifics, you really need to address those questions both to the Director-General of ASD and to the commissioner of the Federal Police.

Senator PATERSON: I will be asking both the AFP and ASD some specifics, but I'm wanting to understand this legislative basis. Was the identify-and-disrupt legislation part of enabling them to enter into this arrangement?

Mr Pezzullo: That would be one of the tools available to the Federal Police, but you'll need to ask the AFP.

Senator PATERSON: Without it, the AFP didn't have the legal power to disrupt data, for example, or enter into networks. That was previously not permitted.

Mr Pezzullo: Again, Commissioner Kershaw would be better placed to give you a more detailed answer. But disrupting, whether it's a ransomware gang or a cybercriminal gang, there's a whole range of techniques that you can use. We recently saw—

Senator PATERSON: I'm not talking about techniques; I'm talking about the lawful basis of it. The AFP didn't have the power.

Mr Pezzullo: Yes, understood. But all techniques flow from a lawful basis, whether it's a warrant—

Senator PATERSON: Indeed. And your department prepared this legislation, so—

Mr Pezzullo: Yes; at the time. But the responsibility for the oversight of that legislation has now reverted to the Attorney-General's Department—

Senator PATERSON: Yes, I realise that.

Mr Pezzullo: so you can raise this with Ms Jones. But just as a general hypothesis, to respond to your general question, you can disrupt a cybercriminal by potentially getting onto their machine, by thwarting their access to funds, by thwarting their access to enablers, by creating a hostile environment so that they face the risk of extradition or mutual assistance removals. There's a whole range of techniques.

Senator PATERSON: Yes, but my question wasn't about any of those things; it was about the 'hack the hackers' initiative, which kind of suggests that it is disruption activities that they're entering into.

Mr Pezzullo: And both the Federal Police and the Signals Directorate have relevant and requisite disruption powers that fit that category.

Senator PATERSON: Yes. I'll have to ask them about the source of it, if that's not clear. The Cyber Hub program was terminated in the budget.

Mr Pezzullo: Yes.

Senator PATERSON: What was the process for deciding to terminate the cyber hubs?

Mr Pezzullo: Up until 1 May, the Department of Finance was the lead department of state, assisted by one of its associated entities or agencies, the Digital Transformation Agency, DTA. They undertook a review of the cyber hub pilot. The government, in the course of the budget that's just been handed down, took a decision to say, 'Based on the evaluation of the pilot, we've decided to go in a different direction.' So, from 1 May, the Minister for Home Affairs and the Department of Home Affairs will take over complete responsibility for the hardening of government IT security. We're now obligated, under that shift in mandate, to think through whether a hub model or some other model of hardening the perimeter of our networks and our devices is going to be better suited to the task, given our learnings from that cyber hub pilot process. That responsibility was transferred into Mr Hansford's group effective 1 May. So, on what transpired in terms of the management, governance and evaluation of cyber hubs and the pilot study, I would ask that—and I think we've got agreement for this, have we not?

Mr Hansford: That's correct.

Mr Pezzullo: You can direct those questions, if you wouldn't mind, to Secretary Wilkinson and her staff as well as the chief executive of DTA. Going forward from 1 May, I'm very happy to entertain your questions.

Senator PATERSON: Thank you. I may pursue it with them too, but, for the time being, you mentioned there was an evaluation of the pilot. Who conducted the evaluation?

Mr Pezzullo: I don't know. It was done by an external independent party reporting to either the secretary or the chief executive or both.

Senator PATERSON: Mr Hansford, do you know?

Mr Hansford: It was in the Finance portfolio.

Senator PATERSON: So Home Affairs wasn't involved in conducting the review?

Mr Pezzullo: Not in its conduct, but we would have been one of the parties engaged because we were one of the hub providers under the cyber hub model. In short, there were going to be a number of hubs, whether three, four or five, that would have set up perimeters within the government network. Then there would have been a macroprotection provided by the Australian Signals Directorate sitting outside, protecting us all. So Mr Milford and his team were one of the hub providers in a pilot project that was being overseen by the DTA. The evaluation was being done of all of those providers, as well as the aggregated defensive benefits that were achieved by having the four—I think it was four—hubs working together.

Senator PATERSON: Do you have a copy of the review?

Mr Pezzullo: It's certainly been provided to us and I've read the review, yes.

Senator PATERSON: What were the findings of the review?

Mr Pezzullo: That's a document given to my colleague—either the chief executive of DTA or the Secretary of the Department of Finance. I've explained to you that such advice exists. I don't own it. It's not a report to me. So that question is better directed to my colleagues in the Finance department—or portfolio, I should say.

Senator PATERSON: Do you know whether the expert advisory board of the Cyber Security Strategy was consulted on this decision?

Mr Pezzullo: I think they were briefed. 'Consulted' has a particular meaning. They were certainly briefed.

CHAIR: Senator Paterson, I'm trying to assist you because I know you have other obligations this afternoon. Senator Shoebridge is seeking the call, and you've had quite a bit of time now. Do you want to come back after the break?

Senator PATERSON: Thank you, Chair. I have one further question to ask, and then I will leave it to Senator Shoebridge and the rest of the committee.

CHAIR: Okay, why don't you ask that?

Senator PATERSON: I know my colleagues Senator Chandler and Senator Scarr have further questions in outcome 1 after the break.

CHAIR: I'm just trying to make sure you get to ask your questions.

Senator PATERSON: Yes, I am grateful for that. Thank you, Chair. The reason I ask about the views of the expert advisory board is that obviously Mr Penn is one of the members of the expert advisory board.

Mr Pezzullo: Yes.

Senator PATERSON: In his previous capacity on the then Cyber Security Industry Advisory Committee, he called for the cyber hubs to have more teeth and said their work needs to be accelerated. It seems that the government's decision to axe them is contrary to that advice, and he is an expert adviser selected by the government.

Mr Pezzullo: The decision taken to terminate the pilot phase and not to go to full deployment was a decision taken (a) in the context of the budget and (b) by the responsible minister and/or department and/or agency, all of whom sit in the Finance portfolio.

Senator PATERSON: Yes.

Mr Pezzullo: We were a participant in the hub arrangement. We were one of the hubs ourselves, and we were funded to act as one of the hubs. As to the merit or otherwise of, or the rationale for, now pivoting into a different direction that we're going to have to work on and develop, for anything prior to 1 May I direct you to the finance minister, her secretary and the chief executive of DTA.

Senator PATERSON: There was a saving of \$8.6 million attributed to scrapping the cyber hubs. Has that \$8.6 million been used to fund any of the cybersecurity initiatives in the budget?

Mr Pezzullo: I presume that would have been the residual in the program.

Mr Hansford: One of the hubs put forward a saving given they hadn't used the funding. That was used then to maintain the cyber-resilience of the other hubs, so there was funding provided to the hubs to effectively maintain some of the services that they were delivering for themselves, and that's the item in the budget.

Senator PATERSON: I'm trying to reconcile that with the advice from your CFO earlier that the only component of the increased cybersecurity funding in the budget came from ASD, in moving a function from ASD, and that everything else was new money. Is that advice still correct?

Mr Hansford: There's funding for the department for our cyber hub and then there's a decision by the government about how to treat hubs, including money that hasn't yet been expended.

Senator PATERSON: But \$8.6 million was saved from scrapping the hubs. I understand that on page 156 of the budget papers it describes it as a saving that went to fund other cybersecurity initiatives, but we heard before from Ms Cargill that the only saving offset from elsewhere in the budget was the ASD saving.

Mr Pezzullo: I will get Ms Cargill to just explain that.

Ms Cargill: The new funding the department received was \$3.7 million in 2023-24 out of the net whole-of-government total for the measure.

Senator PATERSON: I'm not sure how that clarifies the discrepancy that appears to have occurred here.

Mr Pezzullo: Those items that you briefed the committee on earlier—the four components—were related to cybersecurity strategy moneys. Can you go back to that evidence briefly?

Ms Cargill: Yes. The four items were: the critical infrastructure and systems of national significance funding; the next steps for cyber hubs, which was our funding of \$3.7 million; the Act Now, Stay Secure line item; and the hosting of the certification framework.

Senator PATERSON: Yes, but we talked about the increased funding—to use your term—for cybersecurity for the department in the budget and you said that the only proportion of that funding that was arrived at by cutting, reprioritising or being moved from elsewhere was the ASD funding. This appears to be another source of that increased funding.

Mr Pezzullo: I think what the senator is getting at—and you might be very clear in how you think about the question—is not so much money that's new to the department—

Ms Cargill: Correct.

Mr Pezzullo: I think you made that very clear. I think what the senator is asking is what might be new to us might be a transfer or a reduction in activity elsewhere.

Ms Cargill: Correct.

Mr Pezzullo: Can you just clarify that?

Ms Cargill: Yes, and my apologies. From a whole-of-government perspective there is an offset, as you pointed out, from the ATO. The government will provide \$10.6 million in 2023-24 to be partially offset by funding from the ATO for the decommissioning of cyber hub services.

Senator PATERSON: I put it to you, Ms Cargill, that I think your evidence to me this morning was incorrect.

Ms Cargill: And my apologies, Senator, if I misspoke. I was talking about the additional funding for the department and I didn't recall that there was an offset in the whole-of-government measure.

Senator PATERSON: Okay, so I'll ask again. Maybe the best thing to do is to come back to me on notice when you have had time to carefully consider it. How much of that new increased funding is actually new as opposed to having come from elsewhere?

Mr Pezzullo: And given the senator's question, I think new to the department is not what the senator is asking. I think the question is about additional net Commonwealth expenditure across government. Would that be fair to say?

Senator PATERSON: Yes, thank you.

Mr Pezzullo: I don't want to place Ms Cargill in the lee of danger.

Senator PATERSON: Nor do I.

Mr Pezzullo: Thank you. I appreciate the gracious way in which you've treated that. You're the CFO of the department—

Ms Cargill: Correct.

Mr Pezzullo: I know you get very excited, as I get excited, about new money that comes to the department. I think the point of the question is: has it come from elsewhere from the taxpayer having previously generated that money for the Commonwealth?

Ms Cargill: And I'd like to take on notice to check every single measure from a whole-of-government perspective to give you a more comprehensive answer.

Mr Pezzullo: I think any evidence given earlier that was inaccurate was completely inadvertent.

Senator PATERSON: Understood. Thank you.

CHAIR: The committee will now suspend for a break. We'll resume with outcome 2—sorry, with outcome 1. I got too excited.

Mr Pezzullo: Almost as excited as Ms Cargill getting new departmental money.

Proceedings suspended from 15:59 to 16:19

CHAIR: The committee will now resume. We're still with officials in relation to outcome 1. Hopefully, we'll get too outcome 2 soon, but we've got a few more senators with brackets of questions. I'm going to go to Senator Shoebridge first, and then we'll head to Senator Chandler.

Senator SHOEBRIDGE: To round out some questions asked by Senator Paterson about the cybersecurity hub: what's happened to the Home Affairs cybersecurity hub? Is it still 'hubbing'? Is it still in existence?

Mr Pezzullo: We used the funding to augment and amplify some resources that we'd already devoted, simply as a good departmental thing to do, to create our cybersecurity operations centre. In fact, I was fortuitously up at CSOC just last week, Mr Milford. Leave aside what Mr Hugo and his team do, which is like a 24/7 cyberprotection capability; what specifically has happened and will happen to the hub money or the hub element that we're engaged in is what I presume you're getting to.

Senator SHOEBRIDGE: You had a hub. Do you still have a hub?

Mr Pezzullo: We've got a CSOC. We've got a 24/7 cybersecurity ops centre, and the hub money was being built on top of that.

Mr Milford: We have a significant cyber capability that, as the secretary suggests, consists of an operation centre, analysis, forensic laboratories and other things. We provide cybersecurity services to two other government agencies. That was as part of the hub model. For AUSTRAC and ICAC we provide gateway services and cyberintelligence. We had money to build those out which has being used over the previous financial year. Now that there was a determination made that, as a result of the Cyber Security Strategy, the cyber hubs model would be re-assessed, we're in the process and have a small amount of money—the \$3.7 million that was talked to before—to work with ACIC and AUSTRAC to transition to ASD to provide the services. ASD provide a number of free services to government. That \$3.7 million is to help those two government agencies to transition away from the services that we currently provide for them to ASD providing those services for them. We continue to provide to our department cybersecurity services, computer network defence or however you want to talk about it.

Senator SHOEBRIDGE: Are you still providing that hub service to AUSTRAC and ACIC?

Mr Milford: We are. The money we are receiving in the current budget—the \$3.7 million—is to enable us to continue that service and to help them technically transition to the new service by December this year.

Senator SHOEBRIDGE: And that new service is a broader service being run by ASD?

Mr Milford: It is. I can take you through a number of them. It's hardening email, specialist—

Senator SHOEBRIDGE: I know the cybersecurity details.

Mr Milford: There are a number of services which they provide to any government department on request, but it does potentially require a little bit of technical work for those agencies to position themselves to receive it.

Mr Pezzullo: I would describe those arrangements—the director-general will put it in her own terms—as a safety net. We don't want to leave anyone orphaned. Some departments and agencies are large enough—Defence, the Australian Taxation Office, Services Australia and us—to have organic, internal capability to protect ourselves. The idea of hubs was to corral and pony up or to create a series of perimeters that others could come into who didn't necessarily have the scale, because they were small. With the termination of the program as part of the Cyber Security Strategy, we have to rethink how we provide those services to medium and smaller agencies where it wouldn't make sense to have, for instance, an organic 24/7 capability. It would be fair to say that, as a safety net or as a provider of last resort, the ASD will provide those services. In going forward, whether we revert to some kind of hub model or some kind of centralised platform for the smaller agencies, the point is you don't want to get it a point where there are 195-odd—give or take—accountable authorities under the PGPA. If every one of them were to have a 24/7 cyber centre, there'd be a lot of waste and a lot of duplication, so the question is how you scale for those smaller agencies.

Senator SHOEBRIDGE: I understand the strategy. The question I have is: will the services that Home Affairs is currently providing to two of our critical agencies, AUSTRAC and ACIC, be provided by ASD? Are you transitioning over those services, or is that not your responsibility—you're just transitioning them out of your care?

Mr Milford: Certainly we're not just dumping them and leaving them. The services that are going to be provided by ASD are services they provide to everyone. We are also working with those two agencies to ensure that they have their own level of internal capacity, because they still have their own cyber people working inside to be able to provide additional services. Now, as to gateway services, for instance—secure internet gateways—there's already a separate strategy in government at the moment whereby larger agencies provide secure internet gateway services, because, frankly, they are sort of commercial, large based services. So we'll probably continue to provide those services to them, but we're certainly not leaving them to their own devices.

Senator SHOEBRIDGE: To be clear, there'll be times when I'll be critical of Home Affairs. I'm not being critical of Home Affairs. You've been told to transition out by the end of the year. You're doing that process. And, in the meantime, you're basically holding their hands—and I'm not trying to be pejorative in that description—

Mr Milford: Understood.

Senator SHOEBRIDGE: until the end of the year. Is that what's happening?

Mr Milford: Yes, that's correct.

Senator SHOEBRIDGE: Has Home Affairs adopted a position on the use of ChatGPT or Bard by employees or officials of Home Affairs?

Mr Pezzullo: Its use is currently barred and suspended. It's very similar to the discussion we had earlier about cameras and drones. In my view and judgement, the better course would be to have a whole-of-government view about whether or not to deploy that technology. Departments and agencies already use large language models and machine learning technologies. As to what you deploy corporately, a lot of our risk algorithms already, for instance, would have significant artificial intelligence components. The question becomes a bit like the app discussion that you questioned me about earlier: do we allow individual officers on work-connected devices to access such technology? The COO, Ms Saunders, in the first instance.

Ms Saunders: In regard to ChatGPT, of course, once again, as the secretary said, it's a whole-of-government issue and needs to be considered, and the Australian government along with the private sector are continually evaluating emerging technologies and assessing both their potential and the risks associated with their use in the public sector. Certainly, as a department, whilst we haven't banned it, we have initially, at this point in time, blocked it, and then parts of the department can seek a business case to access that information—

Mr Pezzullo: Access the capability.

Ms Saunders: access the capability, and do so and have done so up to this point in time—noting that there is certainly some value in exploring the capabilities as a tool for experimentation and learning and in looking at the utility for purposes of innovation and the like. But it's not to be used for the purposes of making decisions, and it's very critical that you don't incorporate, in the questions that you are asking ChatGPT, any information relating to the department.

Senator SHOEBRIDGE: Of course one of the key data risks with ChatGPT is that whatever you feed into it gets soaked up by it and effectively is owned by it and used for its own purposes.

Mr Pezzullo: Correct.

Ms Saunders: Correct, which is why we do not provide any information as it relates to holdings of the department in any questions that might be posed or any information sought from the AI.

Mr Pezzullo: I'll provide you with this assurance. Departments and agencies have been using artificial intelligence for some years now in risk algorithms. But managing something corporately, where you might have a proprietary engagement—and Mr Milford can speak to some of the technologies that we use—and where you know where the data is stored and what limitations are placed on that data is one thing. It's entirely analogous to the discussion led earlier about apps on phones. The question is whether, as a department, sitting within the broader government, we are willing—I must say: I'm not at the moment. That's why I've directed a suspension. I know I've voiced my own views, corporately, across the public service. I don't think individual officers, who won't necessarily be attuned to those risks or have the capacity to engage with those applications, should be in a position where they say: 'Gosh! This'll help me do my work quicker. I'm going to download ChatGPT'—or, indeed, any other application—'so I can do my work more efficiently, or I can get out earlier,' without the

department having a corporate view about those limitations. So we might well permanently block such technologies and say, 'You can access those technologies corporately,' as opposed to individually.

Senator SHOEBRIDGE: My officers asked a series of agencies this question, and the recurring answer is there is no current Commonwealth policy on the use of generative AI technologies such as ChatGPT. That's the situation.

Mr Pezzullo: Yes. I ask the chief operating officer—she attends many of the committees that deal with these matters—'Where is the prescriptive document that says, "As a secretary of a Commonwealth department, here are the dos and don'ts"?' That document, regrettably at the moment, does not exist. It's got some upside benefits, as in society generally. It's going to assist in rapid analysis, rapid data collation and, indeed, potentially generative and predictive material being able to be derived. I'm deeply concerned that, unless that's managed corporately, which is to say, I take advice from a head of technology and my chief operating officer to say, 'What safeguards can I put around'—this applies to any artificial intelligence technology. It wouldn't matter whether it was ChatGPT or something else. We're already using language models. We're already using machine learning. We're already using—

Senator SHOEBRIDGE: But it's quite different where you have control over the algorithm—you have some kind of licensing over the algorithm and know what data is used. I'm talking about large language things where you feed the data into—

Mr Pezzullo: I understand. The point I'm making—perhaps I wasn't clear enough in my distinction between corporate. If the department arrives at a position, preferably as part of a whole-of-government position, that we can put safeguards in place, either through a proprietary agreement or otherwise, at the corporate level then it's no different from the risk algorithms and risk engines that we currently employ for our officers to do their jobs. What I'm saying is that I don't want a permissive situation where an officer can individually decide, without any safeguards, 'I'm going to use this technology because it will make my day go faster.'

Senator SHOEBRIDGE: The current department position is that there is a prohibition on its use.

Mr Pezzullo: Pending the resolution of these questions.

Senator SHOEBRIDGE: Pending the resolution of these questions. Unless there's an exemption granted?

Mr Pezzullo: That's correct. The business case typically—I won't put words in your mouth, Chief Operating Officer Saunders. I doubt very much that the business case would be entertained where an officer said: 'I've got to do a lot of ministerial representations, because all these senators write to my minister, and this would be a way of generating responses more quickly. Do you mind if I download it to become more productive and efficient?' I don't think that meets the standard of a business case.

Senator SHOEBRIDGE: Or, 'I'm going to feed in bucketloads of data in relation to X, Y or Z and get it analysed and responded to.'

Mr Pezzullo: When we purchase AI on our corporate systems through proprietary arrangements, we can control that. I'm concerned about open-source technologies of this nature where you can't control that.

CHAIR: I'll hand the call over, Senator Shoebridge. We can come back to you.

Senator SHOEBRIDGE: Could I finish this line of questioning? It will only take me another two minutes.

CHAIR: I do need to hand the call over. I've been really generous with time. We've got a very long list of senators waiting to ask questions, and we are over time at the moment. If you've got one last question I'm sure people will understand.

Senator SHOEBRIDGE: I have one last James Paterson style question.

CHAIR: We'll come back to you.

Senator CHANDLER: I have some questions regarding foreign interference, if the relevant officials want to come to the table, although I suspect Mr Pezzullo will be well placed to respond to most of them. You'll be familiar, Mr Pezzullo, with the speech that your minister gave in February this year regarding foreign interference, in which she said that Iran is one of a number of countries which have been involved in foreign interference attempts against Australia, including within Australia.

Mr Pezzullo: Yes.

Senator CHANDLER: Is there any change to the government's view since Minister O'Neil made those comments in February this year?

Mr Pezzullo: A change in relation to that assessment or that judgement?

Senator CHANDLER: Yes.

Mr Pezzullo: No.

Senator CHANDLER: Thank you. In the minister's speech she revealed that the Islamic Republic of Iran had directed foreign interference in Australia, including a specific incident where someone living in Australia had their home invaded and was followed, watched and photographed at the direction of the IRI regime. What consequences has the regime faced for perpetrating this blatant act of foreign interference on Australian soil?

Mr Pezzullo: Mr Coles will assist in the presentation of evidence to this committee. In terms of representations made to the Islamic Republic, I'll ask Mr Coles to speak to that, whether in relation to that incident itself or just more generally.

CHAIR: Before you do continue: obviously these are questions relating to Home Affairs and not the Department of Foreign Affairs and Trade.

Senator CHANDLER: Yes, of course.

Mr Coles: Your question was about the response, if any, to the—

Mr Pezzullo: Consequences to the regime.

Mr Coles: If I can take a step back: in terms of the whole-of-government approach to countering foreign interference, there is an operational structure which is the CFI task force. That is led by ASIO but comprises AFP and other operational agencies. To the extent that there are operational considerations, those are really matters for the CFI task force. I'm not really in a position to answer questions about operational outcomes or consequences.

Senator CHANDLER: Where would I have to go to get those questions answered?

Mr Coles: ASIO would be the best agency to ask.

Senator CHANDLER: So you can't enlighten me as to what consequences the regime might have faced, then, which was my initial question?

Mr Pezzullo: The question of whether there are operational activities underway—the director-general may or may not be in a position to entertain that in a public proceeding. To the extent that sanctions or diplomatic representations might be applicable, that's a matter for the Department of Foreign Affairs and Trade. Our job is to coordinate and ensure that all the agencies are both joined up and sharing information. That's what Mr Coles's day job is. But, if you like, we don't manage operational responses. In a sense, you'll need to go to through each of the relevant departments. If it's a sanction or if it's a diplomatic remonstrance, then that's a matter for our colleagues in the foreign affairs department. If it's able to be discussed, and I suspect there are probably going to be a number of matters that the director-general's not going to be in a position to discuss, he and his officers will be here tomorrow.

Senator CHANDLER: Thank you very much for that. I'm a little concerned that I've done this run-around a couple of times at estimates with Foreign Affairs, Home Affairs and ASIO trying to get some sense of responses to these questions, and they aren't always forthcoming. I'll keep asking questions, but, given that response, I know where further responses will go. The minister was very specific in saying that this incident occurred at the direction of a foreign power. We know that this is the IRI regime. Were the Iranian embassy or any staff at the embassy involved in directing or facilitating this incident?

Mr Pezzullo: Beyond what has been put on the public record both by the minister and—I think the director-general has also spoken about concerning activities of the Islamic Republic of Iran. I don't know that we're either in possession of the facts or entitled to disclose them, because they're not facts known to us through our own direct operational activity. We don't conduct operational activity. As to whether embassy officials are involved or agents of the embassy were involved, I suspect you're going to be equally disappointed with this answer as you were just a moment ago, but I'm genuinely not trying to deflect—they're not matters that we're responsible for in a direct sense. Indeed, we're getting to a point, Mr Coles, where I can't quite recall—this was back in February—how much of this the minister put directly on the public record and how much was surmised in the reporting. You could assist me, perhaps, if you're using direct quotes from the minister as distinct from reportage at the time.

Senator CHANDLER: There was also a response to a question in question time in the parliament as well, where the minister expanded somewhat on that.

Mr Pezzullo: I do recall that. I certainly wouldn't add anything beyond what the minister said at the time. Should the director-general wish to add anything tomorrow, he's fully able to do so.

Senator CHANDLER: I asked a question on notice in the last estimates, SE23-218, as to whether any persons affiliated or working on behalf of the IRGC were present in Australia at any point in 2022 or at any point so far in 2023 when that question was put. The department's response was it doesn't comment on operations

matters. I assume that if I said to you, 'What do you mean when you say you won't respond, because it's an operations matter,' it's the same as the responses you've already provided so far today.

Mr Pezzullo: Knowledge of, for instance, undeclared operatives or those who might be here as an agent of the IRGC would almost inevitably be connected to ongoing operational investigations—well, where they're not the competent authority, because if it's a criminal matter it would be dealt with by the commissioner and if it's a security intelligence investigation it would be a matter for the director-general, so you can try with them. But, in any event, given the nature of matters related to espionage and foreign interference it would be unusual for a lot of detail to be provided in such proceedings.

Senator CHANDLER: Sure. I'll try for some slightly broader questions, then. Does the department believe that the IRGC is an organisation that funds and facilitates acts of terrorism?

Mr Pezzullo: Well, that requires certain legal definitions to be met. It's not a question of belief. If you're asking about the potential proscription of that arm of the Islamic Republic's government apparatus, then I can give you an answer related to that. But I'm not prepared to canvass what we believe or don't believe, because we don't do security investigations; we rely upon the advice of ASIO in that instance, and if there's any breach or potential breach of Australian criminal law then we're reliant on advice from the Federal Police. Those words you've used have a lay character to them—

Senator CHANDLER: Yes.

Mr Pezzullo: but they're also legal definitions. So, the question of whether those activities meet the legal requirements under the Criminal Code is a matter Mr Coles might be able to illuminate you on. But, again, it wouldn't just be a question of our 'belief'. It would be whether the requisite processes have been gone through to establish whether the relevant proscription thresholds have been met. Mr Coles, can you assist the senator otherwise?

Mr Coles: I'm afraid I can't, beyond saying, as the secretary said, that there are a range of aspects of the Criminal Code and indeed perhaps the ASIO Act that would be relevant. It would really be on a case-by-case basis as to the facts.

Senator CHANDLER: Let me ask the question in a slightly different way. Do you think the IRGC is involved in terrorism?

Mr Pezzullo: That, under our law, requires a legal threshold to be met. It's not a question of opinion. In some countries there have been certain designations that would lead you to conclude that—

Senator CHANDLER: Indeed—by many of our allies.

Mr Pezzullo: I've read your opinion piece on this, Senator, and we have laws that are passed by this parliament that have particular thresholds. Other countries have different thresholds. So, for us these aren't matters of opinion. We have to apply the law as it's written and passed by this parliament.

CHAIR: And—to assist the senator—you're also not able to give an opinion; you're not being asked to give an opinion, I don't think.

Mr Pezzullo: Quite. I didn't hear the question as asking for an opinion, but what I'm saying is that, even if I was to speak to that as a matter of fact, there are lay facts here and then there are kind of legal facts.

Senator CHANDLER: Yes. I recognise that.

Mr Pezzullo: And, assisting the minister, as we are required to do, in her engagement with the Attorney-General and others on the proscription regime that's set out in our law, we have to have regard to the facts as they're defined legally rather than as they might be defined shorthandedly or colloquially. Terrorism has a particular definition under Australian law.

Senator CHANDLER: On that—and we've sort of skirted around this issue a little—has the Department of Home Affairs raised with any minister or any other department the option of potentially amending legislation so that the IRGC isn't immune from being listed as a terror organisation even though it is clearly involved in terrorism in layman's terms, as you said, Mr Pezzullo?

Mr Pezzullo: I'm hesitant to say yes in response to that, on the basis that your question has a flow of causality that asks: because of the IRGC issue, have you advised on amendments to the law? I know we've advised from time to time over the years potential amendments that have a relevance to terrorists lifting proscription, but I don't know that it's ever been occasioned exclusively and solely to do with the IRGC. Mr Coles, do you know otherwise? Mr Coles has reminded me that the question you asked then straddles onto the other side of the same group—the terrorism side. Mr Roy, who's been a frequent attendee today on a different topic, might join us. He runs CT. To the extent to which these activities fall within a strict definition or otherwise of 'terrorism', that's a

matter for the CT coordination centre. To the extent to which they then constitute interference, that's a matter for Mr Coles, hence the distinction. The question was, in relation to the prescription regime in general terms—I think we can always answer this—have we provided advice? It's well within the standing orders of the Senate to ask us about advice. I don't know that we've ever provided advice occasioned by a concern related to listing or other prospects for the IRGC.

Mr Roy: Not to my knowledge.

Mr Pezzullo: I think the answer would be no, but we might need to check. Would that be fair?

Mr Roy: I understand, Secretary, that the Attorney-General's Department, in January this year, provided a submission to a different committee—the Foreign Affairs, Defence and Trade References Committee—noting it's of the view that, as an organ of nation-state, the IRGC is not the kind of entity that's covered by the relevant provisions in division 102 of the Criminal Code.

Senator CHANDLER: But is that the extent of Home Affairs' engagement on that question?

Mr Roy: To my knowledge.

Mr Pezzullo: The question wasn't related the current state of the law; it's about whether we've provided advice on potentially amending the law. We might take that on notice.

Senator CHANDLER: Thank you very much, Mr Pezzullo.

Mr Pezzullo: Given the Chair's guidance earlier, we wouldn't necessarily then feel obligated to describe the specifics of the advice. But the fact of the giving of advice often falls within the ambit of this committee.

Senator CHANDLER: That would be interesting enough for me, Mr Pezzullo. Have you received any assessment as to whether the IRGC presents a threat to the national security of Australia?

Mr Pezzullo: Have we received an assessment? Certainly, the competent intelligence, security and law enforcement agencies have turned their mind to that. And have they provided reports? I think the answer would be—I've certainly read assessments that come to us from other agencies. You'd have to speak to them about the extent to which they are willing to divulge the detail or even the general thrust of those assessments. Has it been a matter that we've ignored? No. Has it been the matter of scrutiny by the relevant competent agencies that have got the lawful powers to conduct the appropriate assessments and investigations? Yes.

Senator CHANDLER: When you say you've 'turned your mind to it', or, sorry, 'other agencies have turned their mind to it', has that been in the last five years or in the last five months?

Mr Pezzullo: I think in more recent times than that. I might just check, first of all, on the terror side and then on the interference side. Without being particular about reports that we would not generate but which come from other agencies, I think it's fair to say that that organisation has been the subject of assessment attention. I think that's fair to say.

Mr Roy: That's right, Secretary. I'm not aware of a specific report in mind. But I'm sure that's the case in recent times.

Mr Pezzullo: We'll check on record and we'll need to consult with colleagues about the extent to which we can disclose even the topicality or the time period over which those assessments were provided.

Senator CHANDLER: Okay. Thank you, Mr Pezzullo.

Mr Pezzullo: Mr Coles, do you have anything on the interference side?

Mr Coles: Senator, I'll answer your question in a different way. You referenced before the Minister for Home Affairs' address to the National Security College on 14 February, where the minister spoke in some detail about the community interference threat experienced, in particular, by the Iranian community in Australia. In response to that, the department, in collaboration with partner agencies like the AFP and ASIO, had already to that point undertaken a very significant program of community outreach to the Iranian community in Australia. Since that time we've continued that and lifted that up, acknowledging the particularly difficult circumstances those communities face and trying to support those communities to address that threat.

Senator CHANDLER: I'm sure you would recognise, Mr Coles, and all of the officials at the table, that there is an element of frustration that some of these details were publicly divulged by the minister in that speech and in the contribution that she made in the House of Representatives not long thereafter. I recognise that it is at the discretion of the minister to divulge that information, but, when we come in here, all of a sudden the conversation is not quite as forthcoming.

CHAIR: That sounds like a statement, not a question, Senator.

Senator CHANDLER: I might leave my questions there, Chair, in the interest of time.

CHAIR: Okay, thank you. Senator Rennick.

Senator RENNICK: Thanks, Chair. My question is regarding the 4,213 posts pulled down by Home Affairs in regard to COVID. What qualifications did your staff have in regard to determining whether or not a post was accurate or not?

Mr Pezzullo: Ms Hawkins addressed that in her earlier evidence. The so-called takedown is not effected by any law or power that an officer of mine exercises. It's a request to the social media company that hosts the platform.

Senator RENNICK: On what basis did you make that request, and what were the qualifications of the person that made that request?

Mr Pezzullo: That's a different question. Ms Hawkins will join us but, as she indicated, it was using both advice from the Department of Health, using its public health expertise, as well as the terms and conditions of service that the companies themselves post very transparently on their websites about what constitutes COVID misinformation or COVID disinformation—to use that term ever so briefly. Whether it's on Meta or any other platform, if, on its face, it seems to fall foul then the post is referable. In other words, you don't have to be a clinician to say: 'I've got a view about the medical science here. I think I might ask Facebook to take it down.'

Senator RENNICK: Well let's go into some of the detail then, because I've got posts here that have been handed to me by a whistleblower who's very unimpressed with what's been going on in Home Affairs. Some of the posts that were pulled down were posts which said that the vaccine didn't stop transmission. They've been reported by Home Affairs to Facebook, for example. Was your department aware that the FDA said in December 2020 that there was no evidence that the vaccine stopped transmission? If so, why did they then report posts to Meta when these posts were actually accurate?

CHAIR: Do you—

Mr Pezzullo: Two things have been conflated—sorry did I interrupt?

CHAIR: I just wondered if you had documents to table.

Senator RENNICK: Yes, I'm happy to table them, if someone wants to have a look.

Mr Pezzullo: Oh, good, that'll be handy. Thank you. It'll give me something more precise to focus on. We're not a public health department, Senator, I think I've made that plainly clear.

Senator RENNICK: That's my point. You're not the health department—

Mr Pezzullo: Yes.

Senator RENNICK: so why are you putting pressure on these foreign owned companies to stifle free speech? I would have thought your role was to protect free speech. Given that the immunisation handbook says that people have to be fully informed about the risks of the vaccine, I think people are entitled to ask questions, don't you?

Mr Pezzullo: I saw you sitting up there when I gave my previous evidence, but, if you're interested, I'll re-summarise what I said.

Senator RENNICK: I wasn't here when Senator Antic or Senator Roberts asked questions.

Mr Pezzullo: It goes back to a decision taken in either the first or second quarter of 2020, when the health department and then health minister, Minister Hunt, were particularly concerned about the spread of inaccurate, misleading and, in some cases, dangerously deceptive information about COVID itself—the nature of the virus and the nature of the disease that it causes, as well as the efficacy of the vaccines that were then in prospect. The government gave a direction to the health department, assisted by others who could provide assistance. We've got a practice, which I explained to Senator Antic before, that is constantly scanning social media for other reasons—terrorist and violent extremism material—and we were able to provide the Department of Health with some support to say, 'This post appears to infringe the public health advice that the health minister, the TGA and ATAGI have provided.' It's not our job to contest whether the—

Senator RENNICK: Okay, so what if that advice is wrong? Who gets to determine what's right and what's wrong? And who gets to determine what's right for the individual? Are you protecting the government's rights or the individual's rights here?

Mr Pezzullo: Well, that's a rather philosophical question; I'm not quite sure how to answer it.

Senator RENNICK: No, actually, it's more than philosophical—

Mr Pezzullo: Well—

Senator RENNICK: because you're in the government, you're a bureaucrat and you're meant to protect individual rights. The role of a democracy in a liberal democracy is to protect the individual from government overreach. That's what democracies are about.

Mr Pezzullo: So my job is to restrain other parts of the government? I'm not sure that that is my job. My job is to apply the law and apply government directions that are lawful. At the time, the Morrison government took the view that dangerous, misleading and/or, in some cases, harmfully deceptive information about COVID—

Senator RENNICK: But as I've just demonstrated, the information wasn't harmful or deceptive. The vaccine didn't stop transmission, and the FDA—

Mr Pezzullo: I'm not sure what you've demonstrated.

Senator RENNICK: I just told you. The FDA came out and said there was no evidence it stopped transmission.

Mr Pezzullo: If you say the FDA came to that view in December of '20, then I'd ask you to represent that to the secretary of Health in another committee, and he can speak to you about how the TGA works and how we think about these issues. I just have to take your assertion on face value that that's indeed what the FDA provided, but, for my purposes that's immaterial. That's a matter for the department of health. If we're charged with helping them—to say, 'If any posts fit these categories of disinformation, misinformation or deceptively harmful information, because you've got a 24/7 capability and you've got an engagement with these companies, can you make referrals?'—yes, of course.

Senator RENNICK: The TGA take 96 per cent of their funding from big pharma. They have an inherent conflict of interest. So I'll come back to my original question: what medical qualifications did your staff have to assess what the TGA had even said was health advice was actually accurate?

Senator Watt: That's not their role. We've gone over this. It's not their role.

Senator RENNICK: Well, it was your role, because you've recorded 4,213 posts—

Senator Watt: No. They've explained—

Senator RENNICK: You're reviewing posts and intimidating people, because they're having their posts pulled down, for accurate information.

Senator Watt: If I understand what Mr Pezzullo has now said to three different senators, the role of this department has simply been to action the information that is provided by the health department.

Senator RENNICK: You're actively reporting posts that were correct.

Senator Watt: The federal health department was the authority, under the government of which you were a part, that made recommendations to this department—

Senator RENNICK: I dispute that, Minister Watt, because—

Senator Watt: You weren't part of that government or—

Senator RENNICK: this is still going on today. You are still censoring posts, despite the fact the World Health Organization declared the pandemic over.

Senator Watt: This has been happening for years. It's something that has been done on a bipartisan basis. I understand that you and Senator Antic didn't necessarily share the views of your fellow coalition senators—

Senator RENNICK: I'm just following the actual facts here.

Senator Watt: but you're trying to argue that the Department of Home Affairs was making judgements around health matters, when in actual fact it was relying on the advice of the Commonwealth health department. If you've got an issue with the advice of the health department as to whether information was accurate or not, you really need to take that up with the health department.

Senator RENNICK: That's what I am asking: how do the actual people in Home Affairs who review these posts determine if what's accurate is accurate?

Senator Watt: That's not their role. Their role, as the department that handles cybersecurity, misinformation online, all of that kind of—

Senator RENNICK: But it wasn't misinformation.

Senator Watt: Well, that's your view.

Senator RENNICK: Why do you keep calling this stuff misinformation, when the government was spreading misinformation about the transmission and the vaccine and it being safe and effective, with no qualifying risks?

Senator Watt: That's your view, and we know that you like to take up estimates time prosecuting your views about COVID.

Senator RENNICK: Actually I'm trying to stand up for the people that were injured by the vaccine. I've done this more than once with you, Minister Watt.

Senator Watt: I know. We're all familiar with it.

Senator RENNICK: You've ridiculed them in the past by calling them 'antivaxxers'.

Senator Watt: We're all very familiar with it.

Senator RENNICK: We well remember that.

Senator Watt: It's been going on for years. But you are misunderstanding the role of this department in this process.

Senator RENNICK: Let me put this question to you, Minister Watt—

Senator Watt: It is not the role of the Department of Home Affairs to decide whether the advice of the health department is right or not—

Senator RENNICK: Okay, so let me ask this question to you—

Senator Watt: just as it's not the health department's role to decide whether cybersecurity—

Senator RENNICK: Why is the government—

CHAIR: Senator Rennick and the minister, it would assist me as chair if you could not speak over each other. Senator Rennick, you can put your question. Please stop speaking over the minister while he's trying to answer it for you.

Senator RENNICK: Minister Watt, why is your government still censoring social media posts about COVID, when the pandemic has been declared over by the World Health Organization and the state of emergency was ended here by many states last year?

Senator Watt: I'm not across exactly what action the department is currently taking, but, as has been described, this department has a role in addressing misinformation that represents a danger to the public.

Ms Hawkins: Senator Rennick, can I just come in and help on that direct question? In terms of what you were saying about the pandemic having been declared over, in earlier evidence I did note that the current contract ends on 30 June, and we will not be renewing it.

Senator RENNICK: The contract? Which contract is that?

Ms Hawkins: This work will end on 30 June this year. It's a contract with a service provider who we had contracted to identify the harmful COVID misinformation and disinformation on various platforms.

Senator RENNICK: So you've actually employed an external consultant to review this data?

Ms Hawkins: We did have an external provider—

Mr Pezzullo: Not data, posts.

Senator RENNICK: Posts, yes.

Mr Pezzullo: They've got a scanning capability.

Senator RENNICK: Can I get a copy of that contract you had with that external agency, please?

Mr Pezzullo: We can take that on notice.

Senator RENNICK: And can I get a copy of all the actual posts that have been taken down or reported?

Mr Pezzullo: We took a question on notice from Senator Antic earlier about the 4,200 referrals, and I undertook to come back to him. I also undertook to grouping them up. I also undertook, for Senator Roberts, to look at whether any parliamentarians were identified or otherwise. Sometimes you just get a URL; you don't necessarily get the identity of the poster. But we'll come back as a subset of that. So we'll take the contract on notice, because that's new. We've already taken on notice the post referrals in the order of 4,000-plus. And, just to round out the question of relying on both advice from our Health colleagues and then what qualifications our staff have—and I do recall this now—there was a fact sheet that was developed early in the pandemic. I'm just going to read out the title, Senator; you won't agree with it. It's 'Misinformation and truths about coronavirus (COVID-19)'. There are a whole series of examples of misinformation, so our staff don't need to then look at the science behind it:

MISINFORMATION COVID-19 is a hoax.

Other instances are that a COVID vaccine can connect you to wi-fi, a COVID vaccine can alter your DNA and COVID vaccines can cause infertility. Our officers say, 'Okay, that's an example of misinformation.' The platforms themselves have got terms of service, where they themselves will have regard to a take-down, saying, 'We're satisfied'—Meta or whoever else—that a COVID vaccine will not connect you to the internet without your knowledge,' for instance; 'It will not alter your DNA.' Our job was to act in the middle to broker—because social media is constantly swirling; not everyone has got eyes on every single post. It would be to refer it, to say, 'Hang on. This post appears to infringe your own terms of service because it suggests, for instance, that a vaccine can alter your DNA.' Going to Minister Watt's earlier point, I don't need to separately establish or contest the health department's advice that a COVID-19 vaccination will not alter your DNA. Apparently—I didn't know this—one of the examples of misinformation is that a COVID vaccine can connect your body to bluetooth.

Senator RENNICK: I'm not referring to that. I'm referring to transmission, PCR testing in particular, and that it couldn't cause death and injury.

Mr Pezzullo: You're right; that is one of the matters engaged with by the Department of Health's fact sheet. It says—and I'm going to use the term 'misinformation', if you don't mind, Senator—as an example of misinformation:

COVID-19 vaccines are dangerous, and more people will die from adverse side effects of the vaccine than COVID-19 itself.

There's a half-page description—and I'll get you more particulars on this fact sheet, which was put on the website at the time—and it says at the bottom that, if you're experiencing a side effect, then get on to the TGA. In other words, it's not my department looking at the science of whether there would be adverse side effects that would kill more people from vaccination relative to COVID itself. We just took that as the public health advice.

Senator RENNICK: That lacked age stratification, and that was one of the issues.

Mr Pezzullo: Sorry?

Senator RENNICK: That lacked age stratification, didn't it—because there are different risks depending on the age. Obviously, if you're older, COVID is a risk; I accept that. But if you're younger—

Mr Pezzullo: I remember that debate at the time. And then our job was to say, 'Here's an example that our officers have been trained on,' by looking at these fact sheets. We also did this work in language, didn't we?

Ms Hawkins: We did indeed.

Mr Pezzullo: Because there were some linguistically diverse communities that weren't getting the information from the daily press conferences, we converted—

Senator RENNICK: For time, we'll wrap it up with that. Just one more question, and I'll be finished, thanks, Chair. Are you doing a similar review of social posting in regard to the referendum on the Voice?

Mr Pezzullo: No.

Senator RENNICK: Okay. Thank you.

Mr Pezzullo: Our role there will be limited solely to foreign interference and attempts to subvert our referendum by nefarious external sources, such as foreign intelligence services.

CHAIR: If it assists you, Senator Rennick, I've had a look at the document that you've provided to me. The committee will have to consider whether we can table that.

Senator RENNICK: Yes, that's fine. I don't care whether you table it or not.

CHAIR: Alright. That's fine, thank you. I'll hand it back to you, then. Senator Shoebridge.

Senator SHOEBRIDGE: Just to close the loop on an earlier line of questioning, Secretary, I asked you about what, if any, apps—if you remember, it was in the context of Netflix and the like—have actually been banned or prohibited from being used on government devices. Do we have a list?

Mr Pezzullo: The advice is that blocking websites is easier than blocking applications, but Mr Milford can explain that.

Mr Milford: I don't have a list here of all the apps that are blocked, albeit we do clearly have a list of them, so that could be provided to you.

Senator SHOEBRIDGE: Is there any chance you could get that if there is a list?

Mr Milford: We know the apps that are blocked. I'm not quite sure what format that list is in. I could get it to you on notice. I could see whether I can get it earlier, but certainly I can get it.

Senator SHOEBRIDGE: Does it include Telegram? The reason I ask is that it's owned by Russian oligarchs and based in Dubai.

Mr Milford: I'd have to take that on notice. I can find that out for you relatively quickly.

Senator SHOEBRIDGE: If you could get an answer on Telegram, I'll take the other one on notice. I'll take one on short notice and one on longer notice.

Mr Milford: Hopefully my phone will start vibrating very shortly.

Senator SHOEBRIDGE: Thank you. It will probably be a message from Telegram.

Mr Pezzullo: I should say on that: we certainly have security agency advice as to what the least-risk encrypted applications are, and we tend to use those applications.

Senator SHOEBRIDGE: Minister O'Neil declined a meeting with TikTok. TikTok had sought a meeting to discuss data concerns, and last year she declined a meeting with TikTok to discuss their data concerns. Do you know why that happened?

Mr Pezzullo: I'm not sure. I'm just not aware of that. I'll have to ask her and her office. I didn't know that she'd been approached. I certainly don't have any recollection that she declined a meeting.

Senator SHOEBRIDGE: Were you asked for advice about the minister meeting with TikTok?

Mr Pezzullo: Mr Hansford might know. I know that they were quite active in their lobbying and their advocacy. Can you assist, noting that we might need to check with the minister or her office?

Mr Hansford: We'll have to check which particular invite you're referring to, but there was an invite to review the international transparency centre. I think members of the department took up that invite, but we'll check that on notice.

Senator SHOEBRIDGE: The first invite I was asking about was the one that came from TikTok's director of public policy, Brent Thomas, inviting her to meet with TikTok's global chief counsel, Erich Andersen.

Mr Hansford: We'll check that on notice.

Senator SHOEBRIDGE: Mr Hansford, were you asked about that meeting?

Mr Hansford: I don't recall when that invitation came in, if it did, or the advice at the time.

Senator SHOEBRIDGE: Were you asked about the meeting?

Mr Hansford: What date did the invitation come in?

Senator SHOEBRIDGE: It happened in July.

Mr Hansford: In July of?

Senator SHOEBRIDGE: July of last year. She wasn't minister in July of the year before, and we're not yet in July 2023.

Mr Hansford: I was just a humble regulator at that point, so I wasn't running in that particular function. We'll have to check.

Mr Pezzullo: We'll check.

Senator SHOEBRIDGE: What, if any, advice was given to the minister about that meeting with TikTok's global chief counsel, Mr Andersen?

Mr Pezzullo: That's one of the things that we'll check—whether we even were asked for advice and whether we tendered it.

Senator SHOEBRIDGE: Is Mr Peter Anstee an employee of the department?

Mr Pezzullo: Yes, he is. If he's here, he might be able to resolve this. He's acting in a more senior role than he would have been in in July, but he's continued to have carriage of this. Mr Anstee, do you recall the invitation? I'd be reluctant for you to be drawn directly in. You might refer it back to me about the nature of the advice. I'm typically comfortable in the fact of having given advice.

Senator SHOEBRIDGE: Mr Anstee, just to help, I'm talking about your letter of 9 August.

Mr Anstee: I don't have a copy of the letter with me here. Again, I think it's easiest if we take it on notice and track down the advice from the office.

Senator SHOEBRIDGE: I'm going to ask you, sitting there now, to exhaust your memory: were you asked to provide advice on the request for a meeting that the minister rejected?

Mr Anstee: I can't recollect that being asked. I'd prefer to take it on notice to give you an accurate response.

Senator SHOEBRIDGE: You provided a response to TikTok's request for a meeting. You provided the response on 9 August, and you're telling me you can't remember whether or not you checked with the minister or

you gave advice to the minister about the meeting? So you were asked to provide the response, you provided the response—and you have no memory.

Mr Anstee: I will need to check the correspondence. I think it'll be better to give you accurate advice.

Senator SHOEBRIDGE: I'm asking you to exhaust your memory sitting here now. Simply taking something on notice isn't a valid response. What is your memory of whether or not you provided advice to the minister about the meeting?

Mr Anstee: I'll refer to my previous answer. I think it's best that I check my correspondence with the minister or her office.

Mr Pezzullo: Have you exhausted your memory?

Mr Anstee: I've exhausted my memory, Senator.

Mr Pezzullo: So that's the answer. He's exhausted his recollection.

Senator SHOEBRIDGE: You said you thought it was best, which is quite different from exhausting your memory. Now, with an invitation from the secretary, you've said you've exhausted your memory.

CHAIR: Senator Shoebridge, I think you are reading too much into the language of an official who's being polite rather than obstructive. You've been told that the question has been taken on notice. Do you have another question?

Senator SHOEBRIDGE: Mr Anstee, you said the minister values your invitation to meet with your chief counsel; regrettably, the minister is unable to meet. On what basis was the minister unable to meet?

Mr Anstee: Again, I think it's prudent that I check any specific interaction with the minister or her office to inform why my specific answer was given.

Senator SHOEBRIDGE: Whether it's prudent or not, I'm asking if you have any memory of why it was that you wrote and said, 'The minister is unable to meet.'

Mr Anstee: I don't recollect the specific circumstances.

Senator SHOEBRIDGE: Did you then meet with TikTok?

Mr Anstee: I've had one meeting with representatives from TikTok.

Senator SHOEBRIDGE: Was that in the capacity of representing the minister?

Mr Anstee: I couldn't say whether it was relating to that specific advice, but the department has many interactions with TikTok across a broad range of policy and operational matters.

Senator SHOEBRIDGE: To be clear, you say you have no memory, sitting there, of why the minister was unable to meet. That's your evidence?

Mr Anstee: That's my evidence.

Senator SHOEBRIDGE: And you'll provide on notice what basis you wrote to TikTok and said that the minister was unable to meet.

Mr Anstee: Specifically to interaction with the office, around any advice provided to them, I'm keen to check my records so that I give you accurate advice related to my interactions.

Senator SHOEBRIDGE: By all means, provide us with that. Can you also tell us on what basis you said, in your correspondence, that regrettably the minister is unable to meet?

Mr Anstee: Indeed, I will check that.

Senator SHOEBRIDGE: Secretary, are you aware of the arrest and detention of Daniel Duggan?

Mr Pezzullo: In broad terms, I am, yes. He's the pilot.

Senator SHOEBRIDGE: He's the pilot, yes, who's been prosecuted in the US, and they're seeking extradition from him. I think he's been in jail for 150 days in NSW.

Mr Pezzullo: I'm generally familiar with the matter from public reporting.

Senator SHOEBRIDGE: Mr Duggan's lawyers have raised concerns that he was lured to Australia by US authorities for extradition purposes. Did Home Affairs have any communication with US authorities, in relation to Mr Duggan, prior to his most recent return to Australia?

Mr Pezzullo: I'm going to tread cautiously here, because obviously—I think he's a US citizen, so the—

Senator SHOEBRIDGE: He's an Australian citizen.

Mr Pezzullo: Sorry, I misspoke; he's an Australian citizen. So there's no visa issue as such. Questions to do with law enforcement, criminal justice, mutual assistance and extradition are questions properly posed to the Attorney-General and the secretary of his department. But you're asking me about any interactions that we had—not to suggest there are likely to be any but I've learnt from long experience, just in case there was an email or any kind of contact that might have led to some kind of interaction. Ordinarily, for an Australian returning of no interest to the department—issues around US criminal investigations being matters for the justice department in the US and the Attorney-General's Department here—I'm going to indicate, subject to checking, no, I can't see a basis for there to be any interaction. What I was in the course of saying was that, if he was a noncitizen, we would have had a interaction with him through the visa process, but that is not applicable.

Senator SHOEBRIDGE: Is your answer unambiguously no, or is your answer as far as you understand, no, but you will check and provide a more comprehensive answer?

Mr Pezzullo: It's a fairly solid no, subject to checking.

Senator SHOEBRIDGE: And you'll give us the answer on notice after a check.

Mr Pezzullo: If there's anything to add that varies the 'no', I will.

Senator SHOEBRIDGE: Has there been any interaction of any sort between Home Affairs and News South Wales Police or New South Wales corrections about Mr Duggan's arrest and incarceration?

Mr Pezzullo: For the reasons I've just explained, I would doubt it, because, if there is a US criminal justice interest in this citizen, those matters would have been dealt with between the justice department on the US side and the Attorney-General's Department on the Australian side. So, in other words, I doubt it, but I will check.

Senator SHOEBRIDGE: But again, you'll check and provide it on notice.

Mr Pezzullo: Yes.

Senator SHOEBRIDGE: I've finished on the Duggan matter. One of the reasons that's often given for adopting a different approach to data security regarding Twitter, as opposed to TikTok, is that Twitter is based in the United States and has some kind of common rule of law, so we're more likely to have some kind of knowledge and control over how Twitter maintains and uses our data. Would you say that's one of the reasons given?

Mr Pezzullo: I accept that that's one of the characterisations given about some of the differences here, yes.

Senator SHOEBRIDGE: Is that broad approach something that Home Affairs adopts?

Mr Pezzullo: Adopts in relation to its own internal policies regarding these applications, or as part of a broader interagency process that we discussed earlier?

Senator SHOEBRIDGE: On both—in terms of its own policy in relation to Twitter and engagement on the committee.

Mr Pezzullo: Applications or technology companies that are domiciled—or can be materially either regulated or engaged with—in democracies or in countries which have at least got what we would consider to be applicable systems of the rule of law, would be, as a general principle, treated differently, I think, from those applications and the platform providers that provide those applications that are vested elsewhere.

Senator SHOEBRIDGE: Twitter treats Australia with utter contempt, doesn't it? I say that because Minister Rowland, for example, in February wrote to Twitter's Vice President for Trust and Safety, raising a series of issues and is yet to even have the courtesy of a response.

Mr Pezzullo: You'll have to ask her department about that. I wasn't even aware that she'd written as the communications minister, so that's a matter that you'll need to raise with her department.

Senator SHOEBRIDGE: The eSafety Commissioner has also repeatedly raised concerns about the refusal of Twitter to do the most basic regulation. The eSafety Commissioner said about Twitter:

... you let sewer rats and you let all these people who've been suspended back on the platform, while you get rid of the Trust and Safety people and processes ...

Do you accept that characterisation of Twitter from the eSafety Commissioner?

Mr Pezzullo: I've seen that reference because I think Ms Inman Grant made that comment publicly somewhere. I suspect you and I read it in the same place. But again, she's a statutory officer who reports to the communications minister, so questions about her views about Twitter are best placed to her.

Senator SHOEBRIDGE: But, given one part of government is having these interactions with Twitter, do they talk to you? Do they share their concerns with Home Affairs?

Mr Pezzullo: The characterisation of what a technology company should be doing about its content and its moderation is no different from the concerns that former Home Affairs ministers, for instance, have raised about Facebook's plan to engage in end-to-end encryption that would make it more difficult to detect child sexual exportation material. If you can engage in a robust policy debate with a provider, the question about back-end data security and the splicing off of that data into state agencies and instrumentalities is quite a different matter. So in terms of content moderation, there are a series of issues that engage the Online Safety Act, and the agency that regulates the Online Safety Act is the eSafety Commissioner. As a vector for disinformation and misinformation or in terms of potential for foreign interference, that engages my department. And then there's a data security risk. The question is: where does the data actually sit on the servers and where does it sit in motion to and from those servers? That's a different question again. They are allied questions. I'm not for a moment suggesting that these things should be completely razored out and treated separately, but they are distinct areas of concern.

Senator SHOEBRIDGE: Sewer rats don't normally have good data security though, do they?

Mr Pezzullo: Well, they might well have very good data security, depending on what they do with the cheese that they've taken through the pipes, I suppose!

Senator SHOEBRIDGE: I was being flippant, but it's indicative of an attitude from Twitter to—

Mr Pezzullo: Look, it might well be, Senator. I understand your—

Senator SHOEBRIDGE: to strip out its Australian employees and not even to respond to a minister and to be engaging in that. You're saying that just happens over there and it doesn't have any impact upon decisions that Home Affairs makes?

Mr Pezzullo: I'm not saying it doesn't have any impact. I'm just saying that, as cognisant as we might be of the Twitter sewer rats or otherwise, we've got particular responsibilities that relate to two specific areas of public policy concern: (1) the data security in the back end of the data—where's it sitting, how did it get there, how did it get to those servers, who's got access to those servers, and can it be moved from those servers?—and (2) is it a platform that can be used as a vector by, for instance, in the most nefarious example, a hostile state actor to peddle propaganda or disinformation that might be injurious to the Australian national interest?

As to their policies around content moderation—whether they allow misogyny or racism or the other matters that are captured under the Online Safety Act—they are properly matters for the eSafety Commissioner, and she's obviously ventilated her view about that. I'm not blind to that. I've indicated to you that I'm aware of what she said. I've got to have regard to my policy and legal responsibilities. That might well inform the view I take about that platform, but it's not necessarily determinative.

Senator SHOEBRIDGE: But when it comes to the use of Twitter by foreign governments and their influence over Twitter, you would be aware of the recent steps taken by Twitter to censor and limit communication in the Turkish general election. You'd be aware of Twitter providing information to the Saudi Arabian regime which was used to track down dissidents, some of whom were executed. Twitter has proven itself to be open to manipulation by foreign governments, including some that have quite hostile human rights records. Have you taken that onboard in your assessment of Twitter's access to government apps and government devices?

Mr Pezzullo: And I'm certainly aware of allegations, reporting and indications along those lines and indeed in other respects as well. Those are all matters that are subsumed within the general review of social media applications on government devices that we referred to earlier.

Senator SHOEBRIDGE: Well, to the extent that you can take it as truth, Elon Musk openly admitted in the past week and a bit that he did censor Twitter at the request of the Turkish government in the lead-up to election. As I said, to the extent that you can take what he says in his tweets as truth, it's not an allegation; it's an open admission.

Mr Pezzullo: Understood.

Senator SHOEBRIDGE: So, given that it's that admission—

CHAIR: [inaudible]

Senator SHOEBRIDGE: Well, can we just get an answer on that question?

Mr Pezzullo: On the two key policy areas—

CHAIR: It sounded like a statement to me, Senator.

Mr Pezzullo: On the two areas of policy concern—data security in the back end and use as a vector for misinformation and disinformation and foreign interference—

Senator SHOEBRIDGE: Political manipulation.

Mr Pezzullo: those matters are canvassed in the review that we spoke about earlier.

Senator SHOEBRIDGE: The 16-month one.

Mr Pezzullo: Yes.

CHAIR: Thank you very much. Senator Scarr.

Senator SCARR: Mr Pezzullo, I want to go to a few areas in outcome 1 that I want to try to traverse as quickly as possible. The first relates to the position with respect to families of ISIS fighters who may still be in Syria. We know that 17 Australian women and children were repatriated last year. One of those repatriated has been charged with entering and remaining in a so-called declared area. A number of Australian citizens still remain in camps in Syria, and my questions relate to the position with respect to those individuals. I'll just emphasise that I don't want to take you into operational matters, where you're restricted in terms of what you can say. Can we have confirmation, perhaps, for the record of how many Australian citizens have been repatriated to date? Is it still that 17 number?

Mr Pezzullo: It is that one group, Mr Roy?

Mr Roy: That's right, the group from October last year: 17.

Senator SCARR: Does the department have any expectations, or do you, Mr Roy, have any expectations, with respect to how many additional family members may be repatriated in the future?

Mr Roy: Obviously, I want to be careful how much I say here. We are aware that there are around 60 more Australian citizens in the region, although it's obviously a difficult operating environment to identify with certainty. As you would expect, repatriation—

Mr Pezzullo: Including whether they're in camps.

Mr Roy: That's right. Repatriations require a whole-of-government approach and a balancing of risks, and there are lots of security, diplomatic, community and welfare considerations that need to be addressed. But at all times our focus has been on the safety and security of all Australians, including, I should say, those officials who are involved in the operation. As such, I wouldn't want to comment much further.

Senator SCARR: Would you be able to give us an indication as to the percentage, say, of that 60 who have been the subject of risk assessments?

Mr Roy: The risk assessments are something that ASIO conducts, and I would probably leave comments around threat assessments on individuals to the responsible agency.

Senator SCARR: In terms of what might happen with respect to individuals who are repatriated to Australia subsequently, to what extent does the department have a role—

Mr Pezzullo: Sorry—in future?

Senator SCARR: Yes, in future. To what extent does the department have a role in terms of assessing what mitigations might be put in place when those individuals come to Australia?

Mr Pezzullo: The Department of Home Affairs, through the CT coordination centre that Mr Roy is currently the acting head of, coordinates both federal and state and/or territory—as applicable, as might be the case—engagement on the logistics of the move. We aggregate that advice for government to consider. The Minister for Home Affairs and her ministerial colleagues, ultimately, will make a decision to give us a green light to effect an operation. As part and parcel of that deliberation, the mitigants are: whether it's an arrest on arrival or a criminal justice action at the federal level; whether it's New South Wales, Victoria or any other police action to do with surveillance and those mitigations; and engagement of health, psychological and education providers, which, typically, are either state agencies themselves, or they're contracted or ancillary agents who work with a state. All of that is aggregated before a decision is taken so that the Prime Minister, his ministers and the relevant premier or chief minister are on the same page about what's going to happen to these folk.

Sometimes police are in the position where they say: 'We're contemplating a charge. We're not in a position to give you full advice,' but they provide as much frank disclosure as they're able to. The Joint Counter Terrorism Teams in each of the states have a view about what needs to be done to mitigate the most egregious risks, noting that, typically—to be candid—you won't even get a foot on the plane if the judgement is that you're still high risk. Ministers, in the end, will be provided with all of that information: what the prospective risk is, what the mitigants are to deal with that risk, which of those sit with the Commonwealth and which of those sit with the states and territories. That includes downstream management of risks, such as psychological impact and trauma for children,

for instance. How will that be mitigated? Will they have direct interventions? All of that is aggregated before a green-light decision is taken, going off the pattern that we established last October.

When you ask, 'What consideration is given to mitigants?', every agency with a stake—federal, state or territory—gets a voice and we deliver a package. I think it's fair to say, Mr Roy, that if a state government chose to say, 'We don't want to proceed,' then I would have thought the Commonwealth would take that pretty seriously, because we have to rely on them for schooling, trauma support, counselling, public health support and the like. So it's done consensually. All that information is put to them, and then they'll give us the authority to proceed or otherwise.

Senator SCARR: Is advice given with respect to the cost of potential mitigants, the cost of potential support services?

Mr Pezzullo: Yes. We go through a process with our colleagues in the states and territories, because there will be a tail of their costs and a tail of our costs—or if not a tail at least a contribution to do with our own costs. I think it's fair to say, Mr Roy, that costs are a factor taken into consideration. Am I misspeaking in saying that?

Mr Roy: No. That's absolutely correct.

Mr Pezzullo: Thank you.

Senator SCARR: Moving on to another topic, what information can you give us—again, I don't want to take you to places you can't go—in relation to the department's work on tracking the future release of convicted high-risk terrorist offenders? We've spoken about—

Mr Pezzullo: Tracking?

Senator SCARR: The potential release of convicted high-risk terrorist offenders.

Mr Pezzullo: I see, yes.

Senator SCARR: There is a range of mitigants that can be applied in the event that a high-risk convicted terrorist offender is coming to the end of their term of imprisonment. What sort of program does the department have in terms of tracking?

Mr Pezzullo: The counterterrorism coordination team has visibility across the Commonwealth, states and territories of prospective releases. It works to support the Attorney-General's Department. Prior to the machinery-of-government change last year—I think it's right to say the AFP minister in both the case of a continuing detention order but also an ESO order—is the AFP minister. Since last year, that has been the Attorney-General. So we provide advice and support to the Attorney-General's Department, who in turn—you'll have to ask Ms Jones as to how she goes about this in the detail; it's a matter for her—provides advice to her minister, the Attorney-General. The Attorney-General is, under the relevant division of the Criminal Code, the decision-maker for seeking an application. For instance, we spoke earlier about the Corner report. That relates to the possibility of a continuing detention order, for instance, being sought. When you say 'track', our job is to work with the correctional bodies to maintain, if you like, a master list of what that pipeline looks like. Obviously, there were a number of convictions some years ago, and those terms are coming to the end of their term, if I didn't speak tautologically there. Mr Roy, just to add to my answer, in practical terms those cases are presumably discussed through your committee processes and the Attorney-General's Department and others are given full visibility of the likely release or parole periods. Can you give the senator a quick description of what then happens.

Mr Roy: I'd just add that we work very closely with the Attorney-General's Department in the management of those individuals both on an as-needs basis but also through regular meetings in interdepartmental committees—

Mr Pezzullo: You have a master list, do you not? I've seen such a document.

Mr Roy: Yes, there is a list that's maintained in consultation with the Attorney-General's Department. We also support the HRTTO regime through working with states and territories in relation to funding to support the accommodation of individuals post-release or on post-sentence orders, as well as supporting the countering violent extremism programs that are tailored to reintegration programs for high-risk individuals.

Senator SCARR: Is there any information—again, I'm alive to operational matters—you can give us with respect to the number of potential releasees who are coming to the end of their term over the course of the next 12 months or two years so we can have an appreciation of the scale?

Mr Pezzullo: I would want to check what evidence we've given before. In general terms, without being particular about two years, three years or four years, there is something to the north of 50 persons, I think, currently in prison who were imprisoned as a function of a conviction for a terrorist offence. I think the number is roughly 50.

Mr Roy: That's right. Fifty-six are currently serving custodial sentences.

Mr Pezzullo: Could we help the senator? Do we have any sense of the time period over which those releases will start to occur—well, not start to occur, because Mr Benbrika is a good example. Some of them are actually occurring. Can we assist the senator with a time period?

Mr Roy: I don't have a forecast in front of me, so I might have to take that one on notice.

Senator SCARR: Have you any data with respect to, say, numbers who've been released in the past 12 months—so looking backwards?

Mr Pezzullo: We'd have to—

Mr Roy: We'll have to take that one on notice.

Senator SCARR: I might provide some additional questions on notice for you. Again, I'm interested how much you can provide in terms of particulars.

Mr Pezzullo: For the ones that have been released, unless a CDO or an ESO was sought, just as an objective, we should be able to come back to you to say, 'Person X was convicted for an offence under the criminal code in relation to terrorism.' If they're not in continuing detention, ergo, they've been released, we should be able to come back to you on the record on that.

Senator SCARR: Another area I want to quickly touch on—and this could be a very short discussion—is in relation to the department's prior involvement in relation to the early intervention stream of grant funding, in terms of the Safer Communities Fund grants. The current government has decided not to advance that funding regime. I'm interested to know whether the department has provided any advice to government in relation to the success or otherwise of those funding rounds in the past.

Mr Pezzullo: I've got a feeling that the answer is no, simply as a function of a machinery-of-government change. Where are you, Ms Sharpe? All matters machinery of government are yours, Ms Sharpe. We might as well have a hit out before we change to outcome 2. The Safer Communities program was one of the law enforcement related programs that was moved across to the Attorney-General's government with the machinery-of-government change, was it not?

Ms Sharpe: That is correct.

Senator SCARR: Ms Sharpe, I'm not going to ask you any questions about the annual report—

Ms Sharpe: Thank you.

Mr Pezzullo: Why does she get off so light?

Senator SCARR: but I am aware that the machinery-of-government changes occurred. The question I have is: has the department given advice with respect to its previous experience regarding the success or otherwise of the program?

Mr Pezzullo: I do recall a discussion, in fact, in this committee, about efficacy and evaluation. Why don't we take on notice the period prior to 1 June, I'm assuming, from last year.

Ms Sharpe: That's right.

Mr Pezzullo: In the period leading up to 1 June 2022, we'll go back over the records to see if any evaluation advice was generated and provided.

Senator SCARR: Okay. I'd also be interested to know whether any advice was given after 1 June in terms of, say, a department which is taking over a function or a responsibility on machinery of government has inquired of the previous department that had it as to its experience with respect to the program.

Mr Pezzullo: We'll check.

Senator SCARR: Could you take that on notice as well?

Mr Pezzullo: We'll check. The benefit, of course, of that transition is that not only is the function and the money transferred, but the people, the staff who are undertaking the function, go across. We will check with the Attorney-General's Department. As to the management of that program, subsequent to 1 June of last year, I would direct those questions to Ms Jones and her officers.

Senator SCARR: The next area I want to ask some questions on is—and, again, I'm not sure what you can actually say, Secretary, in this regard—with respect to a case involving Mr Harry Harding. Are you aware of that case?

Mr Pezzullo: I have seen it mentioned in the press.

Senator SCARR: There was a news report on 7.30 recently.

Mr Pezzullo: Could you remind me what the issue was?

Senator SCARR: He apparently was offered money to provide content and his personal credibility to a website referred to as New Eastern Outlook. He reported himself, as I understand it, to both ASIO and the National Security Hotline.

Mr Pezzullo: I see. I suspect there might be some privacy issues in relation to Mr Moon and his officers being able to speak about individual referrals, but the National Security Hotline is managed for all agencies by the National Emergency Management Agency. I don't know whether such a referral was made. If the man says that he rang the hotline, I have no reason to doubt it. In terms of any approaches to ASIO and whether the Attorney-General can shed any light on his organisation's interactions with this gentleman, you'll have to ask him tomorrow.

Senator SCARR: Okay. I'm happy to do so. This is my last question. In your answer to an earlier question, you touched on foreign interference risks in the context of the Voice referendum. What steps has the department taken with respect to those potential risks?

Mr Pezzullo: We're a party to an interagency process that's examining the risk, in the same way as we would be involved in electoral integrity in supporting the AEC in the discharge of its responsibilities in relation to an election. Substitute the word 'election' and insert the word 'referendum', and it's the same support that we would provide to the AEC. Because of our expertise and our access to highly sensitive intelligence and our partnership with ASIO, I know for a fact, because he has told me as much, that Commissioner Rogers values our assistance to the AEC to provide any support and advice around—I was going to say 'electoral interference'. This isn't electoral interference, but it's the same idea of the Australian community as a democracy—

Senator SCARR: It's a democratic process.

Mr Pezzullo: It's a democratic process. We'd be looking out for foreign interference, attempts to subvert the referendum process from the point of view of hostile state action or foreign intelligence service involvement. Senator Antic or Senator Rennick—and I can't quite remember which; I do apologise—asked whether we'd be mobilising, if you like, as we did around COVID. The answer is that there's no public health emergency equivalent, so I've not been directed or tasked to assist otherwise. But otherwise, in keeping with our mandate around espionage, foreign interference and supporting the AEC with electoral integrity, delete the word 'electoral' and substitute the word 'referendum'. We're doing what we would do in the lead-up to a federal election.

Senator SCARR: Could you provide us with further information on notice in terms of the practical steps?

Mr Pezzullo: Very happy to.

Senator SCARR: Lastly on that point, apparently there was evidence given to the inquiry into administration of the referendum that there had been discussions with the Minister for Home Affairs about the risk of foreign interference in the referendum. The questions, if you can take these on notice, are: When did those discussions occur? Who was present at those discussions? What was the nature of those discussions?

Mr Pezzullo: We'll take that on notice. Her responsibility is protecting the nation against external subversion and foreign interference and espionage. It would be within that general remit. But, as to when those discussions occurred between me and her and also between officers of the department, we'll take that on notice.

Senator SCARR: Thank you.

Mr Pezzullo: I don't want to leave any suggestion in anyone's mind that we're going to involve ourselves in the domestic management of the referendum.

Senator SCARR: I wasn't suggesting that.

Mr Pezzullo: There are others in the farther reaches of the internet who might think otherwise. What we're on the lookout for is deliberate attempts by a foreign, hostile state actor to subvert our democracy by exacerbating division and dissension, and, through foreign interference, making the referendum as chaotic as possible, in the interests of foreign interference.

Senator SCARR: That's exactly what I'm interested in.

Mr Pezzullo: I just wanted to be very clear about the nature of my involvement in this issue.

Senator SCARR: I appreciate that. Thank you, Chair.

CHAIR: That is all the questions we have for outcome 1. We will suspend briefly and bring in the officials for outcome 2. [17:48]

CHAIR: I now invite officers from the Department of Home Affairs in relation to outcome 2. I might just start because I have a few questions on this, and then I'll hand the call over to the opposition. Can I start by asking Mr Pezzullo: what is net overseas migration? What does that term relate to?

Mr Pezzullo: Net overseas migration is a statistical measure which is really a demographic concept as much as it is a migration concept. There's a slight misnomer in the appellation 'migration', which is the M word, because it measures, on a rolling 16-month basis, the presence in Australia of a person for 12 months or more. That could be a returning Australian resident or citizen who might have been overseas. If you're here for that 12-month qualifying period within those 16 months, you're counted in. You could be a foreign national who for the first time arrives on a visa. But equally you could have been a foreign national who has been here for several years and never left, so you're already counted in the NOM as being part of the population. So it's really a way of measuring the stock and flow of population. It also has a fertility assumption built into it by the Treasury. And I'm delighted to be able to say that the ultimate NOM modelling and the number that comes out of the equations that the Treasury run are a matter for Treasury!

CHAIR: Thank you, I'm sure there will be questions for them.

Mr Pezzullo: In short order, it's if you've been in Australia for 12 out of 16 months in the reporting period covered by the non-measure. Why they've chosen 12 out of 16, you'll need to refer to Secretary Kennedy and the statistician Dr Gruen who are very learned in these matters.

CHAIR: In regard to what's included in net overseas migration, we will direct those questions to the Treasury if we need to.

Mr Pezzullo: Thank you, and the Centre for Population particularly within Treasury, which models the NOM based on advice from a number of sources.

CHAIR: Thank you. In regard to what you've said about permanent migration, though, permanent migration is only part of the net overseas migration, which is directly set by government. Am I right in saying that?

Mr Pezzullo: The permanent level is set annually, typically at around the time of the budget. In fact, in the most recent budget the planning level for permanent migration was set at 190,000, which was a reduction on the previous figure of 195,000, noting that in some cases a permanent visa might be granted to someone who has already been here on a temporary visa, for instance. It's a misnomer or an optical illusion to think that all permanent migrants will contribute to the NOM because, if they've been here for the qualifying period and had 12 months of the last 16 months already in Australia, they are counted as already resident here and not added to the NOM.

CHAIR: I don't know if you have this answer, but what share of this year's net overseas migration number is being driven by permanent migration programs?

Mr Pezzullo: I think you'd best direct that to the Centre for Population in the Treasury. I'm not familiar with how they factorise the coming and going of permanent migrants and Australians coming and going, and then how they factor in the fertility factor, which is the third factor that they apply.

CHAIR: What was the role broadly of the pandemic on net overseas migration?

Mr Pezzullo: The pandemic resulted in a cumulative reduction of about half a million relative to projections. The most recent data we had prior to the pandemic was the NOM modelling done in the final quarter of calendar 2019. Relative to those assumptions, your long-term trend on net overseas migration is in the vicinity, for round number purposes, of about 250,000. For the first time since the Second World War our net overseas migration actually collapsed, and for two years we had a cumulative gouging or deficiency, if you like, in arrivals of about half a million over those two years. The COVID reduction, remembering that the NOM is a flow concept—how many people are here within any 16-month period—and over time it adds to the stock of population. Obviously, with every passing year, if you have a positive NOM, your population slowly builds. If you have negative net overseas migration, over time your population declines. When you have regard to the two-year cumulative impact over the COVID period, with then an resumption to trend NOM in the year 2024-25—and I refer to budget paper 1, box 2.2 within the budget paper—the Treasury is now estimating that number compared to the projections of population that were stated by Treasury as part of the last pre-COVID forecast they made, which was at the very end of 2019, and then you project forward to June 2031. You'll need to ask Dr Kennedy as to why they've chosen June 2031, but that's the number in the budget papers. At that date Australia's population will be smaller relative to what was projected at the end of 2019 in number terms by 750,000 people or 2.5 per cent smaller relative to the population being projected as at June 2031. Why the Treasury has taken that end point as the medium term, you'll need to ask the Treasury.

CHAIR: We can ask those questions, but to be clear in the 2019-2020 budget, which under the former government—

Mr Pezzullo: Just to be accurate, I think it was MYEFO at the end of 2019.

CHAIR: What was the forecast population?

Mr Pezzullo: I'm not going to read out what the number would have been because I'm going off a chart here, so I won't trust my eyes. But whatever the number that was projected at the end of 2019 was, it is now projected to be three-quarters of a million smaller—whatever that number was. But you'll need to check in absolute terms what that number was with Dr Kennedy.

Senator Watt: Could I add something here. If it would assist, there's actually a very useful graph that sets this out in Budget Paper No. 1, which I've got copies of and can table. It compares what the population of Australia would have been under the forecasts that were issued in the 2019-20 MYEFO, so immediately before the pandemic, and how the population now is forecast to be post-pandemic. Effectively, what it shows, not surprisingly, is a massive drop in population size, compared to the original forecast, once the pandemic hit. While it's forecast that there will be some lift in the population size, it's still several hundred thousand lower than what was expected pre-pandemic.

CHAIR: If that's the document you're both referring to when I ask these questions, it would be helpful if you could table it for us. Thank you.

Senator Watt: Yes, I can table that.

Mr Pezzullo: That's derived from Budget Paper No. 1.

CHAIR: Thanks very much. I might come back to some of these questions, but can you answer for me now what the temporary skilled migration income threshold is and what impact it has on net overseas migration?

Mr Pezzullo: The temporary skilled migration income threshold is a salary level, set by ministerial determination—by way of either a regulation or an instrument, and Ms Foster and her staff can explain how it's applied legally—below which an employer sponsored temporary visa cannot be even considered by visa decision-maker unless there's a carve-out, which might be a function of either a regional labour agreement or a sectorial labour agreement. It was recently increased, by Ministers O'Neill and Giles, to \$70,000. I might ask Ms Foster to pick up the tail from there.

Mr Willard: The announcement was recently made to increase it to \$70,000, and that'll come into effect from 1 July.

CHAIR: I understand that the temporary skilled migration income threshold had been set at a certain threshold for awhile. How long had it been, essentially, frozen for?

Mr Willard: It was around 10 years. I think 2013 was the last time it was set.

Ms Foster: In effect, that was the last year in which it was indexed, and then it was frozen at that point and indexation ceased. That's why it stayed at that level.

CHAIR: For 10 years it hasn't?

Ms Foster: That's correct.

CHAIR: To go back to the concept of overseas migration: we're told that one of the other things that may be impacting the numbers is unrestricted work hours of international students. I'm just wondering if that's come up in any of the cohorts that you've been looking at.

Mr Pezzullo: Because the NOM maps and measures arrivals and whether persons are here for the 12 months out of 16 months qualifying period, it's not entirely clear to me how the working hours would affect NOM. Those persons have to be here whether they've got rights to work 10 hours, 15 hours or 20 hours, or whatever the number is.

Ms Foster: As Secretary Pezzullo was explaining, obviously there were very few people coming into the country during the COVID shutdown. What we've seen since the borders were reopened is a surge in arrivals of working holiday-makers and international students. As the secretary said, it's their presence in Australia which impacts the numbers, and, of course, it is net, so it is arrivals minus departures. Because we had very few temporary migrants arriving during the pandemic, there are now very few temporary departures as we catch up from this dip, so we have a surge of people arriving and fewer people leaving. That cycle will catch up with itself in the next couple of years.

CHAIR: I will go back to what you said at the beginning, Mr Pezzullo, in regard to net overseas migration and the opaqueness, as I think you referred to it as. Net overseas migration, which I think at the moment is at 400,000—

Mr Pezzullo: It's currently, for the financial year 2022-23, estimated to be 400,000. That's for the year that's about to conclude. The Treasury is anticipating a net overseas migration figure of 315,000 in the next financial year.

CHAIR: The other figure that's referred to quite often is the migration intake, which I think is about 190,000 at the moment.

Mr Pezzullo: It will be 190,000 for the next financial year. That's the level that has been set by the government for the 2023-24 year.

CHAIR: But that's quite high net overseas migration because of the pandemic; those don't actually represent new migrants coming into Australia?

Mr Pezzullo: There's theoretically no correlation at all, because you could have a permanent program which exclusively consists of permanent visas granted to everyone who is already here. In NOM terms—this is hypothetically the case—you could have a zero impact on NOM by granting those 190,000 permanent visas to current students or temporary migrants. NOM measures who was in the country at any one moment in time; it does not measure a migration program.

Senator Watt: Just to elaborate on that, Chair, I think I was reading in the lead-up to this—Mr Pezzullo can correct me if I'm wrong—that on average, or maybe in the next year (I can't remember what the measure was) about 60 per cent of those who are granted permanent migration are people who are actually already living in Australia but under some form of temporary visa, like a student visa. Is that figure about right?

Ms Foster: That's correct.

Mr Pezzullo: It's about 60 per cent?

Ms Foster: It's about 65 per cent for skilled migrants and about 52 per cent for families.

CHAIR: So it's not correct to infer that an increase in net overseas migration correlates to an increase in migration, necessarily?

Ms Foster: An increase in permanent migration.

CHAIR: New migration.

Mr Pezzullo: That's right. For one person to be added to the NOM, you have to have arrived within a 16-month period and lived here for 12 of those 16 months. If you've been residing here as a student on a bridging visa or temporary humanitarian visa and you're granted a permanent visa through either the family program or the skilled program, your contribution to NOM is zero, because you're already here. There's no causal connection between the two concepts.

I don't understand the history of it. You'll have to ask a statistician as to why they use the term 'migration'. It really is a net population growth figure that has regard to Australian citizens or permanent residents who might have been overseas for two or three years. They would have fallen out of NOM because they weren't in Australia. They might decide to come back. That is one that's added to the NOM. You might be a new student who applied for a student visa, never travelled to Australia and weren't here during the previous accounting period. You turn up; you're one. You might be a student who's already been here for two years, because you're doing your third year of study. You're a visa grantee, but you're already here so your contribution to NOM is zero. You might be a baby that's born and, within the reporting period, you don't have 12 months of life because you're, say, 11 months. You're outside of NOM because you haven't been living here for 12 months—like my granddaughter, who's not yet 12 months. When she ticks over to 12 months, she'll be counted as having been here, but, at the moment, she'll be added to NOM by one. She's not a migrant; I can assure you. She was born here.

CHAIR: So the two things aren't connected?

Mr Pezzullo: There's some relationship between people coming and going as a function of immigration. There's some relationship between people being born—and, indeed, people die during the period. So there's a fertility and mortality factor and there are also choices that Australians make to relocate to go study, live or work. It's all of those factors taken together about foreign nationals, Australians, births and deaths. You add all of that up into a rolling statistical horizon that is 16 months and then, within those 16 months, you calculate—as to how they do it, you'll have to ask others—how many of those people within those 16 months were here for 12. If you were here for 12 or more, you're not counted in the NOM. If you were here for less than 12, you're counted as an arrival.

Senator Watt: But, at the risk of stating the obvious, the point is that neither the NOM, the net overseas migration, nor even the migration intake of 190,000 forecast for next year is an accurate measure of the number of new people coming into the country—

CHAIR: Got it.

Mr Pezzullo: Correct.

Senator Watt: because both of them also include people who are already here who become permanent and, in some cases, people who are born here.

Mr Pezzullo: Yes, and deaths as well.

Senator Watt: Deaths, yes.

Mr Pezzullo: People who died during the reporting period.

CHAIR: This is my last question before I hand over the call. Is making claims to the contrary misleading?

Senator Watt: I would argue that, yes. I've seen those comments made in this debate round migration and population numbers that we seem to be having at the moment and I have seen a number of people claim that. In fact, Mr Tehan today made a claim that we already have 1.5 million permanent migrants coming into Australia this year and over the next four years. That is just patently untrue. I think what he has done is combine the net overseas migration numbers for the next four years and argued they are all new people coming into the country. He would have to explain why he wants to mislead Australians in that way, but it's just not true. That's my view. Feel free to ask the officials.

CHAIR: Thank you, Minister.

Senator SCARR: I'll take the call. Mr Pezzullo, I just want to get straight in my own mind what role the Department of Home Affairs has then, in terms of these numbers relating to net overseas migration. Just to put this in context, the net overseas migration figure in the October budget was 235,000 for each of financial years 2022-23 and 2023-24. When we fast-forward six months—

Mr Pezzullo: October of 2022?

Senator SCARR: In the October budget of last year.

Mr Pezzullo: Thank you.

Senator SCARR: The net overseas migration figure was 235,000 for financial year 2022-23. Is that correct? Is that your recollection?

Mr Pezzullo: I don't have that budget paper in front of me.

Senator SCARR: And it was 235,000 for 2023-24.

Mr Pezzullo: That may well be the case. I just don't know.

Senator SCARR: Is that correct?

Ms Foster: That's correct, Senator.

Senator SCARR: Thank you. So we fast-forward to May 2023 and the figures are 400,000 for the financial year 2022-23 and 315,000 for the financial year 2023-24. How do you explain such a major increase? Maybe we have to ask these questions of Treasury, but I'm just looking at the figures and wondering how we get from 235,000 for 2022-23 last October to, now, 400,000 in that financial year.

Mr Pezzullo: Senator, we very helpfully have an economist in the department. He can assist me, because I'm at the absolute limit of my ability to assist you technically. You ask about what role we play. We provide border arrival and departure information. We provide assumptions about visas on hand, grants and, if you like, likely arrivals. They tend to be aligned with things like semester commencements. So we provide a whole lot of raw data points to our colleagues in Treasury. How they came to the conclusions they came to the October budget last year, handed down by Mr Chalmers—I think you're referring to that budget—

Senator SCARR: Correct.

Mr Pezzullo: and what information—

Senator SCARR: And I'm comparing it to the budget recently brought down.

Mr Pezzullo: Yes, I understand—or what factors they used, whether based on our department or changed assumptions about fertility or any of the other factors, are really matters that you would have to address to Treasury, unless Mr Douglas can exist in explaining the variance between those two forecasts.

Mr Douglas: As has already been observed, there's only a very loose relationship between net overseas migration and the migration program that this department manages. There's a broad range of factors that affect net overseas migration. One of the big questions late last year was what was going to happen, and NOM, as we know it, is driven by developments both in Australia and overseas.

I'll make a couple of observations on what happened. One is that when Treasury prepared the numbers last year we didn't know what the Chinese government's COVID policy was—people couldn't leave or return. There are a broad range of things—there were questions around flight availability—but our colleagues in Treasury can probably give you a very detailed breakdown on those numbers.

Senator SCARR: Mr Douglas, I'm looking at the difference—

Ms Foster: In broad terms, Senator, there was a much higher influx of international students than was forecast, and that has been one of the big drivers for the change between those two forecasts.

Senator SCARR: The delta is 165,000. Have we ascribed the 165,000 delta, or a large proportion of that, to international students?

Mr Pezzullo: We don't know, in the final calculation, do we, Mr Douglas?

Mr Douglas: I don't recall the detailed Treasury forecasts. My colleagues over at Treasury can give you the detailed breakdown. There are some words in box 2.2, on page 59 of Budget Paper No. 1, that explain the differences. Unfortunately, of all the things that I did bring with me, that's not here. But a lot of it is students and working holiday-makers, as the associate secretary noted earlier.

Senator SCARR: Would you make a similar observation with respect to year 2023-24 increasing from 235,000 to 315,000?

Mr Douglas: One of the observations in the box I referred you to, in paragraph 5, is:

The reopening of international borders has seen a rapid recovery in the stock of international students, skilled temporary visa holders and working holiday makers in 2022-23.

A big part of that is that second- and third-year students who were studying online during the pandemic have been returning. Normally, a student who started studying at an Australian university in 2021-22, the previous year, would have arrived in 2021-22, and so they would have been part of that NOM. They didn't come then because the borders were closed in Australia, or, in many cases, they weren't able to leave their home country—

Senator SCARR: In particular, China.

Mr Douglas: or they couldn't get flights, which was another major factor for some students as well. So what you've got is effectively three years worth of students currently arriving. The vast majority of them, I think, seem to be arriving this year before 30 June, but there'll probably be a degree to which they'll arrive afterwards. As others have noted previously, the other thing is that it's net overseas migration—it's arrivals minus departures—and the big number next year is largely because people who didn't arrive can't now depart, if that makes sense. The logic there is a little bit tortured, but I haven't found a more eloquent way of expressing it. The person who would have come 18 months ago and was due to leave this year or next year never came, so they won't go.

Senator SCARR: I follow you.

Senator Watt: So they account for the NOM now and next year.

Mr Pezzullo: Imagine—just a quick vignette, Senator, if I might—that COVID never occurred. Let's take China as an example, because they also had quite onerous exit controls. In 2020, a person might have come for a three-year or four-year course of study in Australia. They would have arrived in, let's say, calendar year 2020, so they would have been counted as a plus-one in that year of arrival, but—unless they went back for more than four months—they would have been here for year 1, year 2 and year 3 of their study and now, as they start their concluding honours year, they would be counted out when they leave. Because they never arrived—they did their study online—when they arrive they're a plus-one on NOM at that time. And, indeed, we did honour those visas in saying, 'Because of COVID, do your online study in, say, years 1, 2 and 3 and then come down and do your fourth, or honours, year.' Another student who was granted their first year visa arrives at the same time, so two people have arrived on a plane because you've got this cyclical bubble coming through the system. But, eventually, they both go and we return to trend in 2024-25, when the Treasury estimates the historical trend of 235,000 will be resumed.

Senator SCARR: Ms Foster, welcome to your new role. I used to see you on the finance and public accounts committee in a previous life. To what extent are you and your section of the department providing advice to government with respect to issues around housing costs, housing availability, housing supply, rent increases and how those practical issues which the country is now facing dovetail with Australia's migration policy?

Ms Foster: The short answer to your question is that those issues are the purview of the Treasury. Mr Douglas, for example, works closely with the Treasury as they are calculating things like NOM, but the advice around, say, housing impacts, would come from the Treasury.

Senator SCARR: So the Department of Home Affairs does no analysis with respect to the impact of migration numbers in relation to those practical everyday issues?

Mr Pezzullo: The only work that we do that would fall within the ambit of your question would be when we work with other agencies and departments to model fiscal impacts, so, if you have a permanent program set at a certain level or a refugee or humanitarian program set at a particular level, depending on entitlements for Medicare and the like, we work with other departments to provide advice on direct fiscal impacts on the Commonwealth budget. But, as to second-, third- or fourth-order impacts—which I'm not suggesting there aren't any; I'm saying in the remit of our department—what might this mean for rental increases, what might this mean for the stock of housing—Mr Douglas, you're our economist. You probably go to meetings where this is discussed. We don't have any unique insights or contributions to make, do we?

Mr Douglas: No. Treasury has the expertise in fiscal impacts and other entities like Jobs and Skills Australia advise to where the skills needs are for this, so that advice comes from the experts, and Treasury have very deep expertise in this matter.

Ms Foster: I think Ms Cavanagh has come to the table because she has something to add.

Senator SCARR: She's volunteered herself, has she?

Ms Foster: She has.

Senator SCARR: Excellent.

Ms Cavanagh: In forming advice for government on the size of the planned annual Migration Program, there is extensive consultation across government to ensure that other agencies can provide inputs around some of those interdependencies that you've mentioned. We would typically stand up an interdepartmental committee, starting about six months out from the budget, where those matters are discussed. We invite other Commonwealth agencies to make submissions to us. We also run a state and Commonwealth migration officials meeting, which is held right throughout the year so that we can engage with officials at all levels of government.

Mr Pezzullo: That would include state governments being able to ventilate any issues around schools, for instance?

Ms Cavanagh: That's right.

Mr Pezzullo: So really it's a function—sorry to curtail that—of whichever department or agency, Commonwealth, state or territory, wishes to express a view about housing stock or schools or hospitals. There's a process whereby all of that is aggregated. You asked what advice we provide. We provide advice on the program that we manage, but we ensure that other departments and agencies get a chance to express a view about the impacts that relate to their programs. Is that a fair characterisation?

Ms Foster: And, Senator—

Senator SCARR: Sorry to interrupt, Ms Foster. Ms Cavanagh, you said in your answer that those issues, which I raised around housing supply, rent increases, the everyday experience of Australians at this point in time, are discussed at that interdepartmental level. Is that correct?

Ms Cavanagh: I would characterise it as discussions. Where other agencies have policy responsibilities and there are interdependencies with the size of the planned programs, those are discussed. For example, on the topic of housing, agencies such as Treasury, Infrastructure and indeed state and territory governments would typically at those meetings raise the question of housing, both from a supply and from a demand perspective because skilled migration is an important source of labour that goes to building big infrastructure and housing development projects.

Senator SCARR: Are minutes kept of those meetings and of the outcomes of those meetings and the issues which are discussed?

Ms Cavanagh: They are, yes.

Senator SCARR: Could I ask you to take notice whether or not you can provide copies of those minutes of those meetings.

Mr Pezzullo: Of course, we can take that on notice.

Senator SCARR: From, say, the last 12 months. Okay?

Mr Pezzullo: Yes.

Senator SCARR: Thank you. Ms Foster, I want to ask some questions about what makes up what I understand to now be the permanent migration program of the existing government of 190,000. From your perspective, who is included in that 190,000? Which programs are included? I could run through a few programs for you to see if they are included in the 190,000, but is there some commentary you want to provide at the outset?

Ms Foster: Indeed. Just for the record, the figure for this year's program is 195,000.

Senator SCARR: Okay. But moving forward it is expected to be 190,000; is that correct?

Ms Foster: Next year. Typically, it is set year on year.

Senator SCARR: So this year it's 195,000. The year after it will 190,000. Correct?

Mr Pezzullo: The year commencing 1 July coming.

Senator SCARR: Is there someone available who can tell me how that figure is calculated?

Ms Foster: Absolutely. If you'd like to run through some of the programs, we can respond to that as well.

Senator SCARR: I'm going to ask some questions about the aged-care industry labour agreement. I would be interested to know to what extent visas granted under the aged-care industry labour agreement process will be included in that figure.

Mr Pezzullo: The permanent program consists of two overall components, which is skilled and family and partners. Some of those visas I suspect that you're about to go to are temporary in nature. Mr Willard can no doubt clarify our mutual understanding as we go through.

Mr Willard: The aged-care labour agreement includes both temporary and permanent employer sponsored visas. So those that are permanent—that is, the subclass 186, the employer nomination scheme—would be counted towards the permanent program.

Senator SCARR: But not the ones that are temporary?

Mr Willard: Not the temporary ones.

Senator SCARR: I suspect I know what the answer is to this. The temporary skill shortage short stream visa?

Mr Willard: Correct.

Ms Foster: That's part of the temporary program.

Senator SCARR: So it's not included in—

Mr Willard: Apologies. It doesn't get counted in the—

Senator SCARR: It's probably in the name. New Zealand citizens have a special category visa. Are they included in any respect in the 195,000 or the 190,000?

Mr Willard: No.

Senator SCARR: I know it is still subject to passing through the Senate, but what about the Pacific engagement visa?

Mr Willard: The government has made clear that the Pacific engagement visa, if it comes into effect, will be a separate program. Similar to how the humanitarian program is separate to the migration program, as would the Pacific engagement visa be. So it's not part of the migration program.

Ms Foster: So it's not part of the 195,000 or 190,000.

Senator SCARR: As I understand the Pacific engagement visa, what has been proposed is that there would be a lottery process and then, if someone has been successful in the lottery process and been offered a job, they can then come to Australia. As soon as they arrive in Australia, they become a permanent resident, so why wouldn't that be included in the 195,000?

Mr Willard: Your understanding is correct. In a similar way to how the humanitarian program is not part of the migration program, these are separate programs that all have different purposes and are counted separately.

Senator SCARR: Right. Even though, as a matter of fact, putting aside the name of the programs et cetera, it is permanent migration.

Mr Willard: The Pacific engagement visa is a permanent visa.

CHAIR: If it's passed by the Senate.

Mr Willard: If it's passed, yes.

Senator Watt: What I'll say is—correct me if I'm wrong, officials—one measure that does capture all of these categories is the overall Australian population, because those people are included.

Mr Pezzullo: Yes. If you've been here for 12 months out of 16 months you're captured in the measure, which is really population measure otherwise known as NOM.

Senator SCARR: I understand. Just to be clear, someone coming here permanently under the Pacific engagement visa is not considered to fall within the annual permanent migration program?

Mr Willard: They'd be counted as a permanent visa holder but in a separate program.

Senator SCARR: What about those who are going through the resolution of status visa for TPV and the SHEV? Are they included in the 195,000 or 190,000?

Mr Willard: No, they wouldn't be.

Senator Watt: Can I make a point, Senator Scarr, that one thing the budget papers says is that the NOM is forecast to be higher in the current financial year and next year because it's effectively a catch-up from the years when no-one was coming to Australia. But it's expected that from 2024-25 the NOM, which will include all the categories we've talked about would reduce to its historical level of 235,000 per year. So there is a higher net overseas migration forecast for the current financial year and the next financial year because that's effectively playing catch-up on people who would have otherwise been here already, like the international students who would have been here for years one and two of their course who are now coming here in year 3, but it would fall back towards that historical level from 2024-25. I again make the point that even on these forecasts the overall population in Australia is expected to be significantly lower.

Senator SCARR: You referred to the budget paper, I understand, and you were generous enough to table that. Before the dinner break, can I ask some questions in relation to this temporary skilled migration income threshold and the increase in the last budget. The first question is: which stakeholders in industry did the government consult on the changes to that threshold?

Mr Willard: There were consultations through the Ministerial Advisory Council on Skilled Migration, which contains a large number of peak bodies and stakeholders.

Senator SCARR: Are there any representatives of small business in those peak bodies?

Ms Foster: Yes, there are.

Senator SCARR: Who are the representatives of small business in particular in those peak bodies in terms of organisations?

Mr Willard: We're just trying to recall the organisations.

Ms Foster: It was the previous chair of COSBOA, who is now representing small business.

Senator SCARR: In what capacity?

Ms Cavanagh: The current MACSM member would be Ms Alexi Boyd, who is a small business consultant and represents a small business on MACSM.

Senator SCARR: As a representative of a peak body?

Ms Cavanagh: Not any longer.

Senator SCARR: At any stage did the department give advice or—I don't want to take you into an area you can't answer. To what extent was there any consideration given to a staged increase in the threshold as opposed to going from 53,900 to 70,000 in one hit?

Ms Foster: There were a lot of discussions going backwards and forwards, as you're probably aware. Different stakeholders were proposing very different amounts for the TSMIT, and so a wide range of options were considered before 70,000 was selected.

Senator SCARR: Was any modelling undertaken with respect to the potential impact of the increase in the TSMIT on workforce shortages or on inflation?

Ms Foster: Certainly those issues were all canvassed. I'm looking to Ms Cavanagh as to whether we would characterise that as modelling, but I think the answer is yes.

Ms Cavanagh: The role of that particular modelling—that work was done by the Treasury.

Senator SCARR: So Treasury did do modelling in terms of the potential impact of TSMIT on workforce shortages—is that correct?

Ms Cavanagh: Treasury would look at revenue inputs and increases and decreases as a result of a TSMIT increase. You would need to ask them for the details, but they would have included assumptions around whether an increase would have an impact on employment rates and therefore tax revenue.

CHAIR: The committee suspend for the dinner break.

Proceedings suspended from 18:31 to 19:31

CHAIR: We'll resume the hearing. We're still talking in relation to outcome 2. We've got the Department of Home Affairs, and I'll give Senator Scarr the call.

Senator SCARR: I'd like to come back to this somewhat vexed question of net overseas migration.

Mr Pezzullo: The NOM, yes.

Senator SCARR: Mr Pezzullo, you mentioned your grandchild, and how that potentially impacts issues of fertility—

Mr Pezzullo: On the population side of the equation.

Senator SCARR: On the population side of the equation. So are fertility issues not relevant in terms of net overseas migration?

Mr Pezzullo: The population number, which Minister Watt very helpfully had tabled for the committee. Minister, if you don't mind?

Senator Watt: Sure.

Mr Pezzullo: Senator Scarr, if I can draw your attention to page 60 of budget paper 1, the second half or the more graphic part of box 2.2, you'll see a note in the bottom right-hand corner of the document that says, 'Source Treasury'. That shows you the distinction between net overseas migration, which is tracked in red, cumulative NOM. Have you got the colour version?

Senator SCARR: I do.

Mr Pezzullo: Then you'll see another number derived from net overseas migration, and then fertility assumptions—if you look at the footnote under 'Source: Treasury' it says:

Population is expected to be lower than in 2019-20 MYEFO because of a lower fertility assumption.

Senator SCARR: I think I get it now. Your comments around your grandchild and fertility were totally separate from net overseas migration. They were simply dealing with—

Mr Pezzullo: Not separate from population. I'll just go back over the formula that I used before the dinner break. Treasury models population. That's their job. They've got a centre for population. The budget paper that I referred to, and that the minister also referred to, is a population number. There are a number of factors that flow in and out of it. There's net overseas migration: those arriving, those leaving—

Senator SCARR: Before we move on from net overseas migration, my understanding of the meaning of net overseas migration—I've done some homework—from the Centre for Population in Treasury, is 'the net gain or loss of population through immigration to Australia and emigration from Australia'.

Mr Pezzullo: Correct. There is the concept of arriving and leaving, so immigration and emigration. To derive the population figures that I was referring to, you then have to factor in fertility. And that's what the graph shows you.

Senator SCARR: So, in terms of population growth, net overseas migration is one element of population growth. The other element of population growth—

Mr Pezzullo: Is fertility.

Senator SCARR: is the natural increase in excess births over deaths.

Mr Pezzullo: Yes, because you've also got to net off births and deaths. To get to population, you've got to, in effect, have four quadrants of data. You've got to have people arriving, people leaving, people being born and people dying. That, together, constitutes population. I've just drawn that mentally in my mind. On the left-hand column are those first two factors of immigration and emigration—people leaving. That's NOM. Then you factor in fertility—births and deaths—and then you get to a population number.

Senator SCARR: Okay.

Mr Pezzullo: That's depicted—

Senator SCARR: In that table, box 2.2.

Mr Pezzullo: Correct. If you look at chart 1, for instance, there's a sourcing there to the Department of Home Affairs. As Mr Douglas referred to before the break, with temporary entrant visa holders we would indicate to Treasury what we're expecting to see in terms of arrivals. There was a material change in some of those assumptions because of China opening up its own border. You can see the breakdown in the left-hand graph between students, temporary skilled and working holiday-makers. That shows a virtual collapse in net overseas migration and then a gradual build back up as that number snaps back. The left-hand graph is depicted as being sourced from the Department of Home Affairs, because we're the people who manage the program, so we can give Treasury the best information. On the right-hand graph, you see the effect of all of that coming together with fertility to create the population number, and that's sourced to Treasury.

Senator SCARR: But, in terms of fertility and the reference to your granddaughter, that's got absolutely nothing to do with net overseas migration.

Mr Pezzullo: No. I was referring to population.

Senator SCARR: Right. I might have misheard you.

Mr Pezzullo: I'll check the *Hansard*. It was a free-flowing discussion.

Senator SCARR: It was.

Mr Pezzullo: Certainly, in my mind, I'm very clear that there are persons immigrating and persons emigrating. Then to get to population, if you leave it at that, you won't have regard to fertility, births and deaths, so Treasury also has to factor that in. That's why the graph talks about population as being connected to a fertility assumption.

Senator SCARR: Okay, but if we're just looking at net overseas migration, issues of fertility—whether it's your children or anyone else's children—are totally irrelevant. That's correct?

Mr Pezzullo: In relation to NOM, yes, unless she happens to emigrate over the period in question.

Senator SCARR: Senator Watt, during our free-flowing conversation you made reference to a quote from one of my colleagues.

Senator Watt: Yes.

Senator SCARR: Have you read that from a source document?

Senator Watt: I have. An extract of that has been given to me. This was from Mr Tehan today, and I can get you the source. The quote was, 'We already have 1.5 million migrants coming into Australia this year and over the next four years,' and, as I say, that is not the case.

Senator SCARR: I'm not sure it's the case that that quote you've attributed to Mr Tehan is correct. Could you table the transcript or the source document, please?

Senator Watt: Yes. I'm happy to get that for you.

Senator SCARR: I actually looked at ParlView, and my understanding of what you claimed before the break was that Mr Tehan made a claim that we already have 1.5 million permanent migrants coming into Australia.

Senator Watt: This year and over the next four years.

Senator SCARR: So 1.5 million permanent migrants?

Senator Watt: That's the quote as I understand it, and I'm tracking down the source for you now.

Senator SCARR: If you're going to quote something, Minister, you probably need to make sure. Did you hear the interview yourself?

Senator Watt: No, I didn't.

Senator SCARR: So you're just going on hearsay?

Senator Watt: I'm going on information that I was provided, as ministers regularly do.

Senator SCARR: Which is hearsay, because you didn't directly hear it. I'm just trying to clarify if you heard it directly or if you're relying on someone else.

Senator Watt: I'm going on the quote that I understand Mr Tehan made, and I'm happy to track down the source for you. Are you saying he didn't say that?

Senator SCARR: Do you have the transcript?

Senator Watt: I'm in the process of getting that for you now.

Senator SCARR: How long will that take? Will you be able to do that straight away?

Senator Watt: I'm sure people are on to it right away.

Senator SCARR: Okay. Well, let me come back to that. I would like to see the transcript. If you could table that, that would be useful.

Senator Watt: Sure. Mr Tehan has also said, for instance, on Sky News on 18 October last year: Well, we need to get our international students back, we need to get our working holiday visa maker visa holders back.

... ..

... and get all those people back as soon as we can.

Senator SCARR: Sorry, Minister, I haven't asked you a question about what Minister Tehan said on Sky News.

Senator Watt: Just as Mr Dutton said that it was too little, too late.

Senator SCARR: Chair—

CHAIR: I apologise for not paying attention. I was working out who is getting the call next.

Senator SCARR: Minister, can you table the document which you're reading from?

Senator Watt: No, I'm not going to provide the adviser notes I've been given, but I'm happy to get you the source documents for the notes.

Senator SCARR: I will put on the record: could you please table the document which you're reading from?

Senator Watt: No, I'm not going to do that. As you well know, ministers don't table the adviser notes they're provided in estimates, but I'm happy to provide you with the source. I'm also happy to provide you with the source where Mr Dutton said that the increase to the—

Senator SCARR: I'm not asking you that question. Minister, unless you want us to go into spillovers, which I don't think anyone on this committee wants, I would ask you to keep your answers to questions I'm asking without gratuitous references to other documents. I'm focused in particular on the statement which you made, gratuitously, before the break when you claimed one of my colleagues said something. I asked you if you could table the transcript. You, in fact, don't have the transcript or didn't have the transcript at the time you made the comment. You were simply relying on an adviser's note. I would have thought you'd take extra caution prior to injecting that sort of commentary and ascribing those quotes. You're saying you're going to get a copy of the transcript and table the transcript as soon as you have it—is that correct?

Senator Watt: Yes.

Senator SCARR: And you expect to have that in the near future?

Senator Watt: I imagine so.

Senator SCARR: Thank you.

Mr Pezzullo: You asked me to isolate out the fertility question. Could I limit some further advice I'd like to give that strictly, in the technical sense, relates to migration that might assist in your consideration of these matters?

Senator SCARR: Sure.

Mr Pezzullo: You're right to point out that the nexus between migration and population is a matter better directed to Treasury, because they do the broader population modelling. I will just limit my advice to net overseas migration as narrowly as in the terms of we've just agreed. Immigration and emigration—

Senator SCARR: Sorry, it's not narrowly; it is what it is. Correct?

Mr Pezzullo: It's conclusively and inclusively the net between immigration and emigration, you're absolutely right. The advice from Treasury that's laid out in the budget papers is that net overseas migration is not expected to catch up to the level forecast prior to the pandemic until the financial year 2029-30 because, by the time border restrictions were relaxed at the end of 2021, which is calendar '21, net overseas migration was cumulatively almost half a million lower than expected prior to the pandemic. Treasury has washed through that depressive effect of COVID. I'll limit myself just to NOM. You're absolutely right to draw attention to that as a subset of broader population. I'll read out the relevant operative sentence:

On current forecasts, net overseas migration—

that's all I'm referring to—

will still cumulatively be lower by 315,000 than pre-pandemic forecasts as at June 2023—

so the June we are coming to—

and in cumulative terms will be 215,000 lower by June of 2024.

Senator SCARR: Okay.

Mr Pezzullo: I'm not making any additional points about fertility, births, deaths et cetera, just on NOM. We're still tracking behind where NOM, as defined, was anticipated to be prior to the pandemic.

Senator SCARR: Maybe, to clear this up, someone could give me the actual, formal definition of NOM. Maybe you, Ms Foster, or our friend the economist, Mr Douglas.

Mr Douglas: Net overseas migration isn't a concept that appears anywhere in the Migration Act. It's a concept that's defined in a statistical standard by the Australian Bureau of Statistics, so, if you want the technical definition, it is somewhere on the Australian Bureau of Statistics website. But the best way to get it authoritatively would be to get that definition from Treasury, given that the ABS is part of that portfolio.

Senator SCARR: This is my understanding of what the definition is, so if you could tell me if this accords with your understanding: net overseas migration is the net gain or loss of population through immigration to Australia and emigration from Australia. The net gain or loss is the difference between NOM arrivals and NOM departures. NOM arrivals are added to the population count, whilst NOM departures are subtracted from the population count. Is that correct?

Mr Douglas: It is correct, but there are just two things to be very clear on. You use the words 'immigration' and 'emigration'. That is in an Australian Bureau of Statistics definition of what those things are, which relates, as the secretary said earlier, to the '12 out of 16' rule, which actually—

Mr Pezzullo: It's 12 months out of 16 months.

Mr Douglas: is based on whether a person was physically in Australia on 365 out of 486 days, which is what 12 months and 16 months work out at in terms of days. It has nothing to do with a person's status and nothing to do with a person's citizenship. I have a friend who recently returned to Australia after two years. He was born in Australia and recently returned to Australia. He was overseas for all of COVID. He, that Australian citizen coming back in, is a plus-one as part of the NOM. That's in the same way that an Australian citizen who decides to take an overseas gap year is a minus-one and everybody else.

Senator SCARR: Whereas, in contradistinction, Mr Pezzullo, with your granddaughter, her birth had nothing to do with NOM, had no impact on NOM.

Mr Pezzullo: No, as part of the population calculation.

Senator SCARR: But it has no impact on NOM.

Mr Pezzullo: Unless she migrates, yes.

Senator SCARR: But the mere fact of her birth has no impact on NOM?

Mr Pezzullo: The answer is yes, and I was talking about population.

Senator SCARR: Okay. I might have misheard you.

Ms Foster: To clarify, Mr Douglas's friend has to be back here for 12 months before he counts as plus-one.

Senator SCARR: Yes, 12 out of the future 16. It's a rolling measure, so if he comes back for 11 months and goes again, he doesn't form part of NOM. Correct?

Mr Douglas: Yes, in the same way you have to be outside Australia for 12 out of 16 months before you are a minus-one. Technically it's the numbers of days I told you, but, yes.

Senator SCARR: I think I understand.

CHAIR: I will have to hand the call over, Senator Scarr.

Senator McKIM: Of the people exiled to Manus or Nauru nearly a decade ago now, how many remain in Nauru or Papua New Guinea?

Mr Pezzullo: There's no-one in Papua New Guinea that pertains to that arrangement because that arrangement has concluded.

Senator McKIM: Well, Mr Pezzullo, that wasn't what I asked. There are people still in Papua New Guinea who were exiled to Manus Island over a decade ago. Are you telling me there is no-one left in Papua New Guinea who Australia sent to Manus Island nearly a decade ago? Is that your evidence to the committee?

Mr Pezzullo: There is no-one that is there pursuant to the regional agreement that we have with Papua New Guinea.

Senator McKIM: That wasn't the question, Mr Pezzullo. I don't recall saying the words 'pursuant to any regional agreement' in the question.

Mr Pezzullo: How many persons were transferred to PNG who are still in PNG? I don't know. We'll have to take that on notice. The agreement concluded some years ago; I don't know.

Senator McKIM: We will come back to PNG. What about Nauru where there is now an agreement after it lapsed?

Ms Foster: The current number is 22.

Senator McKIM: The department has no visibility at all of the number of people in Papua New Guinea. Is that your evidence?

Mr Pezzullo: No—

Senator McKIM: That's not your evidence?

Mr Pezzullo: Sorry; I'm answering affirmatively that we have no visibility, because we don't track their movements. They might have moved on, or they might have relocated. They were transferred to Papua New Guinea; the agreement came to an end. They are either residents or citizens of Papua New Guinea, or they've otherwise resettled or moved somewhere else.

Ms Foster: Or, as I'm sure you're aware, the UNHCR continues to work in Papua New Guinea and so some of those people are being settled in third countries.

Senator McKIM: Does the department have an engagement with the UNHCR around the people in Papua New Guinea?

Ms Foster: Only in the very broadest of terms. When we meet with them to work collaboratively on our efforts to resettle the people in Nauru, they will sometimes speak to us of their work in Papua New Guinea.

Senator McKIM: So they do raise that with the department?

Ms Foster: They will sometimes tell us what they're doing in Papua New Guinea.

Senator McKIM: This one's for you, Minister. I want to put this to you: a policy adopted by the Morrison government, which says that Australia abrogates all responsibility for people sent to Papua New Guinea by a Labor government nearly a decade ago, is now Labor policy. Is that right?

Senator Watt: You can characterise it how you choose—

Senator McKIM: What's inaccurate in what I just said?

Senator Watt: The Albanese government has not made any commitment in relation to that matter. So how you want to characterise it is a matter for you.

Senator McKIM: It's true, isn't it, that a Morrison government policy to abrogate Australia of any responsibility for people who were sent to Manus Island a decade ago by a Labor government is now Labor policy? Is that correct?

Senator Watt: I'm not going to adopt your formulation. That's up to you.

Senator McKIM: Well, is that correct or not?

Senator Watt: It's up to you how you want to characterise it.

Senator McKIM: Is it correct or not?

Senator Watt: We have not made any commitment that I'm aware of to alter that approach.

Senator McKIM: It was the Labor Party that sent them to Manus Island in 2013, wasn't it?

Senator Watt: I think that would be fair to say.

Senator McKIM: Yes. And it was a Morrison government decision that Australia abrogate its responsibility to those people, wasn't it?

Senator Watt: Again, that's your characterisation of it. But the Morrison government did make that decision.

Senator McKIM: Yes. That's now Labor policy, isn't it?

Senator Watt: Again, to my knowledge, I don't believe there has been an active policy decision of this government.

Senator McKIM: So is it Labor policy that the Australian government is responsible for those people or that it is not responsible for those people?

Senator Watt: Again, I'm not sure that there has been a policy decision made about that matter.

Senator McKIM: I'm asking you what the policy is.

Senator Watt: I don't believe there has been a policy.

Senator McKIM: So you don't have a policy on those people?

Mr Pezzullo: Mr Thomas—

Senator McKIM: No; it's a question for the minister. This is a policy question.

Senator Watt: From our government's perspective, I think that we considered the matter to be resolved, and we have not made a policy decision to alter that, to add to that or to change that.

Senator McKIM: So a Morrison government decision that Australia is not responsible for those people who were sent there a decade ago by the Labor Party is now Labor Party policy. Is that right?

Senator Watt: You keep trying to frame it that way. I understand you need to do that for your political exercise—

Senator McKIM: I'm acting on behalf of the people that are abandoned in Port Moresby, many of whom are so sick that they can't get out of their beds.

Senator Watt: What I'm saying to you—

Senator McKIM: Those are the people I'm advocating for.

CHAIR: Senator.

Senator McKIM: Not for the politics; for the people.

CHAIR: Senator.

Senator Watt: But you do like to throw in political party names, and you'll notice that I haven't done that. You're the one who's politicising this. What I'm saying to you and what I've continually said is that there has been no active policy decision of this government in relation to that cohort of people. There are many, many things that we have not formed a policy position on, whether it be in this portfolio or in any other portfolio. But you're the one who's trying to characterise it as us having made a policy decision.

Senator McKIM: I'm asking you what your government's policy is.

Senator Watt: We haven't made a policy decision about this matter.

Senator McKIM: But what is your policy?

Senator Watt: I can't add to what I've said.

Senator McKIM: Is it your policy that the Australian government is responsible for those people, or is it your policy that the Australian government is not responsible for those people who were sent there a decade ago by a Labor government?

Senator Watt: Again, you are politicising this. That is your choice. I can't add to my answers.

Senator McKIM: So the fact it was a Labor government that sent those people to Manus Island nearly a decade ago now does not apply enough of a moral burden, Minister, for you to accept responsibility for their treatment now, or for finding them a safe and durable place to live? Is that right?

Senator Watt: Again, that is your characterisation of these issues.

Senator McKIM: I'm asking the question.

Senator Watt: I'm not adopting that characterisation.

Senator McKIM: Is Australia responsible for those people or not?

Senator Watt: I think Mr Pezzullo's already outlined the position as it stood, when the former government implemented that policy. We have not made—I have said this now at least ten times—any decision in relation to that matter.

Senator McKIM: This is getting pretty *Yes Minister*, Minister.

Senator Watt: Senator McKim, you could ask me: do we have a policy on any number of things—

Senator McKIM: Well, do you have a policy on it or not?

Senator Watt: that we haven't addressed. To my knowledge, there have not been discussions between ministers or between ministers and departments, because that issue was resolved some time ago.

Mr Pezzullo: The agreement was concluded on 31 December 2021. There were some transitional arrangements to assist PNG for about six months, I think. So by the time of the holding of the relevant election that saw the government come into power about a year ago, the matter had been determined by the Morrison government: agreement concluded 31 December 2021, with provisional funding support to assist PNG with some of the transitional arrangements, which concluded on 30 June 2022.

Senator McKIM: I'm just wondering why it is so difficult for the minister to tell us what the government's policy is about those people.

Senator Watt: Because we haven't—

Senator McKIM: According to the UNHCR, as at 30 April this year there were still 84 people in Papua New Guinea who were exiled by a Labor government a decade ago. Is it your policy that the Australian government is responsible for them, or is it your policy that the Australian government is not responsible for them? That's a pretty simple question?

Senator Watt: I know, and I know you're trying to get a particular answer.

Senator McKIM: I'm just trying to understand.

Senator Watt: I have gone over this many times. To have a policy would suggest that this government has—

Senator McKIM: A policy.

Senator Watt: Formed a policy decision and discussed the matter—

Senator McKIM: No.

Senator Watt: with officials and with ministers, and that has not occurred. We have, on the other hand, a policy to assist temporary protection visa holders to find a pathway to permanency.

Senator McKIM: I haven't asked that. We will be here all night if you keep answering questions that are not being asked.

Senator Watt: What I'm trying to say is that I know your formulation of this would like to suggest that Labor is a terrible group of people who are terrible to refugees. What I'm saying to you is that there are a number of ways in which this government has done the right thing—

Senator McKIM: It's 84 people.

Senator Watt: such as assisting people convert temporary—

Senator McKIM: There are 84 people as of 30 April this year who were exiled to Manus Island against their will, many of them effectively in chains, or the modern day equivalent of chains: handcuffs. I know this because I have spoken to them, and some of them are my friends. They were exiled to Manus Island a decade ago by a Labor government. Now that you are back in government, is it your policy that you are responsible for them or not responsible for them? I don't know why it's so hard for you to just explain what everyone can see, and that is that your policy is that you're not responsible for them.

Senator Watt: Again, that's your assertion. And we've had—

Senator McKIM: So you are responsible for them?

Senator Watt: No, that's your assertion.

Senator McKIM: It's a binary choice.

Senator Watt: Your assertion is that we have formed a policy position when we have not. I had Senator Roberts, Senator Antic and Senator Rennick earlier today making all sorts of unfounded assertions. With respect, Senator McKim, you are making an—

Senator McKIM: Mr Pezzullo, are you in any doubt about the government's policy in relation to those people?

Mr Pezzullo: As the minister said, there's been no policy deliberation or—

Senator McKIM: I didn't ask about deliberations or change. I've asked you, you're the secretary of the department, if you are you in any doubt about the current government's policy in relation to the people from the offshore cohort who remain in Papua New Guinea? Are you in any doubt about the government's policy?

Mr Pezzullo: I'm in no doubt that there is no operative policy that—

Senator McKIM: I'm sorry. I now can't hear Mr Pezzullo.

CHAIR: Hold on one moment. Senator Ciccone, on a point of order.

Senator McKIM: To the rescue!

Senator CICCONI: Senator McKim is asking the department official for an opinion, which is obviously out of order. I'd ask that we return to the budget and that the senator continues his line of questioning without asking the witnesses on their opinion.

CHAIR: The officials and senators are fully aware that they're not able to be asked opinions on matters of policy. I do want to draw your attention to the standing orders, Senator McKim, and we are slightly getting into a

position where you are being quite repetitive in your questions. I will pull you up on that with the standing order if I need to, but I'll allow you to continue with this questioning.

Senator McKIM: Mr Pezzullo, are you in any doubt about the current government's current policy with regard to the people who remain in Papua New Guinea after being sent there by a decision of a previous Labor government—and enacted, I might add, by officials of your department. Are you in any doubt about the current policy?

Mr Pezzullo: I'm in no doubt that there's no policy question for the government to consider. The matter is concluded. I'm in no doubt about that at all.

Senator McKIM: But are you in any doubt about the policy?

Mr Pezzullo: I'm in no doubt about the policy of the Australian government, which are commitments that the government of the day enters into. The Morrison government, in this case, entered into an agreement with Papua New Guinea to conclude the agreement, and it was concluded on 31 December. There's no matter before the government. Of that, I'm in no doubt at all.

Senator McKIM: In your attempt to rush to the political defence of the minister, you're answering a question that I'm not asking you. I'm not asking you about whether the current government has made a decision or is engaging in any policy consideration. I urge you to focus on the ordinary English-language meaning of the words that I'm using in my question to you. Are you in any doubt about the current government's current policy?

Mr Pezzullo: No, I've got no doubt at all.

Senator McKIM: Okay. So what is it?

Mr Pezzullo: For a government to have a policy, it has to tell you that it's got a policy. So an example of—

Senator McKIM: But you said you're in no doubt. I'm just asking: what is it? Minister Watt can't tell us what the policy is. Can you tell us what the policy is?

Senator Watt: Senator McKim—

Senator McKIM: I mean, this is just bizarre and extraordinary.

CHAIR: Senator McKim—

Senator McKIM: This is a farce.

Senator CICCONE: You're turning these estimates into a farce.

Senator POLLEY: You're wasting time.

CHAIR: Senators, thank you. Senator McKim, if you have a question, please put it. Otherwise, I think Senator Ciccone has got a point of order.

Senator CICCONE: I do.

CHAIR: He might refrain from putting that right now because he can see that I have control of the proceedings, and we won't be talking over each other anymore. Senator McKim, I am drawing your attention to the fact that you're asking the same question repetitively. I think you're getting the same answer, and I wouldn't expect anything else. So, if you want to continue with some other questions, you can go ahead.

Senator McKIM: I'd just like to try and get some clarity on this. Mr Pezzullo, you've said that you're in no doubt about the current government's current policy.

Senator Watt: I don't think he said that, actually.

Mr Pezzullo: I'm in no doubt that there's no policy matter before the government. The matter is concluded.

Senator McKIM: That's not what you said. You said you were in no doubt about the policy.

Mr Pezzullo: I've got no doubt that there's no policy matter that the government has to engage on.

Senator McKIM: I'm not asking you about whether or not you're in doubt about a policy matter that the government has to engage on. I'm asking you about whether you are in any doubt about the current government's policy.

Mr Pezzullo: I'm in no doubt that there's no matter that they've deliberated on or have given any consideration about to direct me to implement anything other than—

Senator McKIM: Do you think that the way you're behaving sends a good message to your subordinates in the department about being open, honest and up-front with a Senate committee? Do you honestly think you're setting a good example?

Senator CICCONE: A point of order, Chair—

Senator McKIM: It's outrageous.

CHAIR: Senator McKim, we are straining into an area where I think you are actually being provocative to the point of trying to get me to shut down this estimates hearing. I'm not going to do that. I'm also going to ask you to withdraw that reflection on the secretary.

Senator McKIM: I won't.

CHAIR: I'd ask you to consider withdrawing so that we can continue these proceedings. You have questions to ask; lots of senators do as well. You are getting to the end of your time block as well. You've got a little bit of time left. If you want to use that productively, that's up to you, but you should consider withdrawing that comment.

Senator McKIM: I'm not going to withdraw it. That's absolutely farcical behaviour from the minister and the secretary.

CHAIR: You've been a senator for a long time.

Senator McKIM: Yes, and I've never seen anything like that.

CHAIR: For a chair to ask you to reflect on withdrawing a comment and for you to refuse sends, I think, a really bad message to the Senate. So that's up to you to consider. If you have any other questions you should put them now, otherwise I do need to hand the call over.

Senator McKIM: Why is there \$100 million more in program 2.4 in the budget we've most recently seen compared to the October budget of last year?

Mr Pezzullo: If Ms Foster needs the assistance of the CFO to answer that, I'll ask the CFO to come forward. Program 2.4—

Senator McKIM: IMA Offshore Management. I don't accept the nomenclature, but let's call it that because that's what's written in the budget.

Mr Pezzullo: Understood. Between Mr Thomas, who's the operational business owner, and Ms Cargill, I'm sure that we'll be able to explain to you the variation in the order of—what was it, \$100 million?

Senator McKIM: Yes. If we go back to the last budget of the former government, the 2022-23 budget, so last year's budget of the former government, the 2023-24 forward estimate in program 2.4 was \$370 million. Then, in this government's first budget in October last year, it was \$386 million, an increase of \$16 million. In the budget that has just been handed down, it's \$485 million. I'm just after an explanation.

Mr Pezzullo: Mr Thomas, do you want to answer that from a business point of view or does Ms Cargill from an estimates point of view? Which is better?

CHAIR: That's your last question, Senator McKim.

Ms Cargill: The government has provided additional funding in the 2023-24 budget for the 2023-24 year in relation to the state of readiness that's required in Nauru.

Senator McKIM: That's all with regard to Nauru, Ms Cargill, is it?

Ms Cargill: That's correct.

Senator McKIM: That's correct?

Ms Cargill: Correct. There was a small component related to some capital activity that has been moved from 2022-23 to 2023-24 of about \$18 million, due to the incoming contractor and the fact that they've had an assets stocktake. There are additional capital works required, \$18 million, but the majority relates to the state of readiness in Nauru.

CHAIR: We can come back to you, Senator McKim. Senator Ciccone, you have the call.

Senator CICCONE: Mr Pezzullo, I asked, very early today, some questions around a QON—and I think you promised that there would be the relevant officials here—which was in relation to QON No. 943.

Mr Pezzullo: Just remind me what the topic of the question on notice was. That might assist.

Senator CICCONE: Senator Green had asked how much the department spent on the provision of garrison and welfare services on Nauru between 1 November 2017 and 31 May 2022. I have a copy here if you don't have one.

Mr Pezzullo: That might assist, thank you.

Senator CICCONE: I might just table this QON.

Mr Pezzullo: Thank you so much.

CHAIR: Mr Pezzullo, do you have a copy of this question on notice?

Mr Pezzullo: I do now.

CHAIR: That's fine, thanks, Senator Ciccone.

Senator CICCONE: You would have seen that Senator Green had lodged some further questions about the arrangements between the department and Radiance International on 15 May. Has the department looked at those questions?

Mr Thomas: Yes, we're currently working through answering those questions.

Senator CICCONE: In the QON 943, Senator Green asked the department to provide her with an AusTender reference for the contract, or contracts, between the department and Radiance International. As I understand it, you said that there was no AusTender reference because you were not required to publish the details of those contracts. What exemption in the Commonwealth procurement rules is the department relying on?

Mr Thomas: That's one of the questions we're working through at the moment, with the additional question on notice, to provide some additional detail.

Senator CICCONE: You can't even provide me with an answer tonight?

Mr Thomas: Not at the moment.

Senator CICCONE: The department published the details of a previous contract between the department and Radiance International on AusTender. That was for refugee accommodation at a Buddhist hotel on Nauru. If you want the AusTender reference number, I can provide it to you. You seem to be nodding, so I'm assuming you know which one I'm referring to, but for the benefit of the public it's CN3395884. Are you familiar with that contract, Mr Thomas?

Mr Thomas: No, not personally.

Senator CICCONE: Are you aware of it?

Mr Thomas: I'd have to check the details of that particular contract.

Senator CICCONE: If it helps, I could table a copy as well, for your benefit.

Mr Thomas: The Radiance International contracts consisted of a number of contracts, so more than just one.

Senator CICCONE: I've just provided a copy of the excerpt from AusTender for your reference. The contract commenced on 12 December 2016 and concluded on 30 November 2018. Why did the Department of Home Affairs publish the details of the old contract, which related to refugee accommodation on Nauru that was provided by Radiance International?

Mr Thomas: Noting the age of that, I'll have to take that on notice and answer that through the question on notice that we have with us at the moment. I'm just not able to answer it right now.

Senator CICCONE: You also didn't publish the details of other contracts that the department had with the same company, which related to the same or similar services. Is there anyone else here tonight that's able to provide an answer to that?

Mr Pezzullo: No. Mr Thomas is the relevant division head. Mr Thomas, did I understand you to say that in Senator Green's follow-up question, that was more recently received—I think I'm right in what I heard—that your examination of how best to respond to her question directly relates to this line of questioning?

Mr Thomas: Yes, that's correct.

Mr Pezzullo: It seems to me that if we've got work in hand I can really just refer you to the response that we'll give to Senator Green on the question that she's already provided on notice.

CHAIR: Respectfully, having a question on notice on foot doesn't prevent you from answering questions if you have the information with you tonight.

Mr Pezzullo: I understand that, but I inferred that Mr Thomas have that information.

Mr Thomas: No.

Mr Pezzullo: And that you are working on it in the context of working on the response to the question on notice. Is that fair? Is that what I heard you say?

Mr Thomas: Yes.

Senator CICCONE: What services did Radiance International provide on Nauru for its \$17.5 million contract?

Mr Thomas: These contracts were for accommodation leases. They were to provide accommodation for transferees on Nauru at a number of sites.

Senator CICCONE: Was that from the period 1 November 2017 to 31 May 2022?

Mr Thomas: It would have been throughout that period—different sites at different times. Again, we'll provide more detail through the additional question on notice, but for that period, yes, a number of sites.

Senator CICCONE: Are you familiar with an individual by the name of Mr Mozammil Bhojani?

Mr Thomas: No, I'm not.

Senator CICCONE: Or his brother, Imran Bhojani, who controlled Radiance International and a number of related companies?

Mr Thomas: No, I'm not.

Senator CICCONE: The companies that I'll refer to—that are in the QON that Senator Green put forward—called the Radiance Group, had a number of business interests in Nauru, including trading, shipping and importing of rock phosphate from Nauru. There was a statement issued by the AFP which related to bribery investigations; that's the one I'll table. The statement comes from a press release that was issued by the AFP, dated 14 September 2018, announcing charges against Mr Bhojani for foreign bribery. Do you recall, or are you aware of, that press release?

Mr Thomas: No, I'm not aware of it.

Senator CICCONE: The contract between Radiance and the department was due to expire on 30 November 2018, but the department continued to pay Mr Bhojani's company millions of dollars after 30 November 2018, despite him being charged by the AFP with foreign bribery. Why would that be the case—knowing that someone's been charged with foreign bribery and the department continues to pay the contract?

Mr Thomas: I would have to check the details of what the department was aware of at the time.

Senator CICCONE: Mr Pezzullo, do you have anything to add to that, as secretary of the department?

Mr Pezzullo: It's something which goes back five years. We would just need to check our records. It doesn't readily spring to mind, no.

Senator CICCONE: On 27 August 2020, Mr Bhojani was also convicted of paying more than \$100,000 worth of bribes on Nauru. I'm happy to table another AFP statement about that. And the department continued to pay millions of dollars, even after that. Why was that the case?

Mr Pezzullo: Sorry, I missed the earlier part of this thread. Is the suggestion that this person is an office holder associated with the company known as Radiance International?

Senator CICCONE: Yes.

Mr Pezzullo: Right. Perhaps you could assist me by reminding me what office does he, or did he, hold?

Senator CICCONE: He and his brother own the company.

Mr Pezzullo: We'll have a look at it.

Senator CICCONE: Despite the publicity at the time, and apart from the AFP issuing statements, there was also an ABC story—a 7.30 report on it.

CHAIR: This was when the AFP was part of Home Affairs as well.

Senator CICCONE: Yes.

Mr Pezzullo: That wouldn't be particularly material, Chair.

CHAIR: I don't know if that helps to place it for you.

Mr Pezzullo: That wouldn't be particularly material because who they charge is independent of where they sit within ministerial arrangements.

CHAIR: Sure.

Mr Pezzullo: But I would just need to refresh my memory as to what our knowledge was at the time.

Senator CICCONE: And, as Senator Green said, when the AFP was in the Department of Home Affairs, the then minister, Minister Dutton, was the minister responsible for both the AFP and the Department of Home Affairs. So while the AFP was investigating and charging—and ultimately securing the conviction of a man who was engaged in foreign bribery—the department was paying this individual millions of dollars. What I want to understand is why that was the case. Was there no process in place to stop such payments from being provided to this individual?

Mr Pezzullo: Documents are just being handed around. It would depend on whether the criminal charges in question had any material relationship to, or bearing on, the ability of the Commonwealth to procure the relevant services. When does this go back to? September 2018—that's almost coming up to five years. We'll just have to look at our records.

Mr Thomas, I know you weren't in the role, but does this document now provide any additional amplifying prompting information for you?

Mr Thomas: It does not.

Senator CICCONE: Who was in the role back then, Mr Pezzullo?

Mr Pezzullo: Either Mr Thomas's predecessor or her predecessor. I'd have to check that out.

Senator CICCONE: Who was that?

Mr Pezzullo: I'll check the record as to who was in the job at the time.

Senator CICCONE: Could you also check to see whether Mr Dutton, as minister, knew of the issues and whether he had any briefings via the department or the AFP on the matter?

Mr Pezzullo: I couldn't speak about the AFP's, quite properly, fiercely independent line of reporting to its ministers. That's a matter for the AFP, so you can ask them tomorrow.

Senator CICCONE: You could check from your end that the department didn't provide any briefings to the minister.

Mr Pezzullo: I was about to say that as to whether the department provided advice, again we'll just need to check the records.

Senator CICCONE: Okay. I made reference to an ABC article: the fact that Mr Bhojani's company had a contract with the department was reported by the ABC back in September 2018, shortly after he was first charged. Again, I'm happy to provide a copy of that news report. But the \$2½ million contract wasn't cancelled; the contract was in fact extended for a further three years and the company continued to receive \$17.5 million of taxpayer money. That was all under, not just your watch but that of Minister Dutton. I'm interested in knowing why it was that the department did not stop payments of millions of dollars that were being controlled by a man who was charged with foreign bribery?

Mr Pezzullo: It would be a function of whether he continued to be an office holder and whether he was removed as an office holder as a function either of charges being laid or a prosecution being secured through the criminal court. We're just going to need to reconstruct this. There's a lot of information here that's going to require me to reconstruct a chronology for you.

Senator CICCONE: I want to continue asking questions, because I know that Senator Green asked about this. I don't know how long it's going to take for the department to get back to Senator Green but, given that we're in estimates, I think it's only appropriate that I continue asking these questions.

Mr Pezzullo: By all means.

Senator CICCONE: In addition to that, the AFP's investigation began in 2015, and Radiance International got a contract with the department in 2016. Mr Bhojani then pleaded guilty, in 2020, to a number of foreign bribery offences, including to bribery of Nauruan officials in June 2017, which is about six months after the department started paying his company millions of dollars. Do you know whether Mr Bhojani used any of the money that Radiance International received from the department to bribe these Nauruan officials?

Mr Pezzullo: I am just looking at the press release in question. I do recall some of these matters arising, because of the reference to phosphate. As far as I recall—and the AFP press release assists in refreshing—the illegal activity for which a prosecution was subsequently laid and the conviction secured related to payments made in relation to export licensing around phosphate and imports of fuel into Nauru. As to whether it's the same legal entity—I mean, it's a group of companies—whether AFP, who are very diligent in providing associated departments and agencies with information that might assist them in the performance of their duties, I'd just need to check the records.

Senator CICCONE: To help check your record, too, I'll also table ASIC records that show Mr Bhojani being the director and a shareholder of that company and the fact that the company, Radiance International Inc., was deregistered on 15 March 2022, shortly before the 2022 federal election. I want to table those for the record. Are there any indications from you or Mr Thomas as to when you might get back to Senator Green on her QON?

Mr Pezzullo: I'm sure that we'll meet all the appropriate deadlines, won't we, Mr Thomas?

Mr Thomas: Yes. I believe the tabling deadline is early June, so certainly by then.

Senator CICCONE: Okay. I might leave my line of questioning there, Chair, unless you've got anything you want to add.

CHAIR: We might come back to it. Senator Scarr.

Senator Watt: On this, Senator Scarr, I've got copies of that article you were after.

Senator SCARR: The transcript?

Senator Watt: No. Well, it's an article in today's *Financial Review* with a direct quote from shadow minister Tehan—and I've given copies of this to be tabled—where he says, among other things:

... we already have 1.5 million permanent migrants coming into Australia this year and over the next four years," ...

Have you got that article?

Senator SCARR: Which page?

Senator Watt: I think it's been highlighted or marked, but it should be the second-last page. There is a paragraph starting:

"There is a real danger given the two years it only takes to get permanent residency that this will be exploited as a new pathway when we already have 1.5 million permanent migrants coming into Australia this year and over the next four years," ...

As has been set out by the officials—

Senator SCARR: I'm not sure I've got it.

CHAIR: It's being circulated. We have a number of tabled documents we're dealing with at the moment.

Senator Watt: Which one were you just looking at?

Senator SCARR: I was looking at one of my own documents, I think.

CHAIR: What is the headline?

Senator Watt: The headline, which of course I reject—as I often reject headlines—is: "'Unionised by stealth': Migrant workers come with a catch'. Do you have the article now?

Senator SCARR: I think I do, yes.

Senator Watt: If you turn to the second-last page, there is a heading, 'Big pathway for permanency', and, about five paragraphs under that, there is a paragraph starting, 'There is a real danger'. What I was saying was that, based on the information the officials provided earlier today, it would seem Mr Tehan is not correct. I guess my words were that he was misleading people.

Senator SCARR: I was doing some homework after you made the reference, and I saw an interview Mr Tehan did today on Sky, and I must say I assumed you were referring to that interview.

Senator Watt: No.

Senator SCARR: So you were actually referring to the quote attributed to Mr Tehan in that article?

Senator Watt: I was, and it's got inverted commas, which usually means it's a direct quote.

Senator SCARR: It's a direct quote, attributed.

Senator Watt: Are you suggesting the journalist got it wrong?

Senator SCARR: All I'm suggesting is that in the Sky News comment Mr Tehan made today, the quote was: We've got 1.5 million people coming here this year and over the next four years.

Senator Watt: I'm not even sure that that's correct, because what we've heard is that the net overseas migration is 400,000 this financial year, falling to 300,000-odd next year, falling down to 235,000. I don't know where Mr Tehan is getting his figures from, because he doesn't seem to be relying on facts.

Senator SCARR: Putting aside the political rhetoric, the quote you gave prior to the break was the quote that is attributed to Mr Tehan in the *AFR* article. Correct?

Senator Watt: Yes, and I have no reason to believe that the journalist got that wrong.

Senator SCARR: Okay.

Senator Watt: I don't know if that's what you're suggesting.

Senator SCARR: I just wanted to know where you got it from—

Senator Watt: The article's there.

Senator SCARR: because I didn't have the quote.

Senator Watt: I haven't even seen the Sky interview that you're talking about. I haven't seen the transcript for it, but this is the article in which Mr Tehan has used inaccurate information.

Senator SCARR: There's a quote attributed to Mr Tehan.

Senator Watt: Usually when a print article has inverted commas around text then it's a direct quote.

Senator SCARR: You've put your view. Let's talk about the substance of the article, if we could, now it's been tabled.

Senator Watt: Yes. Sure.

Senator SCARR: Secretary, can you walk us through the process in terms of this article that the minister has tabled? It refers to these arrangements that have been announced regarding aged-care labour agreements. Can you walk us through the process that aged-care providers have to go through in order to access these immigration arrangements?

Mr Pezzullo: Under the agreement? Ms Foster or Mr Willard can assist. It takes the agreement as read, so the agreement has been struck. Are you asking about what an individual provider has to do to?

Senator SCARR: Yes. What's the process? As I understand it—and tell me if I'm wrong—the intention is to facilitate a pathway for aged-care providers to access workforce in a context where there's a shortage of workers in that particular sector. Is that a fair summation?

Mr Pezzullo: Ms Foster, do you want to take that, or Mr Willard?

Ms Foster: The Aged Care Industry Labour Agreement is available to employers as an option as one of the ways in which they can attract or recruit workers into the aged-care sector. There is an MOU, if people choose to use that agreement, with relevant industry unions and the employer. It's essentially a new tripartite approach. I'll let Mr Willard add details to that if you want further details.

Senator SCARR: Ms Foster, and I'm quoting from the article which the minister has brought to our attention, you refer to the fact that there's an option to use an MOU but, to quote from this article—

Ms Foster: I said there's an option to access—

Senator SCARR: Sorry, can I just finish my question? I just want to put it to you. Quoting from this article in relation to the proposed scheme—and I'm after your input in relation to this—I just want to give you the context. Have you got a copy of the article there?

Ms Foster: I don't have it in front of me. I was just going to say, when I said 'option' I was referring to the option to use the agreement and not to enter into an MOU.

Senator SCARR: But you can't get the benefit of this process unless you enter into an MoU with a trade union. Is that correct?

Ms Foster: You can't use the agreement unless you have an MOU, but you can still recruit people directly.

Senator SCARR: What's the difference? If you recruit people under a scheme where you don't exercise your option to enter into an MOU and use the agreement—where you recruit people by the alternative—what's the difference, Mr Willard?

Mr Willard: This is a template labour agreement, and to make use of the template agreement there's an MOU that needs to be entered into—so it's a tripartite arrangement. It doesn't preclude an employer using a company-specific labour agreement, which would be a separate negotiation. The template agreements exist and can be accessed, as per the template, by companies, and to access this template an MOU has to be entered into.

Senator SCARR: Alright. I want to quote from the article that the minister tabled, albeit in another context, because this is going to lead to some questions I've got with respect to the process. It says:

But migration agents and aged care employers have warned that some providers are baulking at the MoU, labelling it as union overreach that will prevent providers signing up.

Under the MoU, management is expressly barred from attending the inductions—
that is, union inductions—

unless they are invited by the union and "make a positive statement about the relationship with the union and the ongoing commitment to work together".

So the concern that's being raised in this article is that, in the scheme as its proposed, in order for the company to access the facilitated migration pathway they need to enter into an aged-care labour agreement, and a condition of entering into that agreement is that they enter into an MOU, on the terms discussed in that article, with the union—is that correct?

Mr Willard: One point I'd make is that the MOU itself is a matter for unions and employers. But in order to use the aged-care labour agreement—that is, that particular template agreement—an employer must have entered into an MOU.

Senator SCARR: What I said is correct, then, isn't it? In order to use that aged-care industry agreement, you must first have entered into an MOU with the union—is that correct?

Mr Willard: Yes, in order to use this specific template agreement. But the company-specific agreements remain open.

Senator SCARR: Okay. But what's the difference in the immigration pathways that are opened up under a company-specific agreement as opposed to this agreement, where you must enter into an MOU as a precondition?

Mr Willard: Company-specific agreements are negotiated on a case-by-case basis with a company, so it's not possible to say what the specific pathways would be.

Senator Watt: Can I assist, Senator Scarr? I think what the officials are saying is that there is a template agreement that has been prepared, as is the case for a range of labour agreements across a range of industries, with the intent of making the process simple for employers. If an employer chooses to go down that path then they need to enter an MOU with a relevant union.

Senator SCARR: Yes.

Senator Watt: If, on the other hand, individual aged-care providers do not want to use the template agreement but want to come up with their own arrangements, they're perfectly at liberty to do that. They're perfectly at liberty to seek to have migrant workers work in their establishment. And then, of course, they wouldn't need to go down the MOU path, because they're not using the template agreement. Is that a fair summary, Mr Pezzullo?

Mr Pezzullo: And they would need to apply for that agreement to be ratified by the department, who would put advice up to the minister. Ministers sign off on labour agreements, be they geographical or firm-specific. There's certainly nothing, Minister, to preclude a provider from doing precisely what you've just described. Mr Willard, we don't have delegated authority to come to company-specific agreements ourselves?

Mr Willard: We do so within guidelines set by the minister.

Mr Pezzullo: Within guidelines set by the minister—my apologies.

Mr Willard: If a request is outside of those guidelines—

Mr Pezzullo: We have to refer it to the minister?

Mr Willard: what you just said is correct, Secretary.

Senator SCARR: So, if it's a specific agreement, if a company chooses to 'tech-ise' its option—if I can use that word—not to go down the path where they are forced to enter an MOU with a union, I am quoting from your website in terms of the purpose of the Aged Care Industry Labour Agreement, there's a section that says:

Aged Care Industry Labour Agreement terms and concessions

- Access the following concessions to standard skilled visa requirements:
- two year pathway to permanent residence through the Employer Nomination Scheme

If I go through a specific company agreement, do I get access to that two-year pathway to permanent residence through the Employer Nomination Scheme?

Mr Willard: Not necessarily because that's a matter that is negotiated in the context of a specific company agreement.

Senator SCARR: Okay. Do I get access to what's covered in the second dot point? That is:

- streamlined visa nomination and priority visa application processing

Mr Willard: Not to the extent of the aged-care industry template agreement.

Senator SCARR: Do I get access to the third dot point? That is:

- no post qualification work experience requirement

Mr Willard: That would also be a matter for negotiation in the context of the individual labour agreement.

Senator SCARR: Do I get access to the fourth dot point? That is:

- English language concessions for workers with relevant community language skills

Mr Willard: Similar to my previous responses.

Senator SCARR: Do I get access to the fifth dot point? That is:

- Annual salary of at least \$51,222 AUD or the Australian Market Salary Rate, whichever is higher.

Mr Willard: That is also subject to the specific negotiation.

Senator SCARR: Clearly, this system has been set up to provide employers with particular nominated concessions—that's in the wording used on your own website—if they go down the path of first entering into an MOU with one of the nominated trade union agreements. Is that correct?

Mr Willard: The nature of a labour agreement is that there's a negotiation in terms of concessions to standard requirements, so, yes.

Senator SCARR: There are concessions if you go down the path of first entering into an MOU with one of the nominated trade union agreements as opposed to on a specific company basis entering into an agreement. Is that correct?

Mr Willard: Because the specific company agreements are negotiated on an individual basis, it's hard to say what exactly the change would be.

Senator SCARR: Mr Willard, you wouldn't say, 'These are the following concessions,' unless there were actual concessions by going down the stream of first entering into an MOU, which is a precondition to entering into, under this new scheme, an industry labour agreement. Isn't that correct?

Mr Willard: Yes, and the nature—

Senator SCARR: Theoretically you could get concessions if you go down the other path, but as a matter of general principle this is being sold to employers as a means by which they can get concessions. The corollary of that, in my interpretation, is, if you don't go down this path, you don't necessarily get those concessions. Is that a fair summation?

Mr Willard: Well, it's still a matter for negotiation, the individual ones.

Senator SCARR: So why does the Department of Home Affairs, in its website, refer to 'the following concessions'?

Mr Willard: Because it's a template agreement, so the concessions apply on the basis of accessing a template agreement as opposed to individual negotiations where concessions could be different, according to the individual negotiations.

Senator SCARR: So you access concessions if you enter into a template agreement?

Mr Willard: Correct.

Senator SCARR: Right, got it. In terms of the template labour agreement—

Senator Watt: Cutting red tape, making things easy.

Senator SCARR: In terms of the template for the unions—

Senator Watt: No, no, for employers as well—

Senator SCARR: you've got the template labour agreement on your website. Is the template of the MOU to enter into the unions also on your website?

Mr Willard: No, the MOU is a matter for unions and employers.

Senator SCARR: But it isn't just a matter for unions and employers, is it, because you must enter into the MOU before you can go down this path and actually enter into the labour agreement? That is correct, isn't it? It's a precondition?

Mr Willard: It is a precondition, but government is not involved in the process.

Senator SCARR: But government is requiring it to be entered into prior to allowing companies that enter into the labour agreement for the aged-care industry, going down this pathway. Is that correct? If you want to get access to the following concessions, which I read, you must first enter into the MOU with the union. Is that correct?

Mr Willard: Correct.

Senator SCARR: Can I table a copy of the MOU?

Senator Watt: You are probably aware, Senator Scarr, there's at least one aged-care provider that has already entered into one of these agreements, even though they were only made available a couple of weeks ago, was it?

Mr Willard: Yes, 5 May.

Senator Watt: And I understand there are a number of aged-care providers who are actively considering this simplified process.

Senator SCARR: Mr Willard, who drafted this MOU that is being provided by the department?

CHAIR: Is this from the website?

Senator SCARR: I've been given this by someone who received it from the department. I'd like to table it. The department can have a look at it and see if they are actually providing this agreement to potential parties that are entering into this agreement.

CHAIR: I'll just have a quick read-through and make sure. I do check documents before we table them, so we're not tabling anything inappropriate.

Senator SCARR: Let me ask you, Mr Willard, just whilst our chair is reading it, which she has every right to do: is the department making available a template MOU for employers to enter into with trade unions?

Mr Willard: Not to my knowledge, but I would like to make absolutely sure in terms of the process.

Senator SCARR: Is there someone here who can actually assist you?

Ms Foster: We're just checking, Senator, to see if there's someone who can give you the information.

Senator Watt: They've literally just had the agreement given to them. They've got to have a bit of time to check its veracity.

Mr Willard: I haven't actually got the agreement yet.

Mr Pezzullo: In fact, we haven't seen the document. The chair is—

Senator SCARR: I'm happy to hand over the call until you can clarify that.

Ms Foster: The relevant officers will be listening. They will be checking to see—and they will let us know—whether we are in fact providing a template MOU.

Mr Pezzullo: I'm sure we won't get that advice via telegram, but we might get it by some other messaging medium.

Senator PATERSON: Not WeChat!

Mr Pezzullo: No!

CHAIR: If it assists, we can provide the document to the witnesses.

Senator SCARR: Sure.

CHAIR: That might help. Unfortunately, there's nothing on this document that indicates the source.

Senator SCARR: No; I understand that.

Mr Pezzullo: Senator Scarr, just so that I'm clear, you understand this to be—and I say that simply because it's been described to you in certain terms—a mock up of a—

Senator SCARR: A template—

Mr Pezzullo: A template.

Senator SCARR: of an MOU. If you have a look at the labour agreement for the aged-care industry, which is on your website, it has as a precondition—

Mr Pezzullo: That you've got to enter into an MOU, yes.

Senator SCARR: Correct.

Mr Pezzullo: Which opens up your access to the template. There are two uses of the term 'template' here. There's the larger template industry agreement—

Senator SCARR: Correct.

Mr Pezzullo: and as a precondition of entering into that agreement you've got to strike an agreement, an MOU, with the relevant applicable union. What you're saying to me, I think, is that this document, which is watermarked 'template', is said to be a document that's been prepared in my department. Is that what you're asking?

Senator SCARR: I'm not saying where it's been prepared. I'm saying it's been provided—

Mr Pezzullo: 'Provided'—I'm sorry.

Senator SCARR: to employers who are potentially looking to enter into the labour agreement.

Mr Pezzullo: So—just so I understand the premise of the question I'm dealing with—you're not asking me whether this document has been prepared in or by the department?

Senator SCARR: I may well be asking you, but I've got to get it tabled first!

Mr Pezzullo: But, at the moment, you're asking me whether we've been party to its circulation, it's dissemination—

Senator SCARR: We're giving you an opportunity to see if it is a document which has been provided by the department.

Mr Pezzullo: Thank you. I understand clearly what you're asking. We will check. It doesn't have any indicators.

CHAIR: Senator McKim, you have the call.

Senator McKIM: During my last bracket of questions, Ms Foster, you gave evidence on how many people from the offshore cohort are currently on Nauru. Could you just remind me of that number.

Ms Foster: It was 22.

Senator McKIM: Next year the department has budgeted \$485 million for offshore management. That's exclusively in Nauru, isn't it?

Ms Foster: That's correct.

Senator McKIM: So \$485 million to look after 22 people is over \$22 million per person per year. Would my maths be right?

Ms Foster: I think as we've given evidence before, the costs for maintaining the facility are not attributable to the number of individuals. There's a certain base level of cost which is required to maintain that capability. You can divide it, but that's not the basis on which the costs are calculated.

Senator McKIM: No, but the effect of it is that \$485 million will be spent next year, according to the department, on an offshore processing facility and associated supports that currently house 22 people. That's right, isn't it?

Ms Foster: Those facts are correct.

Senator McKIM: When you do the maths, it comes out to over \$22 million per person in that year, doesn't it? That's the effect. You can talk about capabilities and so forth, but there's a cost, and there is a number of people. I presume the department hopes that the number of people will come down over time. Would that be right, Mr Pezzullo?

Mr Pezzullo: It's the policy as well as the direction given to the department to reduce the population to zero and then to transition the facility into a contingency facility, or an enduring one. As Ms Foster said, the moment you enter into any kind of contingency arrangement, you're going to have a number of fixed costs, which are independent of the number of persons making use of the amenities or the facilities in that capability.

Senator McKIM: So you're in no doubt about the government's policy on Nauru?

Mr Pezzullo: There's a very clear government policy—

Senator McKIM: Is it a clear government policy?

Mr Pezzullo: providing a direction—

Senator Watt: Precisely. We actually have turned our minds to this, and we have a policy.

Senator McKIM: Do you? You have a policy? But you don't have a policy on the people in Papua New Guinea.

CHAIR: Senator—

Senator Watt: We don't have a policy on a range of issues that have been resolved prior to the election of this government.

Senator McKIM: So you don't have a policy on the people in Papua New Guinea?

Senator Watt: Honestly, how many times have we got to go over this?

Senator McKIM: You could answer the question once, and we could move on, Minister. But you can't answer it, because you're too embarrassed to answer it.

Senator Watt: No. The Chair has already pointed out to you the repetitive nature of these questions.

Senator McKIM: That's because you won't answer them.

Senator Watt: There are things that the government has a policy on. We have turned our minds to them. This is one of them: the legacy case load on Nauru

Senator McKIM: Have you not turned your minds to—

Senator Watt: There are other things that were concluded prior to the election, whether it be PNG or whether it be on a whole range of other issues—

Senator McKIM: We all know what your policy is.

Senator Watt: that this government doesn't have a policy on.

Senator McKIM: Thank you, Minister. We all understand what your policy is. Mr Pezzullo understands what your policy is. I understand what your policy is. You're just too ashamed to spell it out.

Senator Watt: Then you probably don't need to keep asking questions about it.

Senator McKIM: That's what's going on here.

CHAIR: Senator McKim, let's go back to questions. Minister, I don't think you're assisting the proceedings. If you could let Senator McKim ask his questions and then answer them, we can get through this very calmly.

Senator McKIM: What changed between October last year and May this year in the department's thinking that required the department to add another hundred million dollars to the cost of providing offshore management in Nauru?

Mr Pezzullo: We extended our assumptions about the rate of population decline—of people being relocated through resettlement—as well as the assumptions we made about the extent to which we were going to maintain a high level of readiness should a boat or a number of boats arrive, and then the taper-down of that contingency state. I think it's fair to say, from the October budget—and you were newly arrived, Ms Foster, so you might remember this from your early days—we changed some of our assumptions that related to the flow-out of persons as well as assumptions about the level of readiness as we tapered down, did we not?

Ms Foster: I think it's fair to say that the assessment about the level of readiness is made from budget to budget. There's a certain base level included in the budget which is about maintaining the capability, and then we provide advice and the government makes decisions about the level of readiness it wishes to maintain. It's that level of readiness which changes the costs.

Senator McKIM: What assumptions or conclusions changed that mean that the budget changed by a hundred million dollars? Specifically, what changed? You've said there were assumptions around the level of readiness, so specifically what assumptions or conclusions changed?

Ms Foster: I think the point that I was trying to make was that the decision about what state of readiness to maintain is taken year on year, so there will be a base level of funding to maintain a capability which is consistent with the government's policy that maintaining regional processing capability is part of its strategy. And then, as we come into each period, there is a discussion or a debate about what level of readiness to maintain.

Senator McKIM: So what changed in the level of readiness that the department or the government decided to maintain?

Ms Foster: I'm not trying to be tricky here, it's not that we had—

Senator McKIM: You will know if I think you're being tricky because I will start to speak to you like I did to Mr Pezzullo earlier.

CHAIR: Senator McKim, I don't think that is necessary.

Senator CICCONE: Chair, point of order: I think it's fair to say that there is a level of standard that senators have to observe, and the way that Senator McKim addressed Ms Foster was highly inappropriate. He should withdraw the comments that he made, and I think all senators need to reflect on their behaviour towards witnesses. He was out of order in the way he addressed Ms Foster.

CHAIR: Thank you, Senator Ciccone. Senator McKim, you might like to reflect on your comments and consider withdrawing them. We did make a statement at the beginning of these hearings, particularly in relation to the Set the Standard report and the way we will conduct the hearings. We will do that in an orderly fashion. I draw your attention to the comments and ask you to withdraw them.

Senator McKIM: My comment was not aimed at Ms Foster; it was aimed at Mr Pezzullo, but I will withdraw the comment.

CHAIR: Thank you.

Senator McKIM: I'm certainly happy to offer an apology to Ms Foster if she believes that I have offended her in any way. Thank you, Ms Foster.

Ms Foster: Asking what changed the characterisation assumes that we had made a determination about the posture in the forthcoming year as opposed to maintaining a base level capability and then making a decision year

on year about whether to augment that or not. The decision-making around the level of capability will go to questions about the likelihood of needing that capability in a particular state of readiness. The government decision in this case was to maintain it at a higher level of readiness for a short period in the coming financial year.

Senator McKIM: So the facilities at Nauru are going to be maintained in a higher state of readiness in the 2023-24 year than they are in the 2024-25 year. Is that right?

Ms Foster: Higher rather than lower as opposed to higher than now.

Senator McKIM: I said higher, I believe, Ms Foster.

Ms Foster: Yes, but not higher than current. When we talk about high states of readiness and low states of readiness, what I was saying is we're going to maintain it at a high state of readiness for the first period of the next financial year. That is the current state of readiness.

Senator McKIM: Yes, but it's then going to drop down in terms of its state of readiness, to use your words—

Ms Foster: That's our prediction at the moment.

Senator McKIM: from 2023-24 to '24-25—

Ms Foster: That's our assessment at the moment.

Senator McKIM: and then taper off after that for the next two years.

Ms Foster: Yes.

Senator McKIM: That's what the numbers show.

Ms Foster: Then it will go into essentially, as the secretary said, a contingency state.

Senator McKIM: Do the numbers in the last two years, so '25-26 and '26-27, reflect a contingency state?

Ms Foster: They do.

Senator McKIM: With no people there?

Ms Foster: That's correct. As I was saying before that decision would be reviewed at each budget to make sure that it's still appropriate to the circumstances.

Senator McKIM: So Australia's on the hook for \$350 million per year forever, or for the foreseeable future, in order to maintain Nauru in a contingency state. Is that right, Minister?

Senator Watt: Our government has been on the record for a long time, including in opposition, that we would have preferred the legacy case load—for want of a better term—on Nauru to have been dealt with well before now. It wasn't, by the former government. We are now dealing with it. Ms Foster has given you the reduction in numbers of people who remain on Nauru. The reality is, until that legacy case load is fully resolved, costs are incurred, including housing and providing services to the people who remain there. We would have preferred this to have been sorted out a long time before now.

Senator McKIM: You haven't sorted it out, and you've been in government for a year.

Senator Watt: With respect, the efforts of the government to resolve this issue—

Senator McKIM: You put them there in the first place.

Senator Watt: can be demonstrated by the reduction in numbers of people who remain on Nauru.

Senator McKIM: You put them there.

Senator Watt: And that has taken significant work.

Senator McKIM: You put them there in the first place, Minister.

Senator Watt: You're politicising it; that's what you do.

CHAIR: Senators.

Senator McKIM: I'm pointing out the facts of the matter, which is that they were put there by the Labor Party.

Senator Watt: And there you go. Well done. Politicising it.

Senator McKIM: That's right—the facts of the matter.

CHAIR: Senators.

Senator McKIM: In the budget papers, it says that the performance measure for resettling 95 per cent of the targeted 150 refugees in New Zealand each year is at risk. Why is that at risk?

Mr Pezzullo: I'll just remind myself of what the reference is there.

Ms Foster: I'll get someone to get me the actual reference in the budget paper.

Senator McKIM: It's page 45, in table 2.2.2.

Ms Foster: Whilst we've been working very closely with New Zealand on that target, as you well know, the process of an effective resettlement in a third country is a complex one in which we need to take into account the individual circumstances of the people. Our assessment, as we were preparing the paperwork, was that we are probably unlikely to meet 150 this year, but we have a very clear agreement with New Zealand that those numbers will roll into the next year. We have a good pipeline going with New Zealand, but it's just taking a little bit of time to effect the actual movement of the people in a way which gives us confidence that the resettlement will work for those people.

Senator McKIM: How many people have been transferred to New Zealand?

Mr Thomas: There were 13 people at the end of March this year. I believe there has been maybe one more since then.

Ms Foster: But we have a very large number that have been assessed by New Zealand and are in the pipeline to move.

Senator McKIM: You're not going to reach the 150, are you, on those numbers? You've called it at risk, but let's just name it—you're not going to reach the 150 in the current financial year, are you?

Ms Foster: We don't believe we are. As I said, we've got processes in place to catch that up over the life of the agreement.

Senator McKIM: Can you remind me what the life of the agreement is, Ms Foster?

Ms Foster: It was 150 for three years—each of three years.

Senator McKIM: How many people are there—let's leave Papua New Guinea aside for a minute, because it's clear that the Labor Party's policy is the same as the Morrison government's policy on those people—but on Nauru, and what the department calls 'transitory persons' here in Australia, what's the total amount, if you add the 22 in Nauru with the number of transitory persons in Australia?

Mr Thomas: The total at the moment is 1,174.

Senator McKIM: That 1,174 includes the 22 in Nauru?

Mr Thomas: It does, yes.

Senator McKIM: Your evidence is that the government has a three-year agreement with New Zealand, that, let's say, optimistically, is going to result in a settlement pathway for 450 people, given the evidence that we have just received from you, Ms Foster, that any shortfall in a given year will be caught up later or rolled into future years. That still leaves 724 people, if my maths are right. What happens to them?

Ms Foster: We also have agreements with the US, and we're also working with Canada to transition people to Canada. I think Mr Thomas can give us some figures around that.

Senator McKIM: Thanks. Mr Thomas, could you update us specifically on the US arrangement? My understanding is that applications and the processing of applications closed and ceased some time ago. But I am aware that relatively recently a small number of people have been transferred. I'm particularly interested in how many more people have approvals but are yet to be transferred, and whether that is the entirety and will result in a conclusion to the US arrangement.

Mr Thomas: Sure. Applications for the US process are still ongoing. There is still a number yet to be finalised. We have 313 individuals that have received notification of provisional approval but have not yet departed. That number does include a number that have withdrawn from the process as well.

Senator McKIM: A number of people that have withdrawn?

Mr Thomas: Yes, since being approved.

Senator McKIM: Okay. Do you have a number for that category?

Mr Thomas: It's 215 individuals.

Senator McKIM: So there are only 115 who haven't withdrawn from the process and who are provisionally approved?

Mr Thomas: That's correct.

Senator McKIM: I guess there would be a range of reasons, but why haven't they been transferred?

Mr Thomas: We're still waiting on the US to finalise the process to receive final approval. They've received provisional approval, pending final approval.

Senator McKIM: Is there a system problem here, or are there problems with—

Mr Thomas: It's just the US process—some cases are more complex and some take more time, but it's a matter for the US system to process them.

Senator McKIM: You're engaged with the US, presumably?

Mr Thomas: Yes.

Senator McKIM: So what's the hold-up?

CHAIR: Senator McKim, you've got just a couple more questions. I'm being very generous with the time I'm giving you, as are other senators. If you have a couple more on this topic, and then I'll have to share the call. We can come back to you though.

Senator McKIM: Alright.

Ms Foster: As you said, we are actively working with the US. It's a matter of them putting the more complex cases through their internal processes and finding a resolution for them. They understand the priority we afford to this, and I think it's fair to say that they're moving as quickly as their system will allow.

Senator McKIM: I just want to make sure I've got the maths right here: it's 1,174, then take off 454 for the New Zealand deal. That's down to 724, and then of them there are another 115 who haven't withdrawn from the US arrangement but are provisionally approved. That gets us down to 609. You mentioned Canada. My time is short, so I'll ask you this: do we have a pathway to permanent safety for all of those 609 people? And, if not, how many people from that cohort do we not have—after a year of Labor government and after Labor exiled them to Manus Island and Nauru a decade ago—a pathway to a durable solution for?

Mr Thomas: I'm not able to give you a specific number, just noting there are other variables within that. The Canadian example is a private sponsorship program, so we don't have full visibility of how many people are engaged in that process and how many may go. There may be other resettlements as well in the future, returns and other circumstances, so it's still an indicative figure at this moment, given the number of different variables that might occur with resettlements.

Senator McKIM: But you haven't got—

CHAIR: Senator McKim, thank you. Senator Polley, you have the call.

Senator POLLEY: I'd like to go back to the aged-care labour agreements. What was the purpose of the Aged Care Industry Labour Agreement? Could you outline that?

Mr Pezzullo: To facilitate streamlined access by aged-care providers to a source of otherwise untapped labour in the form of migrant workers. But would you characterise it any other way, Ms Foster?

Ms Foster: And also recognising the workforce needs in that sector and so trying, as the secretary said, to facilitate access to fill critical work shortages in the most efficient way.

Senator Watt: Senator Polley, I might be able to assist a little further. Everything that the officials have just told you is absolutely correct. I guess the other dimension to this—and you obviously know about it, through the work that you've done over many years on this issue—is the incredible workforce shortages we've seen in aged care that weren't solved. You would also be well aware that the aged-care workforce has historically been grossly underpaid. The process of fixing that, as a result of our government agreeing to provide a 15 per cent pay rise, has never been done before. Nevertheless, there remains a workforce shortage, but we are talking about workers who historically have been grossly underpaid. There obviously have been issues around the exploitation of migrant workers in the past. So this is a system where we are providing these tripartite template agreements. I know that's a foreign concept for some people, but it's tripartite: government, unions and business are working together to ensure that businesses can get the workers they need and to ensure that those workers are well treated. So that's the broader policy rationale for it.

Senator POLLEY: It's fair to say, from my experience, that over the last decade there was a trajectory of having a desperate need for workers. So, in terms of developing this template, can you outline to the committee the benefits of that template compared to something that was specific to a certain provider?

Mr Pezzullo: I'll refer to the evidence previously provided. The template affords industry providers streamlined access to the conditions in a streamlined fashion, which Senator Scarr very helpfully read out from our website. There is a precondition that we established in the early questioning that they have to demonstrate to us in the department that, to be compliant with the terms in accessing the industry agreement, they have to have

struck a memorandum of understanding with the applicable union that's got the relevant coverage or the union that's got particular standing. If that MOU is provided to Mr Willard's officers, that's an important precondition. Then, essentially, it streamlines the application of the industry-wide template agreement—let's call it that for the sake of brevity—to the provider.

So the benefit that I suppose you would derive from that evidence is that it streamlines access to the concessions. As Mr Willard made clear in his evidence before to Senator Scarr, it doesn't rule out or prevent a provider approaching the department, which is able to be done at all times, from saying: 'Look, I'd like to strike a firm-specific, a company-specific or a facility-specific agreement. Could I get access to those conditions?' As Mr Willard made clear, that would be the subject of case-by-case consideration. I think the other key element in the evidence that we heard earlier was that, as long as those company- or site-specific agreements operated within guidelines that the minister has approved, then Mr Willard's officers have got the ability to approve. If they fall outside of any applicable guidelines, it's referable back to the minister—is it not, Mr Willard?

Mr Willard: Correct.

Mr Pezzullo: Is that maybe, in 90 seconds, what we went over some half an hour or so ago?

Mr Willard: Yes.

Senator POLLEY: Thank you for that, but the real benefits of this tripartite agreement between business, unions and government is actually in delivering a workforce that is desperately needed in aged care in this country, which has been neglected over the last decade.

Ms Foster: Yes, and the minister was also correct in noting that part of the thinking behind the agreement was to try to tackle the problem that we have seen of exploitation of lower skilled workers.

Mr Pezzullo: The point being that you could deliver a workforce into any sector with lower standards of protection. So, yes, it's about delivering a workforce, but it's about delivering a workforce in keeping with the government's policy, which is through tripartite arrangements to ensure that unions are, if you like, a party to or inform the workforce mobilisation challenge. I'm not saying that unions are only interested in sourcing workers, but their interests more relate to the protection that then is put around those migrant workers.

Senator POLLEY: The conditions and wages, yes. Can I then go to the company-specific agreements. How many of those have been approved since the announcement back in 2019 by Minister David Coleman?

Mr Willard: Since 2019—company-specific agreements for which category?

Senator POLLEY: In the aged-care sector.

Mr Willard: Just a moment, I'll see if I have that.

Senator POLLEY: Also how many jobs were actually covered under this agreement?

Senator Watt: I think, if I'm right—and again the officials can correct me if I'm wrong—the point you're making, Senator Polley, is that the former government in 2019 also unveiled a form of aged-care industry labour agreements.

Senator POLLEY: That's right, back in 2019.

Senator Watt: I suspect that approach wasn't tripartite. I'm happy to be corrected if I'm wrong about that.

Mr Pezzullo: I don't recall it as being tripartite.

Ms Foster: I believe there was a requirement for consultation with unions but not a formal MOU.

Senator POLLEY: So how many agreements were actually signed?

Mr Willard: I don't have figures for aged care in particular for company-specific agreements.

Senator POLLEY: Can you take that on notice?

Mr Willard: I can take that on notice.

Senator POLLEY: And then how many jobs were covered? If you're talking about other sectors, can you give us those figures as well? That would be really useful.

CHAIR: We are due for a break.

Mr Willard: I may have the answer to Senator Scarr's question. I've checked with my team, and the advice is that the document was not a departmental document, and it wasn't sent by the department. It's actually a document that the unions send out on inquiry when they're approached for an MOU.

Senator SCARR: After the break, next time I get the call, I'll ask some questions about that document and the process. But that's helpful, thank you.

CHAIR: We're due to go to a break. We've had some discussions within the committee. Outcome 3, we won't get to you tonight, so it's better if we let you go, and we'll continue with outcome 2 for the rest of the evening when we return from the break.

Proceedings suspended from 21:13 to 21:29

CHAIR: We'll resume the hearing. Senator Scarr, you have the call.

Senator SCARR: Mr Willard, thank you for clarifying—

Mr Pezzullo: Hang on, we need Mr Willard.

Senator SCARR: Secretary, I thank Mr Willard for clarifying the origin of the MOU. I want to dig a bit more into that. As I understand the situation, Home Affairs has prepared the Aged Care Industry Labour Agreement, which is on your website, correct?

Mr Willard: Correct.

Senator SCARR: That agreement has a requirement that the employer must have entered into an MOU—and I'll just read the definition of MOU in the Department of Home Affairs' agreement, which is on your website:

Memorandum of Understanding means an agreement between the Sponsor and a Relevant Industry Union, or Relevant Industry Unions, related to this Agreement.

Mr Willard: That's correct.

Senator SCARR: But a draft of that MOU, under the way the scheme's operating, hasn't been prepared by the department. What involvement, if any, has the department had with respect to the development of the MOU to be entered into by the employer and the trade union?

Mr Willard: The department's been consulting closely with the trade unions, industry skills assessment authorities and other government agencies but has remained at arm's length of the MOU itself.

Senator SCARR: Has the department itself looked at copies of a draft MOU of this type? It might not be this MOU but a MOU which is proposed to be entered into by unions and sponsors?

Mr Willard: I've not seen any, but I'm happy to take on notice if anyone in the department has seen a copy of a draft.

Senator SCARR: Okay. The arrangement has been characterised—and I don't want to verbal Senator Polley in her absence, but I think the minister used this term—as a tripartite agreement or arrangement between the department, a sponsor employer and a union. Is that how the department sees the arrangement?

Mr Willard: It is a tripartite arrangement in the sense that there needs to be an agreement in the MOU between two parties and then an agreement between the third party that is the government.

Senator SCARR: But it's not strictly a tripartite arrangement, is it? Typically a tripartite agreement would be an agreement between three parties, each of the three parties would be a party to the same agreement, each of the three parties would therefore have intimate knowledge with respect to the content of that agreement, and any of the three parties could elect not to enter into the agreement if they were unhappy with any of the provisions in that agreement— isn't that correct?

Ms Foster: I think the tripartite refers to the overall agreement, not to the MOU. The requirement for an MOU between the relevant union or unions and the employer is a requirement of the aged-care labour agreement, which is a tripartite agreement.

Senator SCARR: I understand. The point I'm making, Ms Foster—and tell me if I'm wrong—is that there is no agreement which was entered into by each of the department, the sponsor and the union. There is no tripartite agreement which each of the three parties has entered into. There's an agreement entered into by two parties, which has a conditional precedent that an agreement has been entered into by one of the parties with a third party. Correct?

Mr Willard: I follow that.

Senator Watt: I think Senator Scarr's correct, that the parties to the aged-care industry labour agreements are the employer and the government or the department.

Senator SCARR: Correct.

Senator Watt: The parties to the MOU are one of the relevant unions and the relevant employer, but the department is not a party to that agreement, just as the union is not a party to the labour agreement.

Senator SCARR: Exactly.

Senator Watt: I think it's probably more accurate for us all to talk about it being a tripartite approach, which may, in fact, be the words I used—I'm not exactly sure—rather than a tripartite agreement.

Senator SCARR: I'm not seeking to use whatever you said, I'm trying to conceptualise it—

Ms Foster: I understand.

Senator SCARR: because there is a difference. Let me tell you what the difference is, from my perspective, just to get your input in relation to it. As I read the agreement between A and B—namely, the department and the sponsor—it is simply a precondition that an MOU is entered into by the sponsor and the union.

Mr Willard: Correct.

Senator SCARR: The department's not involved in the negotiation of that MOU—is that correct?

Mr Willard: That's correct.

Mr Pezzullo: You just have to know that one exists. Right?

Mr Willard: Yes.

Senator SCARR: So you're agnostic with respect to what's in the MOU, provided an MOU has been entered into. Is that correct?

Mr Willard: Yes, with the relevant unions.

Senator SCARR: If an employer comes to you and says, 'You've said we can get the concessions'—which, as Mr Pezzullo said, I helpfully listed and enumerated from your website, the five dot points—'provided that you first enter into an MOU,' you're absenting yourself, intentionally perhaps, from the negotiation between the employer or sponsor and the union. Is that correct?

Mr Willard: That's correct. The department's not involved in that negotiation.

Senator SCARR: Isn't there a risk in that that, in terms of bargaining power, the union effectively has a veto right as to whether or not an employer has access to the concessions which are enumerated under this program? The reason I say that is that an MOU obviously can't be entered into unless a union agrees to enter into that document, whatever it may contain. That's a practical consequence from the approach, isn't it?

Mr Pezzullo: The two parties have to agree, of course.

Senator SCARR: Do you agree with that characterisation?

Mr Pezzullo: Yes. You can't have a memorandum of understanding between two parties that's not agreed by both of the parties.

Senator SCARR: Correct. So the union effectively has a veto right as to whether or not an employer can go down this path. Is that correct?

Senator Watt: I don't think that would be an accurate way to characterise it, Senator Scarr. It's two parties freely negotiating and hopefully coming to an agreement of their own free will. If you're going to argue that a union has a veto, then you could similarly argue that an employer has a veto, because each of them needs the other for an agreement to be formed.

Senator SCARR: I don't disagree with that, Minister, but where this becomes a little bit more complicated is that the employer can only access those concessions subject to them doing it independently, but they only have access to the streamlined process if they can enter into an agreement with the union. That's correct, isn't it?

Senator Watt: I would say that—

Senator SCARR: They can choose not to—I agree—but they'd only have access to the streamlined process if they enter an MOU.

Senator Watt: What I was going to say—and I don't have that list of concessions, as you call them, in front of me—is that my recollection is that some of them are quite beneficial to employees as well, in the sense of being a pathway to permanency. I guess you're right that an employer can only access those concessions by coming to an agreement with a union, but, similarly, the workers can only gain access to the benefits available, such as a pathway to permanency, if an agreement is formed. It's not one-sided. There are benefits to the employer, and there are benefits to the workers.

Senator SCARR: But the streamlined arrangements can only be entered into if the employer agrees to enter into an MOU on terms which the union agrees to. That's almost axiomatic, isn't it?

Senator Watt: In the same way that the workers who will be the subject of that agreement can only access those concessions, such as a pathway to permanency, if the employer agrees. It takes two to reach an agreement.

Senator SCARR: I'm not disagreeing. It's just that the employer can only access the concessions which are listed on the website if they've first entered into an MOU with the agreement.

Senator Watt: Yes.

Senator SCARR: I'm not disputing what you are saying, Minister.

Senator Watt: Yes, and, similarly, the workers can only access it if an employer agrees. I think you're trying to portray it as: 'It's all down to the union; the union's got a veto.' That's the sort of language that you've been using.

Senator SCARR: I'm just asking simple questions.

Senator Watt: And I'd say it's actually an agreement between two freely negotiating parties.

Senator SCARR: But, from what I understood Mr Willard saying—is this correct?—the workers could access the benefits which the minister referred to if a special one-off agreement is entered into by a sponsor with the department.

Mr Willard: In respect of the aged-care industry template agreement, the only entry point to that is an agreement between the union and the employer.

Mr Pezzullo: That's understood, but, in terms of the substantive concessions themselves, is there some other way in which they can be accessed by way of a firm specific agreement? That is the question that's been asked.

Ms Foster: As Mr Willard said a couple of times, that would be subject to the negotiation that the employer was able to make. That may well have similar concessions for employees.

Senator SCARR: Would that include—the minister referred to it—the streamlined pathway to permanent residency?

Mr Willard: It could be in a company-specific labour agreement.

Mr Pezzullo: The company could propose it, and the department would be obligated, under the law, to consider it.

Senator SCARR: I understand.

Mr Pezzullo: Just to be clear so we're not misleading the senator: are there any applicable ministerial guidelines currently in place or prospectively in place that would put parameters or restrictions around the ability of one of your delegates to strike such an agreement with a provider?

Mr Willard: Yes. There's guidance on the extent of concessions that delegates can provide as opposed to concessions that were meant to go to the minister for consideration.

Mr Pezzullo: So the import of that, which is quite important, is that there is a capacity for any firm to approach the department to say, under the Migration Act: 'Can I get these concessions, because of the business case I'm putting to mobilise the workforce?' Mr Willard is saying that he's got certain authorities that ministers have given him to strike such agreements and he's also got some guidelines where ministers have said, 'Anything beyond that or above that is referable to me.'

Senator SCARR: Chair, can I share the call with Senator Chandler?

CHAIR: Senator McKim is also seeking the call. If Senator Chandler wants the call, we can go to her, and then we will go to Senator McKim.

Senator CHANDLER: Thank you very much, Chair. I have some questions about the processes for applying for Australian citizenship.

Mr Pezzullo: Ms Foster also runs the citizenship program.

Senator CHANDLER: Wonderful. Am I right in saying, at a high level, that there are some instances where a permanent resident applying for Australian citizenship may be required to get police checks from other countries that they have been resident in for an extended period of time?

Mr Kirkwood: Yes, that is correct.

Senator CHANDLER: That's a requirement under the character test to determine Australian citizenship, and there are genuine and very good reasons why we have those provisions in place. Is that right?

Mr Kirkwood: That's correct.

Senator CHANDLER: How does the Australian government deal with a situation where it may not be desirable or possible for an individual permanent resident on the pathway to Australian citizenship to contact a country where they've been resident for a period of time to get that police check?

Mr Kirkwood: I think we would need to deal with that on a case-by-case basis. Normally the requirement for a police check is where somebody has spent a total of 90 days cumulatively in that country.

Senator CHANDLER: Since they've been a permanent resident?

Mr Kirkwood: I believe it's in the past ten years.

Senator CHANDLER: The reason I ask the question—and I wrote to the minister about this some weeks ago and haven't yet had a response—is that I'm aware of instances where Iranians in Australia, particularly Iranian women, are applying for citizenship and are therefore required to seek police checks from Iranian authorities in order to process their citizenship. In that situation, I would have thought it's not exactly desirable for people, particularly women, to have to contact the Iranian police authority back home. Indeed, I think the Department of Home Affairs website actually directs applicants to the Law Enforcement Command of the Islamic Republic of Iran. Were you aware of that, Mr Kirkwood?

Mr Kirkwood: Not specifically on that one, no.

Senator CHANDLER: Do you think it's appropriate that Iranian Australians are being told that they need to contact those authorities and submit their personal details to them in order to gain citizenship here?

Mr Kirkwood: I am aware that there are cases, particularly with applicants from a humanitarian background, where there are difficulties in, indeed, approaching the source country, if I could call it that, in any way. I would need to come back to you on notice with the specific details of how we handle those cases, because I am not aware of us not having alternative ways in which we can obtain those assurances. I'll need to check.

Senator CHANDLER: Sorry, can you say that again?

Mr Kirkwood: I'm not aware that we can't find another way, if someone was unable to obtain their source documents—

Senator CHANDLER: There's a double negative in there. I'm just trying to work it out, sorry.

Mr Kirkwood: I guess I'm trying to say that I don't think we are forcing people into that situation for a citizenship application. I need to check the specifics.

Senator CHANDLER: You don't think?

Mr Kirkwood: No.

Senator CHANDLER: Okay. Ms Foster?

Ms Foster: I think what Mr Kirkwood was trying to say is: he believes that there are ways to work with cases where it's not possible to get source documents—

Mr Pezzullo: Or desirable.

Ms Foster: or where it's just not desirable for them to do so, and he's just saying he will get on notice what our processes are.

Senator CHANDLER: I would really appreciate that, because, as I said, I have written to the minister with a specific example, and, for obvious reasons, I do not think it would be appropriate for us to canvass this specific example in this forum. But, if there is another manner in which Iranians in particular at the moment are able to get these checks undertaken without having to go back to the Iranian government or even through the Iranian embassy locally—I think we all have canvassed in here and in other committees why there are concerns there—then I really would appreciate some information that I might at least be able to pass on to that particular constituent. If that could be provided in a timely fashion, and if the minister in the other place happens to be listening along to estimates and there is a way he can action my correspondence, that would be very much appreciated.

Mr Kirkwood: Certainly.

CHAIR: Senator McKim, you have the call.

Senator McKIM: To wrap up my previous line of questioning, there's 1,174 people—this is the topic I was covering with Mr Thomas—who are either on Nauru or are in Australia and classified as transitory persons. Do all of those people have a defined pathway to a permanent and durable solution?

Ms Foster: We are working with all of those people to try and establish a pathway. We, as yet, haven't. Obviously, we're just starting our journey with New Zealand, we haven't quite exhausted the pathway with the US and we're certainly still working with Canada. As we progress through those current arrangements, we will continue to seek arrangements, either with those countries to extend those arrangements or with others, so that we can find a pathway for all of those people in that transitory cohort.

Senator McKIM: But they don't all currently have a defined pathway, do they, Ms Foster?

Ms Foster: No, they don't.

Senator McKIM: You've just spoken about perhaps extending or entering into future agreements with the United States or New Zealand, or potentially another country. You've mentioned Canada but in the context only, as I understand it, of the private sponsorship arrangements that the Canadian government has. I'm happy to give credit to the government here that has introduced or is in the process of introducing a similar program. Nevertheless, are there any agreements with other governments or extensions to current agreements with other governments in the offing, or is this just like 'cross your fingers and hope that something might arise in the future'? Ms Foster, Minister, Mr Pezzullo or whoever—it has been a decade, now, for these people. We're signatories to the convention. We said we'd provide a durable solution to people who sought asylum in this country. It's now been 10 years. We've just had evidence that they don't all have a defined pathway to a durable solution. How long is this shameful chapter in our country's story going to continue?

Ms Foster: Senator, as I've said, we still have some way to go with our current agreements. It would obviously not be productive of us at this stage, for example with our arrangement with New Zealand, to be talking about extending—we actually need to make the current arrangement work and deliver those outcomes, but we are absolutely committed to continuing to find arrangements whereby we can progress pathways for the transitory cohort.

Senator McKIM: We've heard that for a decade now, Ms Foster, and a change of government—

Senator Watt: Well, I think—

Senator McKIM: It's exactly what we heard from the former government for a decade—

CHAIR: Minister—

Senator Watt: To be fair—

Senator McKIM: That's what we heard.

Senator Watt: No, no, no—

Senator McKIM: Yes, yes yes—

Senator Watt: To be fair—

Senator McKIM: I am being fair.

Senator Watt: what is different about this government is a demonstrable reduction in the number of people on Nauru.

Senator McKIM: We've heard that for a decade.

Senator Watt: It is not zero; I acknowledge that. But, unlike yourself, Senator McKim, we actually have the responsibility of delivering on this, not just talking about it, and we are delivering on it by reducing the number of people who are still on Nauru.

Senator McKIM: Heard it for a decade.

Senator Watt: But, you have to acknowledge that things have changed—

Senator McKIM: Heard it for a decade, Minister, and still hearing it tonight.

Senator Watt: and the numbers have gone down.

Senator McKIM: Still hearing it tonight and still no defined pathway for the entirety of that cohort that was sent to Manus Island and Nauru by the Labor Party a decade ago—by your party. Shameful.

Senator Watt: Well, as I was saying, Senator McKim, we were talking before about how once, many eons ago, you were part of a government, and you might remember from that time that when you are in a government you actually have to deliver things. That is what we are doing. I know it suits your political narrative to say that there is no difference between the Labor Party and the coalition, but even you have to accept that the numbers of people on Nauru have significantly decreased since this government was elected.

Senator McKIM: I don't recall asking about—

Senator Watt: Maybe not to zero, but we are working on it and, unlike yourself, we have to deliver it.

Senator McKIM: Chair, I was just wondering if you might be able to just restrain the minister from answering questions that weren't asked?

Senator Watt: Well, if you're going to make political assertions, I am going to correct them.

CHAIR: Senator—

Senator McKIM: Same rubbish in a different bin.

CHAIR: Senator—

Senator Watt: That is your narrative.

CHAIR: Senator McKim! Minister! Minister! Minister! I shouldn't have to ask you three times. Senator McKim, you asked pretty broad ranging questions; I think you'd accept that you get a broad ranging answer.

Senator McKIM: Alright. I want to switch topics now to the conversion of people who were on temporary protection visas to permanent. To forestall the minister, I want to acknowledge the great work that's been done to date—the policy that we totally agree with because, of course, we never supported temporary protection visas in the first place—and to acknowledge that that's made a meaningful and positive difference to a lot of people's lives.

But there are 12,000 people who are on temporary protection visas still, as I understand it, who were denied temporary protection visas or safe haven enterprise visas through the fast-track assessment process. That's an approximate number, but is that approximately the number of people who don't have a defined pathway to permanent protection, because they were denied visas under the fast-track assessment?

Mr Pezzullo: Is it exclusively, Mr Kiley, a function of being denied under fast track, or is it the case that in some cases matters are still at merit or judicial review stage?

Mr Kiley: I might be able to answer it in the reverse. There are approximately 19,000 individuals who had a temporary protection visa or a safe haven enterprise visa. They have been found to be owed protection, and they are the individuals that the pathway applies to. There are some other individuals, again, depending on their circumstances, that the pathway may apply to. There are approximately 1,800 people who are still at their initial assessment stage and so, subject to that consideration, they may move onto a resolution of status visa.

There are, give or take, 11,000 people for whom the pathway is not available at this point in time. That includes those still at merits or judicial review of—of which there are about 5,200, give or take—those who have been refused with no further matters ongoing and a range of other individuals who, for the most part, have departed or their visas have expired offshore.

Senator McKIM: How many people are in the refused category?

Mr Kiley: Refused with no immigration matters ongoing and still onshore—2,307 as at 10 May this year.

Senator McKIM: Were they all refused under the fast-track process?

Mr Kiley: I don't have that breakdown.

Senator McKIM: Could you take it on notice?

Mr Kiley: I am happy to take that on notice.

Senator McKIM: Thanks. What is the pathway for those people? You said, I think, that they may have a pathway. There are obviously different categories of people there and different circumstances. Is their pathway to apply to the minister and for the minister to make a personal decision on all of those cases?

Ms Foster: For a number of the categories that Mr Kiley outlined, we're actually in a situation where we need the process to play out first—so for the merits review to take place.

Senator McKIM: I understand that.

Ms Foster: For that cohort where there are no immigration matters on hand and they've been refused—

Senator McKIM: What is the option for that cohort—for the refused and no matters on hand cohort?

Ms Foster: In some cases, as with anyone who is in Australia without a migration pathway ongoing, clearly removal to their home country where that's possible is a pathway, or a third-country resettlement, as we are trying to do with the other cohort.

Senator McKIM: So those people have no pathway to permanent protection in Australia? Is that what you are saying, Ms Foster?

Ms Foster: Our current posture is that we are seeking to find resettlement options for the cohort in Australia.

Senator Watt: Senator McKim, I might be able to assist.

Senator McKIM: Specifically, has any of that cohort been refused under the fast-track process that Labor when in opposition was very critical of and talked about how unfair it was?

Ms Foster: Mr Kiley says he doesn't have that breakdown and will take that on notice.

Senator Watt: What I was going to say, Senator McKim—and, again, feel free to correct me if I'm wrong here, Ms Foster—is that applicants who do not engage protection obligations and have exhausted all avenues to remain in Australia are expected to depart Australia voluntarily and may be provided assistance to depart. Those with new, credible protection claims related to changes in their country of origin or their personal circumstances may request ministerial intervention.

Senator McKIM: Thanks. Because we are pretty short of time, I'm going to move to another topic briefly, which is the applications the government has on hand from Afghanistan. There was obviously extra places announced with regard to Afghanistan. I hesitate to ask this given some of our previous exchanges today, but is it the policy of government that no-one in country—so no-one who is currently in Afghanistan—will be granted a humanitarian visa under that program?

Ms Foster: I think the question goes more to the practicality of what we can do rather than a policy decision not to do something. I will let Mr Kiley outline what the practical challenges are.

Mr Kiley: As you would be aware, there are a range of criteria that need to be met in relation to issuing visas generally and certainly humanitarian visas. That includes undertaking biometrics checks, health checks and security checks. Because of the current situation in Afghanistan, we are not able to undertake those checks at the moment. It's for that reason that visas for those in Afghanistan cannot be finalised.

Senator McKIM: Are not being finalised, did you say?

Mr Kiley: That's correct.

Senator McKIM: Is it the case that the department regards biometrics that have been provided as only valid for 12 months?

Mr Kiley: I'll have to take that one on notice for you.

Senator McKIM: Well, I hear that regularly from people. In terms of you taking that on notice, I'd just like an opportunity, while the minister and Mr Pezzullo are here, to say that I think that that's grossly unfair and the effect of it is that it coerces people to travel to third countries, to engage in very dangerous travel to third countries, to upgrade their biometrics in other countries. I just want it made very clear on the record that, if that is the policy—and my understanding, through direct contact from a number of people who have applied for visas, is that it is the policy—it's a dangerous policy that is placing people's lives at risk.

Ms Foster: I don't believe the biometrics test expires after a year. I'm just having that checked quickly.

CHAIR: Senator McKim, I do need to share the call with Senator Smith, who has been waiting very patiently. We can come back to you if we have time. We can try to shorten the blocks. But, Senator Smith, you have the call.

Senator DEAN SMITH: Thank you to officials for making yourselves available. My questions go to Home Affairs's engagements with the UNHCR in the beginning. Am I right to assume that the funding that Australia provides to the UNHCR is provided via the Department of Foreign Affairs and Trade? Thank you. And does Home Affairs provide any additional financial support to the UNHCR?

Ms Foster: Not that we're aware of. I'm hesitating only because occasionally we will provide support for a specific program, and I just would like my staff to check to see if there is any current specific funding. But you're right: in the broad, that is a whole-of-government funding thing through DFAT.

Senator DEAN SMITH: What engagement does the department have with the UNHCR on a regular or interim basis? How is the UNHCR informed about our particular humanitarian priorities, and how does the UNHCR exchange with us its particular priorities?

Ms Foster: There is a wideranging engagement with the UNHCR. I meet on a regular basis with—I think they call them—the head of mission here in Australia. The staff in the office are engaged very directly with Mr Thomas and his staff on issues relating to people on Nauru and the transitory cohort. I'll let Mr Kiley speak for himself, given he's at the table, about the extent of his relationship, but I think it would be fair to say, certainly in my experience over the last six months, that it's regular and canvasses the spectrum of our humanitarian related activities.

Mr Pezzullo: Did you mention our mission in Geneva?

Ms Foster: And, of course, yes, we have an officer in Geneva.

Senator DEAN SMITH: What are Australia's priorities when we are engaging regularly with the UNHCR? What are the top three or four priorities that we would communicate to the UNHCR?

Ms Foster: In the case of Nauru, for example, it's been working together to move people from the island, to resettle people, and that particular engagement is very regular and quite detailed. It actually involves working about individuals and their successful transfer from the island. Again, I'll let Mr Kiley talk about the nature of the relationship with his division. I'll pass to Mr Kiley at this stage.

Senator DEAN SMITH: I'm assuming there's more than one priority that Australia puts on the table in terms of its negotiations or engagement with the UNHCR.

Mr Kiley: Certainly, and in terms of my division's engagement with the UNHCR, it's primarily focused on delivering the humanitarian program each year. That covers a range of issues. We engage with them in the lead-up to each program year run in a financial year in terms of understanding the need. Obviously, there's a great need out there, but we're working closely with the UNHCR to understand where their priority areas are as we look to what the program composition will look like, so more at that program settings level. We do that every year in the lead-up to the program being set, and we're in the process of doing that now. You might be aware that the minister released a discussion paper on the Home Affairs website that goes to the composition of the '23-24 program. Then we engage very closely with the UNHCR pretty much on a daily basis effectively all around the world in delivering the program. We have regular engagements through our posts to ensure that the referrals flow through and on all sorts of issues associated with the delivery of the program.

Senator DEAN SMITH: Mr Kiley, what are the UNHCR's priorities when they engage with you?

Mr Kiley: I'm happy to take that on notice because engagement happens across a range of people in my team, so I wouldn't want to give a definitive answer. But our focus is on working together to deliver the program and to ensure that the places that we have allocated for various regions are delivered over the course of that program year.

Senator DEAN SMITH: The minister recently met with the Commissioner of the UNHCR and talked about a variety of matters. What were the tangible outcomes of that discussion between the minister and the UNHCR? I've read the media statement. It talks about sustainable solutions championing complementary resettlement pathways. What specific initiatives arose or are being pursued as a result of that meeting on 19 April? Were you present, Mr Kiley or Ms Foster?

Mr Kiley: Which meeting are you referring to?

Senator DEAN SMITH: This is the 19 April meeting with the United Nations High Commissioner for Refugees.

Mr Kiley: With which minister?

Senator DEAN SMITH: Andrew Giles.

Mr Kiley: Yes, I was present.

Senator DEAN SMITH: Can you detail for the committee what tangible outcomes are being pursued as a result of that? Was it a high-level discussion? The minister has also visited Thailand in recent months and took himself to the border of Burma or Myanmar, as some people might say. What are the specific tangible outcomes arising from that visit by Minister Giles? The answer I'm looking for is something about improvements to our humanitarian program that are specifically dealing with the continuing human rights violations and conflict in Burma. I'm trying to ascertain whether or not, as a result of these discussions with the UNHCR and the minister's visits, when a humanitarian program is released—and I'll come to that in a moment—Australians might see a sizeable response from Australia in regard to a humanitarian intake specifically related to the Burma conflict.

Mr Kiley: We certainly work very closely with the UNHCR in working through what the composition of the program will look like for each year. As I noted earlier, we're currently going through that process now, so I wouldn't want to speak to where the government may land on the composition of the program for '23-24, given that that work is still ongoing. But I'm assure you, in developing that advice to government, we work extremely closely with the UNHCR in pulling that together.

Senator DEAN SMITH: The details of the humanitarian program are not included in the budget. When will Australians see the detail of the government's humanitarian program?

Ms Foster: Mr Kiley is working through the standard consultation process on the composition of the program at the moment. It's clearly up to the government as to the timing of the announcement of the numbers and the composition.

Senator DEAN SMITH: I thought I saw a media report, or a suggestion that the consultation process closes on 31 May.

Mr Kiley: That's correct. That's when submissions on the discussion paper close.

Senator DEAN SMITH: How long would you expect it to take to review the submissions to come to a position where the department could provide some advice to the government about what that humanitarian program intake should look like?

Mr Kiley: We hope to do that very soon after the completion of that consultation period.

Senator DEAN SMITH: 'Soon', 'very soon' and 'very, very soon' are terms that get used frequently at estimates. I'm trying to understand: is 'very soon' a month, a number of months or six months?

Mr Kiley: We would hope to do it quickly, given the program year starts on 1 July. It is subject to a range of inputs, including the number of submissions we receive, ongoing engagement with UNHCR and when their advice would flow through as well.

Senator DEAN SMITH: Has the UNHCR identified the refugee issue on the border of Thailand and Burma as a priority?

Mr Kiley: In discussions with the UNHCR, they certainly raise the issue around Myanmar as a key priority in terms of global displacement generally, and we'll work with them in terms of how the humanitarian program may be used to help respond to that crisis.

Senator DEAN SMITH: There really are only three areas in regard to the Burma conflict: the Rakhine, or Bangladeshi, issue; the emerging humanitarian crisis in north-east India, which I'll come to in a moment; and the continued presence of very, very large refugee populations on the border of Thailand and Burma. Have each of those three been raised with you by the UNHCR specifically?

Mr Kiley: They haven't personally been raised with me specifically, but my team are in regular discussions with the UNHCR. The key part of the composition process is getting formal advice from the UNHCR, and we'll wait to receive that advice—

Senator DEAN SMITH: Okay. How does that formal advice come to you? In the form of a written submission from the UNHCR?

Mr Kiley: Yes.

Senator DEAN SMITH: And is it a public submission?

Mr Kiley: I'll have to take on notice whether we've publicised those in the past.

Senator DEAN SMITH: Thank you very much.

Senator Watt: I've got a little bit of information that might be helpful. I understand the high commissioner's visit to Australia was the first from a high commissioner in more than ten years, and, in the meeting with Minister Giles, there were detailed discussions regarding Australia's commitment to resettling refugees and playing a global leadership role on matters involving refugees. That's about as much detail as I've got, I'm afraid.

Senator DEAN SMITH: I don't think the word 'detailed' was used in the media statement, otherwise I would have referred to it. The media statement says:

Minister Giles discussed Australia's long-term partnership with UNHCR and ongoing commitment to contribute to humanitarian and resettlement efforts in response to global displacement crises.

No-one disputes that. What I'm interested in are the detailed tangible outcomes that are expected to be prosecuted or implemented as a result of that discussion and these more regular discussions with the UNHCR that the department's engaged with.

Senator Watt: I'm not sure if the officials have anything that they can add, but I would argue that the matters discussed as listed in that press release, if that's what it is, are matters of detail. Of course, as I say, one of the things that this government is interested in doing is resuming the global leadership role that Australia used to play on these matters.

Senator DEAN SMITH: And the government will enjoy my support if that's implemented.

Senator Watt: Great.

Ms Foster: If I could add to the minister's answer, the conversations really focused on how we could build on the consultations and the relationships, at both the ministerial level and the departmental level. The thrust of the high commissioner's approach was how we can assist Australia in its efforts to play a strong role in humanitarian settlement, given the global displacement crisis et cetera. There was some discussion about how we could best contribute with our leadership around the Global Refugee Forum and what sort of representation would be helpful to move those discussions forward. So it was really about how we could work together in partnership to strengthen Australia's role in the humanitarian sector.

Senator DEAN SMITH: Thank you very much. In response to questions taken on notice at the last estimates, the department confirmed that there were 362 humanitarian visas granted to Myanmar nationals, but that they were unable to travel to Australia because the Indian government was not providing them with exit permits. That is 362 of a total of 517 humanitarian visas that have been granted—almost 70 per cent. I understand that these are predominantly in the north-east part of India.

Additionally, the department said it was aware of the issue and was continuing to engage with the Indian government on the matter. There's no doubt it's a sensitive issue, so I absolutely respect that, but can you tell me what progress has been made since the last estimates in seeking to engage and find alternative pathways to satisfy the various challenges that the Indian government might have? Again, it involves 362 of 517 humanitarian visas that have been granted.

Mr Kiley: I don't have updated numbers, but I'm happy to take that on notice and we can provide you with updated numbers. In relation to managing the exit permit issue—

Senator DEAN SMITH: Mr Kiley, just to be clear on that point, you're updating for me whether that number continues to be 362 or is now larger, is that correct?

Mr Kiley: I'll provide an updated figure.

Senator DEAN SMITH: But that's the number you are checking for?

Mr Kiley: Yes, I'm happy to take that. In relation to exit permits more generally, as you are aware, we rely on the host government to provide exit permits for those looking to leave. In relation to India, the mode of arrival is relevant. Because these individuals have arrived illegally, India will not provide exit permits. I don't have any further updates to provide, other than that we continue to work really closely with the Indian government to try to find a resolution to this issue.

Senator DEAN SMITH: You can only work closely with the Indian government if you're engaged and meeting with them. I'm keen to understand how many meetings have happened and what progress is happening. Has the matter been raised with you by the UNHCR in any of your regular discussions?

Mr Kiley: I know we've had discussions with the UNHCR in the context of this issue in India, and I'm happy to take on notice exactly what representations have been made to the Indian government. I'll have the details. I know we continue to engage closely with them, but I don't have the details of exactly what—

Senator DEAN SMITH: At what level is this matter being addressed in the department? Is it just at your level, Mr Kiley, or is Ms Foster aware of it? Is the secretary aware of it? Is the minister engaged on the matter?

Mr Kiley: It has certainly been raised with me, and I'm aware that officials in India continue to litigate that and work closely with the Indian government in the hope of finding a way through. I don't have an understanding in front of me as to what level that has been raised to with officials at post, in the Indian bureaucracy and with the Indian government, but I'm happy to take that on notice.

Senator DEAN SMITH: Prime Minister Modi arrives in Australia tomorrow for a day of activities. Has the department been asked to provide any advice on the matter to the Department of the Prime Minister and Cabinet, given that the Prime Minister will be meeting with Prime Minister Modi?

Mr Kiley: No, not explicitly.

Ms Foster: Not to Mr Kiley's knowledge. The relationship over the visit is largely handled by our International Division, so we'll need to check with them.

Senator DEAN SMITH: Are they in the room, Ms Foster?

Mr Pezzullo: Yes, the head of International Division is here. She has been waiting for an opportunity to come to the table.

Senator Watt: While that's occurring, Senator Smith, I think you had some questions about what the minister did while he was in Thailand—who he met with and what was achieved.

Senator DEAN SMITH: My question was regarding the detailed outcomes that were being pursued as a result of the minister's meeting with the United Nations High Commissioner for Refugees, which, I gather from your evidence, might have been in Australia.

Senator Watt: Yes.

Senator DEAN SMITH: But he also met with the permanent secretary for foreign affairs, I understand, and then travelled also to the border with Burma?

Senator Watt: Yes. What I understand is that Minister Giles spent time meeting with the UNHCR regional office and the IOM office in Thailand. He visited the border, as you said, to inspect the refugee camps and fully

understand living conditions there as well as understand the cultural training that refugees undergo before they travel to Australia. He met with Thai officials and discussed Australia's relationship with Thailand and how we can support them with their border issues with Myanmar.

Senator DEAN SMITH: And Australia has a strong record in providing resettlement for Korean refugees off the border. That's exactly right.

Senator Watt: Yes, and I acknowledge the very long history you've had with that community.

Senator DEAN SMITH: Thank you very much.

Ms Balzary: I'd have to take on notice whether the Department of the Prime Minister and Cabinet has specifically asked for briefing on this issue, but I would like to add some context around representations that have been made through post and at what level. We have a senior executive officer, a regional director, at post, who I believe you've met before.

Senator DEAN SMITH: Yes, he is very professional. I compliment him on his professionalism, absolutely.

Ms Balzary: So he has continued to prosecute the issue regularly with the Indian government, and I'm aware that he has also involved the high commissioner in New Delhi—O'Farrell.

Mr Pezzullo: Is this on the exit permits?

Ms Balzary: This is on the exit permits. That's correct.

Senator DEAN SMITH: When we think about the humanitarian program that is supported by the UNHCR through India, has that been fully utilised in the last one or two years, or has that been underutilised?

Mr Kiley: By reference to 'fully utilised', are you talking about the relationship with the UNHCR or resettlement through UNHCR for those who are in India?

Senator DEAN SMITH: I'm assuming that Australia would have an agreement with the UNHCR in terms of how many people it might take to resettle in Australia. My question is: of that figure, whatever that figure is—and you might be able to tell me that now or take it on notice—has it been fully utilised or underutilised in the last one or two years?

Mr Kiley: COVID posed some challenges, as you would be aware—

Senator DEAN SMITH: Of course.

Mr Kiley: in terms of managing the program. I can say that we're on track to fully deliver the program this year, and that includes the places that have been allocated for referrals through UNHCR.

Senator DEAN SMITH: I did meet officials in Delhi recently, and, again, I compliment them on their professionalism. I'm sure they share my interest in not only having this matter resolved but also finding an alternative or complementary pathway so that those refugees that are having to flee violence in the north-west of Burma and are travelling across the border into north-east India might be able to find safe haven in Australia under our humanitarian program. That's probably a message more for the minister than it is for officials.

Senator SCARR: I'm just looking at the time. I'd like to take five minutes in relation to a discrete block of questions I have in relation to the Community Support Program, and then I'll be looking to pass the call to the very patient Senator Antic, who's got a few questions. Ms Foster, I was at a function on Saturday night with our wonderful Queensland Vietnamese community. Indeed, the Speaker of the House of Representatives, Milton Dick MP, was there as well. He has a very close relationship with that community. Concerns have been raised in relation to the breadth or ambit of the Community Support Program and which cohorts are eligible to participate in that program. I have a letter which was written by Minister Giles to Mr Julian Hill MP. I don't think I need to table it. I just want to ask a few quick questions.

There's considerable concern in the Vietnamese community, because they would like to sponsor refugees who are located in Thailand and who have been there for some time, but, when they approached the approved proposing organisation, they were informed that the ambit of the program does not extend at this point in time to that cohort of refugees in Thailand. So my first question is: is that correct? If it is correct, to what extent does the department engage in reconsideration of priorities in that regard? Lastly, in terms of reconsideration of priorities, to what extent does the department consider the capacity of a local community and members of that community to engage in positive sponsorship activities to facilitate the successful integration of refugees into Australian society? I've given you a triple-barrelled question, but I think that leads you through the basic questions that I would like an answer on.

Mr Kiley: Generally speaking, no nationality is excluded from consideration under the Community Support Program. However, priorities apply to the Community Support Program in the same way that they do to the

broader humanitarian program, in line with global, regional and settlement priorities. In relation to the particular case that you have raised, I'm happy to take that on notice and have a closer look at that. I don't have to hand—

Senator SCARR: No, that's okay, Mr Kiley—

Mr Kiley: whether that falls within priorities—

Senator SCARR: I might flesh this out just a little bit before I pass the call, through the Chair, to Senator Antic. The letter from Minister Giles says: 'While no nationality is excluded'—which completely dovetails with your answer—'Vietnamese nationals have not been historically represented within the CSP.' So, clearly, the current priorities of the government, as the minister indicates—I know you haven't got this, but you'll take it on notice—don't include Vietnamese nationals. To what extent, in terms of considering priorities, will the department take into account the fact that there is a vibrant community in Australia with the ability, the passion and the desire to actually sponsor what I understand to be a relatively small cohort of Vietnamese nationals who have been recognised as refugees by the UNHCR in Thailand and are currently stranded? We're talking about total numbers of under 1,700. To what extent is the fact that there is a community in Australia that has the ability to sponsor and wants to sponsor taken into account in terms of priorities?

Mr Kiley: A sponsorship group is certainly part of the consideration, and I'm happy to provide further detail on notice, but what might be more relevant here than the Community Sponsorship Program is the Community Refugee Integration and Settlement Pilot, which was more recently set up. The focus of that pathway is primarily on community groups who want to provide a settlement response to individuals. They do that in a way that can then be linked to UNHCR referrals. So it still relies on that UNHCR link and that refugee requirement, but there certainly is the ability for those interested community groups, through the CRISP, which is the acronym there, to provide that sponsorship pathway. I'm happy to take that on notice.

Senator SCARR: Can I ask you to take that on notice? Ms Foster, there's a very strong desire in this community to provide settlement opportunities to this relatively small cohort, and there's certainly capacity, in terms of that community, to provide assistance in that regard. Could you tease out that answer in relation to the question on notice? Is that possible?

Ms Foster: We certainly can.

Senator SCARR: Thank you.

Senator ANTIC: I want to touch on some of the issues surrounding the New Zealand arrivals. I think on 22 April this year, the Prime Minister announced that, from 1 July this year, New Zealand citizens living in Australia would have a direct pathway to Australian citizenship. So, with that theme in mind, how many New Zealand citizens living in Australia under this process would be eligible for Australian citizenship from 1 July?

Ms Foster: In very broad terms, the answer is about 300,000, but I will let Ms Cavanagh and Mr Kirkwood find their places and give some greater fidelity to that answer. In a way, there will always be some uncertainty about the exact number, because on the 444 visa, the visa that will translate, one of the eligibility criteria is obviously the length of time people have spent here. So it's a percentage of the total number of visa holders.

Ms Cavanagh: The current estimate is 670,000 special category visa holders.

Ms Foster: But not all are eligible.

Ms Cavanagh: That's correct.

Ms Foster: Of those, not all meet the time in country eligibility. I think the actual eligibility number is closer to 300,000, Ms Cavanagh?

Senator ANTIC: So there are 670,000 New Zealanders living in Australia, but—

Ms Cavanagh: There are 670,000 special category visa holders living in Australia. However, it's also estimated that 300,000 of those are special category visa holders who arrived in Australia after the 2001 policy change. It's those people to whom the new provisions would apply.

Senator ANTIC: Are there indications at this stage of how many are likely to take that up? Can we drill it down any further than that?

Ms Cavanagh: When the measure was considered by government, the costings assumed that over the forward estimates at least 90 per cent of that figure would apply at some stage.

Senator ANTIC: Is that the same for each year of the forward estimates?

Ms Cavanagh: No. Ninety per cent of the approximate 300,000 would apply over a four-year period.

Senator ANTIC: Over the course of that period? Okay. Does the department believe that the easier path to permanent citizenship would lead to an increase in New Zealanders migrating to Australia? Is it seen as an inducement or encouragement.

Ms Cavanagh: Again, when the advice was being prepared for government it was assumed that quite a large number of those here would take it up. There's always an annual inflow of New Zealanders as well, so those people were included. There were also assumptions made about additional pull factors, given the ease of the pathway, if you like.

Senator ANTIC: So modelling has been done on that subject?

Ms Cavanagh: That's correct.

Senator ANTIC: Can you offer any more explanation about what sort of modelling has been done?

Ms Cavanagh: I think I've given you the parameters I've got here in front of me. It was 90 per cent of the current cohort plus the annual inflow. There were also some additional assumptions about a further pull factor. I'm not sure whether we have those particular numbers here with us now, though. We could take that on notice.

Senator ANTIC: The budget paper says that providing permanent citizenship to, let's say, 400,000 New Zealand citizens would 'increase payments for government services and benefits by \$1.3 billion over five years from 2022-23, and increase receipts by \$795 million over five years' through the same period. Are you able to provide a breakdown as to where that \$1.3 billion in increased payments would be allocated?

Ms Cavanagh: I'll let our chief financial officer take that one.

Mr Pezzullo: I don't know why everyone always gravitates to the right of the witness table.

Senator Watt: I'm not taking it personally.

Mr Pezzullo: Some colleagues ought to keep the minister company on his left.

Ms Foster: There's some safety in numbers, I think we find.

Mr Pezzullo: Do you sometimes have people to your left, Minister?

Senator Watt: Occasionally I do.

Mr Pezzullo: We might, rather than playing shuffle—

Senator Watt: Senator Antic, for example. There's a point at which the Left and Right meet, you see.

Mr Pezzullo: Ah! We're all squeezed up over here. Ms Cavanagh, you can perhaps keep the minister company on his left.

Ms Cargill: The net costing, over the forward estimates, for the measure is \$493 million. That's the net of the payments and the receipts. I can give you the breakdown by specific agencies.

Senator ANTIC: Yes: welfare, health—that sort of thing.

Ms Cargill: The Department of Employment and Workplace Relations have costs related to tuition fees for vocational education, which are only \$0.1 million. In terms of employment services, that's \$13.2 million over the forward estimates. The Department of Education's costing for schools is \$56 million. That's obviously related to the assumed increase in funding for both government and non-government schools. Services Australia—and this is in relation to administering increased government services and benefits—is \$25.6 million over forward estimates. The National Disability Insurance Agency is \$543 million over the forward estimates; the Department of Social Services, which is increased income support payments, \$418 million; the Department of Health, \$75 million—that's in relation to hearing services, Medicare and the Pharmaceutical Benefits Scheme; Home Affairs, additional receipts of \$20 million; the Australian Taxation Office has estimated receipts of \$775 million, which is income and consumption tax revenue offset by \$145 million of payments to the states; and the Department of Home Affairs has costed approximately \$22 million for the costs related to the activity.

Senator Watt: I would just add one thing here, Senator Antic. It's probably worth noting—and, again, officials can correct me if I'm wrong—that the New Zealanders that we're talking about, if they are working, already pay taxes to the Australian government, pay Medicare levies and pay the NDIS levy, but can't currently obtain a range of benefits that are available to Australian citizens, such as the NDIS. I'm not sure about things like employment services. I wouldn't want people to get the impression that these people will now qualify for some benefit that they aren't paying for. They have been paying for it, in some cases for up to 20 years, while living here, but have been unable to access those services. Is that correct?

Ms Cargill: Yes.

Senator ANTIC: Can you explain how the figure of \$795 million over the five years, 2022-23, was arrived at? This is the increased receipts.

Ms Cargill: So the Australian Taxation Office receipts?

Senator ANTIC: Yes.

Ms Cargill: That's been modelled by Treasury. It relates to income and consumption tax revenue, which is estimated to increase primarily as a result of the pull factor as well as additional points tested places.

Senator ANTIC: When are the citizens likely to be able to vote? Are they going to be able to vote in the voice referendum?

Mr Kirkwood: Once individuals apply and are assessed through the process—so as soon as they become a citizen—on the day they give their pledge in a ceremony, they will be eligible to enrol to vote. It will come down to when applicants choose to apply after 1 July.

Senator ANTIC: So there could be some increase then—there could be some New Zealanders that are voting on the voice?

Mr Kirkwood: I beg your pardon?

Senator ANTIC: There could be some New Zealanders voting on the voice then—there might be very many, presumably.

Mr Pezzullo: Let's just be careful about how we answer this. Between 1 July and whenever the referendum is slated to be—it has been said to be later this year—would you have processed applications in order to be able to confer citizenship within that three-, four-, or five-month period?

Ms Foster: We are positioning ourselves to process those applications. The rate at which we do that will depend a little bit on the rate at which the applications come in. Obviously, we have a pool already of applications to process. So we're not really in a position to give definitive—

Mr Pezzullo: But they don't get bumped up the queue; they just get added to the citizenship processing pile, don't they?

Ms Foster: We have some additional resources allocated to that processing. So it's not quite a black-and white question.

Senator ANTIC: But there is the possibility that some may be available to vote in the voice referendum—these new New Zealand citizens?

Senator Watt: In the same way that anyone who becomes an Australian citizenship may choose to enrol to vote.

Senator Polley interjecting—

Senator ANTIC: That's very helpful; thank you, Helen. I am aware of that. I am glad that you are still with us.

Ms Foster: As we work through the—

Senator ANTIC: It's not a conspiracy; it's a question, and it's a simple one. That is just a fact, is it not—that there may well be some applications, as Senator Polley helpfully points out, that may be processed by that stage?

Ms Foster: That's correct. As with all of our citizenship applications, once people are assessed and have their citizenship conferred, they become eligible to vote.

CHAIR: Senator Antic, do you have more questions?

Senator ANTIC: No; I don't think so.

CHAIR: Was there another topic that you needed to cover?

Senator ANTIC: I can.

CHAIR: You should do that quickly.

Senator ANTIC: I thought we were going to these tomorrow. There were some questions about TPV costings in the budget papers. We'll have a crack at those, if you like. To go back a step, the 2023-24 budget allocated \$732½ million over five years to provide a permanent visa pathway for TPV and SHEV holders—I think that was for those who held or applied for them before 14 February of next year—which is estimated to increase payments by about that figure of \$732.5 million over five years. Minister, why has your government's decision to dismantle a key pillar of the Operation Sovereign Borders framework resulted in this budget blowout?

Senator Watt: Well, there are a number of false premises there. I seem to recall that at the last estimates session, with Home Affairs, we made the point, and I think officials made the point, that the TPV system was not—what were the terms you used?—a central part of Operation Sovereign Borders. So we've actually established that and gone over that already. But the reason for the government's decision to offer people a pathway to permanency if they'd been on TPVs is that these are people who've been in a state of limbo for a decade. We didn't think it was fair to those people for that to remain the case, and, of course, every time those people have had to apply for a renewal of their visa, that's costs that taxpayers wear and resources that officials have to deploy. We think there are better ways of spending taxpayers' money than pointlessly keeping people put through a system.

Senator McKim interjecting—

CHAIR: Senator McKim, you will get the call in a moment.

Senator ANTIC: Before the last election, the Treasurer and the now Minister for Finance, Senator Gallagher, included in their pre-election costings that the Labor Party's election commitment to abolish TPVs and create a new permanent visa would cost \$407 million over four years. That's far below the budget allocation of \$732.5 million. Is the department aware of the fact that its funding allocation for this budget measure far exceeds the pre-election costings as prepared by the PBO?

Ms Foster: Yes, Senator.

Senator ANTIC: You are aware of that? So, with that in mind, why does the budget allocation differ so substantially when the costings were included in the assessment of the financial impact of the budget measures? Is there a reason for the variation?

Mr Pezzullo: Ms Cargill, can you assist?

Ms Cargill: There are a number of reasons. Obviously, we can't speak to the PBO costing, but to satisfy ourselves on some of the differences we have gone into some of that information. In particular, the PBO, as part of their costings, assumed a saving for the Adult Migrant English Program of \$30 million. Our costing, and the costing that's been agreed through the budget process, hasn't been able to assume that saving. In addition, the PBO assumed savings of approximately \$110 million for settlement services, and the costing that's been finalised didn't find any opportunity to reduce current funding for settlement services. In addition, the PBO costed a net impact for income support payments of approximately \$400 million. That was subsequently costed by DSS at more than that, at \$590 million. The PBO costing did not incorporate the NDIA costing component. For Services Australia, again, their costs relevant to the proposal were not picked up. The PBO assumed schools and childcare subsidy costs of approximately \$30 million, whereas the agency themselves did not suggest that those costings were required. So that's gone the other way. The PBO assumed health program costs of \$140 million over four years, whereas the agency themselves did not cost it at that. They costed it at only \$12.5 million on the basis that the majority of the cohort is already eligible for those services. And there were other minor variances for disability employment services and jobactive from DEWR. In relation to the revenue, the PBO estimated additional taxation revenue impact but that was not the costing of the Treasury, who were of the view that as the cohort are already in Australia and mostly working, there would be no additional impact on the tax base.

Senator ANTIC: So, it's almost a doubling from the pre-election commitment to the budget. Minister, is this just another example of Labor saying one thing before an election and another at the time of the budget?

Senator Watt: You really want to have a discussion about financial messes?

Senator ANTIC: No, I just want you to answer that question.

Senator Watt: It's not unusual for PBO's costings prepared for oppositions—and you and your colleagues will have this experience in the approach to the next election—to be based on certain policy parameters. When a policy is put through the full rigours of government, those policy parameters are found to be maybe not complete and the costings need to be adjusted. I'm sure there are many examples of oppositions on both sides of politics where this has occurred.

Senator ANTIC: Is that the same as the \$275 on energy bills as well? Is that the same thing that happened there?

Senator Watt: As I said, I'd be surprised if someone from a party that ran up \$1 trillion in debt would want to have a talk about economic responsibility, but you always do things a bit differently, Senator Antic.

Senator ANTIC: I'm very happy to do that, but not at quarter to 11. I'm done, so thank you.

CHAIR: Thank you, Senator Antic; I appreciate that. Senator McKim, you have the call.

Senator McKIM: Thanks. I have some questions on public interest criterion 4007. There have been some high-profile cases recently where the minister's intervened to overturn decisions the department's made to cancel visas. Firstly, how many applications for either visas or permanent residencies has the department rejected on the grounds of that requirement in the last year, if you've got that data?

Mr Willard: Senator McKim, can I confirm you're asking about 4007, the health criterion?

Senator McKIM: Yes, correct.

Mr Willard: I'll have to take that on notice, Senator.

Senator McKIM: Alright; thanks. Based on cases that have been made public and in the media, an autistic child could fail that criterion—is that correct?

Mr Willard: The health criteria set out a range of measures that applicants have to meet. They go to determining costs to the Australian health system, determining access to the Australian health system for Australians in the circumstances of certain conditions. They're the sorts of considerations that are taken into account.

Senator McKIM: Okay. And a child could fail a criteria even if they're born in Australia—is that correct?

Mr Willard: It is possible that could occur, Senator.

Senator McKIM: Thanks. So, you're going to take on notice how many applications the department's rejected. Could you also please take on notice how many deportations there have been from Australia under that criteria?

Mr Willard: Deportations, Senator?

Senator McKIM: Yes.

Mr Willard: I can take it on notice.

Senator McKIM: Well, the minister has had to intervene to prevent deportations. It's a matter of public record, unless you think that's not the case?

Mr Willard: I think you may mean removal from Australia.

Senator McKIM: Yes. That's a deportation isn't it, Mr Willard?

Mr Willard: Deportation has a specific meaning in the Migration Act, which I suspect wouldn't apply to children.

Senator McKIM: Alright, removals from Australia. We've got a Disability Discrimination Act in Australia that ostensibly protects people with disability against discrimination, but there's an exemption in the Migration Act, is there not?

Mr Willard: There's exemption (4) of the Migration Act.

Senator McKIM: And that means, actually, that in terms of decisions on visas and permanent residencies, the government can, and does, discriminate against people with disability—is that correct?

Mr Willard: On the basis of that assessment that's set out in the public interest criteria, and it goes to a number of things. Part of it is that question of cost and part is that question of access to services. There's another part that goes to public health generally, but I don't think that's what you're talking about.

Senator McKIM: No. Don't we have obligations, as a signatory to the UN Convention on the Rights of Persons with Disabilities, not to discriminate in the way that we do because of public interest criteria 4007?

Mr Willard: I'd have to take that on notice to give you a proper response on that, Senator. I know that we do have an exemption in respect of the domestic provisions.

Senator McKIM: Will you take on notice, please, how many decisions by the department either to cancel or to not grant a visa or permanent residency the minister has intervened in?

Mr Willard: Yes.

Senator McKIM: Will you take on notice how many of those interventions led to the minister overturning a decision of the department?

Mr Willard: Yes; we can take that on notice.

Senator McKIM: Has the new government asked the department, Mr Pezzullo, for any advice on whether PIC 4007 should be updated or removed entirely?

Mr Pezzullo: Not in my knowledge. Mr Willard seems to know.

Mr Willard: Yes. There's been a request for advice, and there's been a request to engage with a number of disability groups in respect of the provision.

Senator McKIM: Alright. Approximately when was that request made?

Mr Willard: I'd probably be best taking it on notice, but I suspect in the last three months—that sort of time frame.

Senator McKIM: Would you take that on notice, Mr Willard?

Mr Willard: Yes, I can confirm the specifics.

Senator McKIM: Thank you. Has that advice been provided?

Mr Willard: The advice is still being formulated.

Senator McKIM: Are you in discussion with disability sector organisations?

Mr Willard: Yes. The department has engaged with a number of disability sector organisations.

Senator McKIM: And that's ongoing?

Mr Willard: That's ongoing; yes.

Senator McKIM: I'm going to move on because we're pretty short on time. Thanks, Mr Willard. These questions relate to partner visas, and are possibly for you, Ms Foster. These are specifically in regard to partner visas for applicants from Afghanistan—so Afghan nationals. How many 300 and 309 applications does the department still have on hand for Afghan nationals that lodged their applications in 2020 or earlier?

Mr Willard: I have a breakdown. It gives me the time on hand by years since lodgement. I'll have to do a bit of arithmetic. I think the figures are 1,757 that are two years and less than five years on hand and 2,901 that are five years or longer.

Senator McKIM: Okay. So there's nearly 3,000 in that category that have been on hand for longer than five years. Is that correct?

Mr Willard: That's correct—2,901.

Senator McKIM: These are people who are partners of Australian citizens or permanent residents, are they not, Mr Willard?

Mr Willard: Correct. They're applying on that basis.

Senator McKIM: That's a long time, isn't it, to be waiting for a partner of an Australian citizen or permanent resident? Five years plus is a long time to be waiting to have their application assessed. Would you accept that?

Mr Willard: Yes, Senator, it is. I would note that a number of these applicants would have been affected by the ministerial direction that was previously in effect.

Senator McKIM: That's MD80.

Mr Willard: Correct.

Senator McKIM: Which is now no longer in place, correct?

Mr Willard: Correct.

Senator McKIM: Are you aware of the biometrics issue, Mr Willard? Are you able to shed any light on whether the department regards biometrics as only valid for 12 months?

Mr Willard: I was making some inquiries following your question to Mr Kiley. I haven't been able to confirm that.

Senator McKIM: Someone will come back on notice with that, will they? Yes. Thank you. What's the department's time frame for clearing the backlog of those cases that we're discussing?

Mr Willard: I think we've spoken previously—we have a specialised team who's working on it, and we are making good progress. It is extremely difficult in a circumstance where individuals often have very, very complex situations. There's often very complex family relations and dependents involved. It's difficult to give specifics on the time frame. As an indicator, the number has come down from over 8,000 on 30 June 2021 to around 6,400 now for the whole cohort, not just those that have been waiting for more than two years.

Senator McKIM: Is that just for Afghan nationals?

Mr Willard: That's Afghan nationals.

Senator McKIM: Alright, thanks. Do you have a number for people who've been waiting for over ten years?

Mr Willard: No, I don't. I just have five years.

Senator McKIM: Are there any, do you know?

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

Senator McKIM: Thanks. How many 300 and 309 partner visas have been granted to Afghan nationals in this program year—2022-23?

Mr Willard: This program year, to the end of March there have been 1,632.

Senator McKIM: How many were granted in the 2021-22 program year?

Mr Willard: There were 1,570.

Senator McKIM: So it's speeding up?

Mr Willard: It is speeding up. We are making progress. We have been engaging with agents and representatives of these communities. We did sessions in a number of capital cities at the end of last year. That helps in terms of resolving what are some extremely complex issues related to these applications.

Senator McKIM: In terms of the family reunion visa system more broadly, there was no funding for the development of a long-term strategy to update Australia's family reunion visa system in the budget. We have had a Senate inquiry into this and the chair's report—it was a Labor chair at the time—recommended that the Department of Home Affairs develop a long-term strategy to update its system for processing family reunion visas to improve its efficiency, reduce complexity, reduce waiting times and provide greater transparency. Is the department working on such a strategy?

Mr Willard: Is this in relation to the information technology system?

Senator McKIM: This is the family reunion visa system. There was a Senate inquiry that I moved for and participated in. It was an inquiry into the efficacy, fairness, timeliness and costs of the processing and granting of visa classes that provide for or allow for family and partner reunions. I see Mr Pezzullo is nodding. He has a memory of this, presumably.

Mr Pezzullo: Of your inquiry, yes.

Senator McKIM: That was a recommendation of the committee. It was a Labor chair. I'm just wondering if the department has or is developing a strategy. It's a broken system. There are people waiting decades, Mr Pezzullo, for some classes. So what is the department doing about it?

Ms Foster: The issue has certainly been surfaced in the context of the migration review—both the report done by Dr Parkinson—

Senator McKIM: I've read that carefully.

Ms Foster: to colleagues and also canvassed in the work that the government department is doing in response to that review. I'm not saying anything but the bleeding obvious when I say it's a really complex issue that we are going to need to consider in the context of the broader migration strategy going forward.

Senator McKIM: Are you considering that?

Ms Foster: Yes, Senator.

Senator McKIM: Thank you. I have one final topic from me in the last couple of minutes. Neither of the current government's two budgets to date have included an annual planning level for humanitarian visas. Labor has a policy of progressively increasing Australia's government-funded humanitarian intake to 27,000 places per year. I guess it's a question for the minister: why hasn't either budget handed down by your government included an annual planning level for humanitarian visas, and why is the humanitarian visa quota in Australia not been raised in line with Labor's policy?

Senator Watt: There was a bit of a discussion about this earlier, Senator McKim. Not sure if you were in the room.

Senator McKIM: I don't believe I was.

Senator Watt: That is a matter that is undergoing consultation at the moment. I think Senator Smith asked questions about this. The consultation period ends on 31 May. I imagine that a decision will be made shortly after.

Senator McKIM: So you are consulting specifically on whether to increase the humanitarian quota?

Senator Watt: I think the size of the humanitarian—

Ms Foster: The consultation is on the composition of the program.

Senator McKIM: The size as well?

Ms Foster: The composition.

Senator McKIM: Not the size?

Ms Foster: The normal process is to consult on the composition. I think armed with that input, the government will make an announcement about both the size and the composition.

Senator McKIM: So, just to be clear, the consultation that is on foot is not a consultation on the size of the humanitarian intake; it is merely a consultation on a narrower scope, which is the composition of the—

Ms Foster: My understanding is that it's on the composition, but I will check that.

Senator McKIM: Could you come back on notice if that is materially wrong?

Ms Foster: Yes.

CHAIR: Thanks, Senator McKim. I think we agreed that all other questions on outcome 2 can be put on notice. I thank the minister and departmental officers for their attendance, and Hansard, Broadcasting and the secretariat staff.

Committee adjourned at 23:00