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Estimates

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BY AUTHORITY OF THE SENATE

Mr Moraitis: I should also add that we are also undertaking some training in the next few weeks that will commence an ongoing process of training and familiarising staff in a more formalised way, as well as an online version of training as well.

Senator JACINTA COLLINS: Thank you.

Mr Fredericks: It is another advantage of consolidation. So AGS will be providing that training, because they have very good experience in that. So in many ways that has been the real focus of our efforts to date. I should also note that the Senate, in one of its recommendations, also suggested that it would be useful, particularly for the senior executive of the department, to have some further training in parliamentary accountability issues. We have opened up a discussion, I believe, with the Senate itself in order to secure that training, so we will follow that recommendation through. I should say we have also taken advantage of really informing ourselves, in the run-up to these estimates hearings, about the importance of those accountability issues as well. So it has been a useful opportunity, really, for us, under the secretary's leadership, to reinforce the importance of those accountability issues.

Mr Moraitis: Could I also add something, Senator. I do not know if you recall that I said I would further consider the issue about the nature of the correspondence and awareness of terminology and stuff like the caliphate and that, and I have also asked Ms Chidgey and Mr Fredericks to see what we can do in terms of ongoing awareness raising for staff who deal with that sort of issue, just to have a knowledge of the culture and other aspects of that sort of thing and draw on the experience of our colleagues in other portfolio agencies that can come in and brief staff—because obviously there is a lot of turnover in staff over a period of time—so they are familiar with those sorts of points in that respect.

Senator JACINTA COLLINS: That covers, in part, some of the changes in resourcing or focus, I suppose, that we have canvassed there.

Mr Moraitis: Certainly, yes. Obviously, with the changes that are going on now with machinery of government and movement of people, we also have a functional efficiency review that, like all departments, we are undertaking. When that is finalised and bedded down, we will also look at our overall resourcing to meet government's priorities, and that will be part of that, taking into account the obvious importance of national security.

Senator JACINTA COLLINS: Okay. I think my time has concluded. There are a couple of issues that hopefully will not take too long in this area and that I will come back to, by the looks of it.

CHAIR: Yes, we can come back to it. I now go to the government side, but my colleagues have indicated that Senator Heffernan can take their spot for their 15 minutes, or any part of it, as he is involved in other committees as well. Senator Heffernan, over to you.

Senator HEFFERNAN: Thank you, Mr Chairman. Mr Attorney-General, in recent months I have put a proposition to the royal commission into the institutional treatment of children—and I might say at the outset I think that commission, under Justice McClellan and others, including Mr Reed, who has just come to the table, are doing an excellent job, and it is pretty heartbreaking to see what has gone on and what has been denied for the last 50 years now being exposed as a reality. It has broken a lot of hearts.

I actually want to go to the proposition, Mr Attorney, that we should include in the terms of reference the institution of the law, and I have documents here, which the royal commission

has seen, to justify that case—and in fact every Attorney-General from Attorney-General Ruddock till now has seen some of these documents. They are police documents, and they are very disturbing.

In the last 18 months I have put forward a case, which I initiated to remove a judge from the bench in New South Wales, Justice Garry Neilson—whose name in the trade is 'Gorilla in Black Lace'—and it succeeded to a point. He was hearing a case against a man who was found guilty of raping siblings and then faced new charges, and the judge would not allow the earlier charges into the court. During the hearing of the case and from the bench, he said to the court that he thought the law was out of date, that sex for siblings should be now legal and that it should not be illegal for men to have sex with children. I found that despicable and despising, and a display of complete bias of display from the bench.

I took it to the judicial commission—and I might say the New South Wales judicial commission is doing an excellent job and I have a good relationship with them and have had for some years. As you know, Mr Attorney, I have tried in vain to get a federal judicial commission. I think the treatment in the federal jurisdiction of children by some people in the jurisdiction of the family law court is disgusting and a disgrace, and some of those children are a tool for attorneys in representing cases.

CHAIR: Senator Heffernan, I do not think anyone would disagree with anything you have said, but this is estimates and I do try to insist that we ask questions of the committee while we have the—

Senator HEFFERNAN: Thank you very much for your assistance. I have produced a set of documents to the royal commission under an order to produce, which includes, disturbingly, documents that name in one document 28 people as alleged paedophiles and signed off by Gary Crooke QC, counsel assisting an earlier royal commission. It includes a whole lot of prominent people, and I think to protect the discretion of the royal commission I will not comment on what the commission thought except that they thought it was outside the terms of reference of the royal commission. Could you explain to me why that is so?

Senator Brandis: Senator Heffernan, the matters you have raised are of course very grave matters and I know, because we have discussed this over the years, what a very close interest you have taken in this issue. If I may say so, one of the reasons why the issue has become as prominent in the public mind as it is these days is in part to do with your advocacy of this cause. So I think your role in raising this issue deserves acknowledgment—not alone, of course, but your role, along with others, does deserve acknowledgment.

Senator Heffernan, you have done the right thing. If you believe that you have information, including documentary information, which ought to be brought to the attention of the royal commission—and the royal commission has a process for dealing with complaints and other information brought to its attention and placed into its hands by citizens, including prominent citizens such as you— then it is for the royal commission to judge whether, by reference to its terms of reference which of course define its jurisdiction, that information is something that it should or indeed is capable of inquiring further into.

I am not possessed of the documents that you have referred to. I am not in a position, obviously, to second-guess any decision by the royal commission about the relevance of documents placed into its hands as determined by its terms of reference; however, I think,

Senator, we should respect any decision of the royal commission about the ambit and scope of its terms of reference and any decision therefore in relation to whether or not particular evidence can be received by it inquiring in conformity with those terms of reference.

Senator HEFFERNAN: Thank you very much for that. One of my problems is that we have in Australia—I mean it is like the denial of the priests and the altar boys to make a cheap comparison for 50 years—sadly, a compromise at the highest of levels: there is a former Prime Minister on this list, and it is a police document. We have a compromise similar to the compromise demonstrated by *60 Minutes* in recent times in the UK. When I approached *60 Minutes* and said, 'Why in God's name did you have to go to the UK to do that,' they said because no-one in the UK would do it.

Can I just say to the children that have been abused, to the parents and the loving mothers—quite often more than the fathers—who go to places like divorce courts: lawyers use the tool of abuse in the divorce courts. The divorce courts should deal with, in my view, the break-up of the family and its assets et cetera. It should not and is not qualified to deal with abuse that is alleged. That should be a separate entity and it is not.

I just want to put everyone on notice—

Senator Brandis: So you are talking about the abuse of children here?

Senator HEFFERNAN: Family law court judges demonstrate quite regularly that they are not capable of dealing with that phenomenon.

Senator Brandis: Senator Heffernan, can I tell you what the government is doing about this particular issue of allegations of child abuse that arise in the family law jurisdiction of either the Federal Court and the Federal Circuit Court. What has been apparent for quite a while now—and I think this bears on your point—is that there is a significant overlap between issues that might arise in proceedings for termination of marriage and the Family Court or the Federal Circuit Court and issues that might arise in state children's courts, however so-called. In some states, they are called children's courts; in other states, they have got other names. So there is a state jurisdiction that deals specifically with children's cases and then there is the federal family law jurisdiction that deals primarily with the breakdown of marriages and consequential orders in relation to children as well as in relation to assets. Quite often, the same issues arise in family law proceedings as arise in state children's court proceedings.

It is for that reason that last year I commissioned the Family Law Council to examine this matter, this issue of jurisdictional overlap, and Professor Helen Rhoades has done a study of this which the government is considering with a view to trying to ensure that the interests of the child are not compromised by, as it were, falling between the cracks of two different jurisdictions: the federal family law jurisdiction and the state children's protective jurisdiction, where we are dealing with, essentially, the same set of facts.

Senator HEFFERNAN: To assist me—and thank you very much, Mr Attorney, for that—in the case of the Family Court, is custody of children determined by the Family Court?

Senator Brandis: Yes—it is usually determined now by arrangements entered into between the parents, which are sanctioned by orders of the court. Senator, you should be aware that, when it comes to matters arising under the Family Law Act, the vast majority of

those matters—something approaching 90 per cent of them—are dealt with not by the Family Court but by the family law division of the Federal Circuit Court.

Senator HEFFERNAN: That goes to my point that the custody battle often uses the legal tool of one partner abusing the other—whether that is true or false—and in many cases it is false. And thank very much for your assistance.

Senator Brandis: There are provisions, of course, in the Family Law Act which do deal with the making of false allegations—which is of course, apart from anything else, perjury if made under oath—but also may have consequences in terms of costs and other adverse consequences for a party maliciously making false allegations.

Senator HEFFERNAN: I deal with lots of people—because they know I will try to help—who have had their lives ruined because the law out smarts them in the Family Court. To make the point: I absolutely believe that, in many cases—and all human endeavour has failure, and none more spectacularly than me—it is often not these people's secrets. Obviously, these documents are very disturbing. They were delivered to me by a police agency some time ago because no-one seems to want to deal with them. It is often—

Senator Brandis: Senator Heffernan, I understand that you have put the documents to which you refer into the hands of police.

Senator HEFFERNAN: As Mr Reed knows—and I thank Mr Reed, you are doing an excellent job, as is the royal commission—this folder actually came back hand delivered. Every Attorney-General bar you—you were on that committee when I tried to get the argument up for a federal judicial commission—has seen some of these documents. Some of them did not read them; some of them returned them. Robert McClelland tried to do something about some of them. It is not so much the secret that is the problem. It is when a group of people, such as the 28 people on this page, keep each other's secrets that the institution—going back to my point about the institution—becomes compromised. On this list, there are some spectacular examples of that, with people involved in hearing court cases people—anyhow, I will not go through that.

For the thousands and thousands of people in Australia—and the royal commission, to its credit, is demonstrating the disgusting culture of some of our institutions—I just appeal for you to give consideration to cleaning up this act. The Wood royal commission, as you know, Attorney-General, was about to explore—and it is in the *Hansard*, so it is no great secret—who the legal fraternity people were that used to attend Costello's the 'boy brothel' club in Kellett Street, Kings Cross. I actually have the list here. A lot of them are still practising. But the judge of the day of the royal commission decided it was a no-go zone. Paddy Bergin, counsel assisting at the time, said, 'We will rise for morning tea,' and they never went back to it. I did ask the commissioner why. He said he would deny it if ever I mentioned it. I think it is time to mention it in view of the good work of the royal commission. He said, 'We've decided not to revisit that issue because the public would lose confidence in the judiciary.'

Like with the churches and our other institutions, who are now facing up to the truth, I think it is time that the institution of the law face reality. There are a lot of good people in the law. The royal commission is doing an excellent job. I am absolutely blown away by their attitude, aptitude and the forensic tone they bring and their consideration of victims—many who can live through this and many who cannot, and suicide, et cetera. I think it is time that

we gave consideration to cleaning up the act. You may like to revisit. I do not see how, given the evidence, given just the instance—and I have to say I got rid of another judge through the excellent work of the Judicial Commission in New South Wales a few years ago, without a murmur. He was a person who is in this list here as picking up young blokes in the toilets outside Marcellin College at Randwick. He heard a case in the Central West—I will not name the town—of a stepfather abusing a daughter. The judge closed the court—this is the judge that is in this here—found the person guilty, suppressed the names, gave a non-custodial sentence to the man and let him go back to the family home. Nothing else was done. I think it is a disgrace.

Senator Brandis: Can I just make a couple of points. This is a very sensitive area where we are treading now, but let me make a couple of points. First of all, thank you for your observations about the work of the Royal Commission into Institutional Responses to Child Sexual Abuse. The royal commission has the very strong support of the government. In fact, it was Mr Abbott, when he was opposition leader, who first called for this royal commission to be established and it has been very strongly supported by this government and its term has been extended and it has been given the resources it needs to do its important work. Secondly, of course, just because somebody's name appears on a list does not make them guilty—

Senator HEFFERNAN: I accept all that.

Senator Brandis: and I know you understand that, if there are serious allegations to be made against one or more people, then they should be put into the hands of the police and I know you have done that. Thirdly, let me make the point nobody is above the law. I do not comment on your general allegations, but of course nobody is above the law, nobody.

Senator HEFFERNAN: Can I just finally say one thing quickly.

CHAIR: We can come back to you later if you have other questions.

Senator HEFFERNAN: Okay. I think included in these documents—and I think it measures the issue, Mr Attorney, and I would hope people are listening and we give serious consideration to the victims of this process. When the police find it necessary to put a judge under surveillance, I think we have got to a point where we have a problem. And when that surveillance is dropped because of a lack of cooperation between the AFP and the New South Wales police, we have a problem. Thank you very much, Mr Chairman.

CHAIR: Thank you, Senator Heffernan. We can come back to you later if you have other questions, but we run this on a 15-minute cycle. The committee has resolved privately that we will take questions on notice for the Federal Court and the Family Court and so we specifically indicate that. I think the committee secretariat has let the Family Court know that. Anyhow, the committee has so resolved, and I acknowledge that both Senator Collins and Senator Waters have agreed to put their questions on notice. So the Federal and Family courts do not have to attend. We are hopeful that we will get to the Federal Police.

Senator BILYK: I want to ask some questions about the trade union royal commission.

Senator Brandis: You are talking about the Royal Commission into Trade Union Governance and Corruption—is that the one?

Senator BILYK: That is right. Specifically, I want to talk about Commissioner Heydon's claim he did not know anything about the Liberal Party fundraiser because he does not use email. I want to ask some questions about the fact that Commissioner Heydon claims that he