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SENATE

ENVIRONMENT AND COMMUNICATIONS LEGISLATION
COMMITTEE

Estimates

(Public)

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ENVIRONMENT AND COMMUNICATIONS LEGISLATION COMMITTEE

Wednesday, 8 November 2023

Members in attendance: Senators Bilyk, Duniam, Grogan, Hughes, David Pocock, Rice, Roberts and Whish-Wilson

CLIMATE CHANGE, ENERGY, THE ENVIRONMENT AND WATER PORTFOLIO

In Attendance

Senator McCarthy, Assistant Minister for Indigenous Australians, Assistant Minister for Indigenous Health
Department of Climate Change, Energy, the Environment and Water

Executive

Mr David Fredericks PSM, Secretary
Ms Rachel Parry, Acting Deputy Secretary
Mr Dean Knudson, Deputy Secretary

Finance Division

Ms Michelle Crowther, Acting Chief Finance Officer

Biodiversity Division

Dr Ilse Kiessling

Circular Economy Division

Ms Kate Lynch, Division Head
Ms Chloe Bird, Branch Head
Ms Jackie Raynor, Branch Head

Environmental Permitting and Compliance Division

Mr Andrew McNee, Division Head
Mr Graeme Grosse, Branch Head, Compliance and Enforcement Branch
Ms Kate Elliott, Branch Head, Wildlife, Waste and Environmental Permits Branch

Clean Energy Regulator

Mr David Parker AM, Chair
Mr Mark Williamson, Executive General Manager
Ms Michelle Crosbie, Acting Executive General Manager
Ms Bronwen Shelley, General Counsel
Ms Rebecca Longford, Acting Chief Operations Officer
Ms Jane Wardlaw, General Manager, NGER and Safeguard Branch

Threatened Species Scientific Committee

Professor Helene Marsh, Chair

Committee met at 18:32

CHAIR (Senator Grogan): I declare open this hearing of the Environment and Communications Legislation Committee into the 2023-24 supplementary budget estimates. I begin by acknowledging the traditional owners of the land on which we meet and pay my respects to elders past, present and emerging.

The committee has fixed Monday 15 January 2024 as the date for the return of answers to questions taken on notice. We will begin our proceedings today with outcome 2.3 of the Climate Change, Energy, the Environment and Water portfolio.

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

The Senate has endorsed the following test of relevance for questions at estimates hearings. Any question going to the operational financial position of the departments and agencies which are seeking funds in estimates are relevant questions for the purposes 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 also that an officer of the department of the Commonwealth should not be asked to give opinions on matters of policy and shall be given reasonable opportunity to refer questions asked

of that officer to superior officers or to a minister. This resolution does not preclude questions asking for explanations of policies or factual questions about when and how policies were adopted.

Witnesses are reminded of the Senate order specifying the process by which a claim of public interest immunity should be raised, and I incorporate the public immunity statement 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: I remind all senators that we continue our work implementing the *Set the standard* report. As chair I will ensure that the proceedings are conducted in an orderly, respectful and courteous way.

I would now like to welcome Senator the Hon. Malarndirri McCarthy, acting for the Assistant Minister for Climate Change and Energy, representing the Minister for Climate Change and Energy and the Minister for Environment and Water. Minister, do you have an opening statement?

Senator McCarthy: I'd just like to acknowledge you, Chair, the senators present and the departmental staff. It's good to be here to represent Senator McAllister and Minister Plibersek. I acknowledge, too, that we are on Ngunawal country and, as a Yanyuwa woman, I pay my respects to them and note that caring for country is really significant. I look forward to the next hour with you.

Department of Climate Change, Energy, the Environment and Water

[18:34]

CHAIR: I welcome Mr David Fredericks, Secretary of the Department of Climate Change, Energy, the Environment and Water. Would you care to make an opening statement?

Mr Fredericks: I don't, other than to thank the minister for those very kind words and acknowledgement. I appreciate that.

CHAIR: Excellent. Our time is tight, and we have a cast of engaged senators looking to ask questions. We will go in five-minute blocks and try and keep it as tight as we can. Senator Duniam, would you like to go first?

Senator DUNIAM: I am pleased Senator McCarthy was looking forward to—

Senator WHISH-WILSON: Can I confirm that we are starting with Outcome 2.3?

CHAIR: Yes, as per the agenda, Outcome 2.3. To keep everyone on track, this is the only outcome that has been called and it is only the transition to a circular economy. Senator Duniam, off you go.

Senator DUNIAM: I note that section 161B of the Environment Protection and Biodiversity Conservation Act 1999 has an interplay with the Hazardous Waste (Regulation of Exports and Imports) Act 1989, which I gather is an area covered by this part of the department. Was this contemplated at all on 30 or 31 October in discussions with the stakeholders on the new laws?

Mr Knudson: No, Senator.

Senator DUNIAM: Why not?

Mr Knudson: As the minister has said in her media releases, we were doing a rolling consultation. The main focus of the consultation was the assessment and approvals process as a whole and a number of other related matters, but that was not in scope for this round of consultations.

Senator DUNIAM: A future round, perhaps?

Mr Knudson: Absolutely. All the elements that will be in the new acts will be through the rolling process and dealt with at the time they come up.

Senator DUNIAM: When is the next meeting?

Mr Knudson: The date has not been set, but as we said last time, we were expecting to have another round of consultations before the end of the year.

Senator DUNIAM: Before the end of the year. And how did it go?

Mr Knudson: We had over—

Mr Fredericks: Senator, we will do our best, but just to be clear, this is Outcome 2.3.

Senator DUNIAM: Yes.

Mr Fredericks: Strictly the answer to your question is that you've already received evidence that the subject matter of Outcome 2.3 wasn't discussed at the meetings of the 30th or the 31st. By definition you are asking for—

Senator DUNIAM: Hopefully, Mr Knudson was the same Mr Knudson who was there on the 30th and the 31st, and he was about to answer. So, fire away.

Mr Fredericks: It went very well, Minister.

CHAIR: Let's make it brief, because this is not 2.3.

Mr Knudson: All I was going to say is that we had over 30 organisations represented, they were held over two days, and we estimate that we had a few hundred different questions and inquiries. I would argue that it was a very robust and fruitful consultation.

Senator DUNIAM: Moving onto fees and charges, is the government still going to introduce new fees and charges from 1 July next year as part of the proposal for mixed cardboard and exports?

Ms Bird: That's currently the scheduled time frame for the introduction of cost recovery.

Senator DUNIAM: Is it still the government's intention to go down that path? What is the latest total co-funding dollar figure across Australia, through the Recycling Modernisation Fund, broken down by each state and territory's amount of co-funding respectively?

Ms Bird: Give me a moment and I will look for that. I do have that on hand.

Senator DUNIAM: In the interests of time, could you take that on notice.

Ms Bird: Yes.

CHAIR: Excellent. Senator Whish-Wilson.

Senator WHISH-WILSON: In relation to the 2024 paper and cardboard regulations that are scheduled to commence on 1 July next year, does the department have any idea at this stage whether there will be sufficient capacity for domestic processing to meet contamination requirements by July 2024?

Ms Lynch: The department is still in the process of finalising the rules associated with the export of paper and cardboard, so those rules are yet to be finalised and released by government. We have, as part of that process and part of the briefing advice that we are providing to government to determine those rules, been looking at processing capacity, and there is certainly a large volume of processing capacity already in place in Australia. Your question goes specifically to the level of contamination and whether facilities will have the ability to meet certain requirements. Because the requirements have not yet been landed, it's a bit early to determine that, but it's something that we can certainly come back to you on once the rules have been landed.

Senator WHISH-WILSON: Yes, thank you. I've got a whole heap of questions I'll put on notice on that. Just in relation to one other thing, the mandatory packaging product stewardship scheme, I understand there's a draft consultation plan. Is that still on schedule to be available for consultation with stakeholders in December and January?

Ms Lynch: The packaging reform process has certainly been progressing according to its schedule. As for the next stages, after having done some pretty intensive industry consultation and some cost-benefit analysis over the last few months, we expect the next decision point to be considered by Australia's environment ministers at the Environment Ministers Meeting in a couple of days time.

Senator WHISH-WILSON: When is that?

Ms Lynch: It's scheduled to occur on Friday this week.

Senator WHISH-WILSON: So it will happen on Friday, okay.

Ms Lynch: So there will be decisions taken. Following that, depending on where ministers land, we would expect to see public consultation then occur, but the details of that will be confirmed after Friday.

Senator WHISH-WILSON: I know that, in terms of the scope of mandating obligations, there's been some modelling done. Is that going to be released? Will the consultation be on whether the current existing 2025 targets will be maintained, whether they'll be changed or whether the date will be extended?

Ms Lynch: The reform process itself is looking beyond the current industry led national packaging targets, and it's essentially doing an evidence based, from-bottom-up look at what's required to properly regulate packaging. Your question about whether the 2025 targets will be changed is almost a separate question and issue. What we expect the national packaging regulations to cover will include a range of different regulatory obligations for parties who put packaging onto the market in Australia.

Senator WHISH-WILSON: Like design?

Ms Lynch: Yes, it will include design, but it will also be other obligations—for example, reporting, being a member of a scheme et cetera. But those design standards, we expect, will be workshopped over the coming 12 months in consultation with packaging technologists and others. We'll be establishing a formalised design working group.

Senator WHISH-WILSON: Will you be setting any new packaging targets, like mandatory packaging targets? We know the voluntary ones have failed. Well, we know they're going to fail to meet their 2025 targets. APCO's report showed that clearly. Will you be setting mandatory targets?

Ms Lynch: Yes. The expectation is that, as part of those mandatory obligations, packaging placed on the market would need to meet design requirements. That's the current thinking. Those design requirements may include, for example, that they must not use certain materials.

Senator WHISH-WILSON: Reuse and recycle material—that kind of thing?

Ms Lynch: Exactly. Whether they will mirror the same targets that we saw in the industry national packaging targets, I can't confirm at this stage, because that's not yet decided.

Senator WHISH-WILSON: Who decides that?

Ms Lynch: That will form part of the regulatory design that is going back to environment ministers. As I said, they'll be meeting this Friday to consider the first tranche of the formalised decision. We expect they'll be having to consider a couple of other key components. It's quite a complex reform process, but those decisions around what the packaging design standards will be will occur at some point next year, I'd expect.

Senator WHISH-WILSON: I'll put some more questions to you on notice. Thank you.

CHAIR: Senator Pocock. No—you're all good? Senator Rice.

Senator WHISH-WILSON: We're onto the next—

Senator RICE: Onto threatened species?

CHAIR: No, we have in front of us the department. We're at item 1.

Senator RICE: That's right. I'm just here for the Threatened Species Scientific Committee.

Senator WHISH-WILSON: If we've got more time, I could keep going.

CHAIR: But we also have a situation where Senator Rice has requested half of the time for the Threatened Species Commissioner, which might interrupt your issues.

Senator WHISH-WILSON: I'm happy to move on early, if you want.

CHAIR: Okay. On that speedy note—

Senator WHISH-WILSON: Unheard of!

CHAIR: I will now release 2.3, and we will ask the Threatened Species Scientific Committee representatives to come forward.

[18:44]

CHAIR: Welcome, Professor Helene Marsh, Chair of the Threatened Species Scientific Committee. I have a couple of questions. How many listings of threatened species have you made in your 13 years as chair?

Prof. Marsh: I don't know. I can say that the work that we've done since the fires is going to represent about 20 per cent of the listings that have been made under the EPBC Act and about 10 per cent of the total listings under the act, but I haven't actually added up how many in my time as chair.

CHAIR: Maybe you can take that on notice for us.

Prof. Marsh: I'll take that on notice.

CHAIR: I think it would be a fine statistic. I would like to take the opportunity, before we go to questions from my colleagues, to thank you on behalf of the Senate and on behalf of this committee for all your work. I believe this is your last appearance here at estimates.

Prof. Marsh: It is.

CHAIR: We just want to take a moment to say thank you and to recognise the amazing work that you've done over those 13 years in protecting our threatened species and ecological communities. Thank you so much.

Prof. Marsh: Thank you very much. It's been an honour.

CHAIR: Senator Whish-Wilson, would you like to start?

Senator WHISH-WILSON: I'll go to Senator Rice first.

Senator RICE: Hello, Professor Marsh. I want to go to the swift parrot recovery plan, which we understand has been released to the states but is not yet public. Can you confirm whether the Threatened Species Scientific Committee has signed off on that plan?

Prof. Marsh: The committee signed off on that plan, I believe, on 11 November 2020, and what has happened since then is a matter for the department.

Senator RICE: So the committee signed off then on what was then a draft plan? What the department told us was that there was a draft plan that had been out for consultation, and that was the last plan that the swift parrot recovery team had seen, and then it was finalised.

Prof. Marsh: At that November meeting three years ago, we saw a draft plan. We saw all the public comments. We went through it through our processes. We made some minor modifications. We checked against our checklist, and we made a recommendation to the minister that the plan be made.

Senator RICE: So you haven't then considered any further changes to the plan at that stage?

Prof. Marsh: No, we haven't.

Senator RICE: Can I ask Mr Knudson, then: since that plan was signed off in November 2020, have there been changes made to that plan between then and then what has now been released to the states?

Mr Knudson: I don't know the details on that particular piece, but I do remember that Ms Kennedy, when we were here last, did outline a number of the steps that had taken place. I'm very happy to come back on notice and give the details on those steps. But, because the officials beyond me aren't here for this, because this is about the

Threatened Species Scientific Committee, we're not very well positioned to support you in giving you really robust answers to questions dealing with that outcome.

Senator RICE: I'm very confused then, because two weeks ago Dr Kiessling said:

If we compare the draft that went out for public consultation and the draft that has been endorsed by the Threatened Species Scientific Committee, the changes that were made were primarily in terms of adding to the detail around the habitat critical to the survival of the species. ... There were no substantive changes to the actions.

Is the draft that was endorsed by the Threatened Species Scientific Committee the draft as of November 2020?

Mr Knudson: That's my understanding. What I'm suggesting, just to make sure I don't mislead, is to come back from the draft that was prepared in November 2020 all the way to the advice that Dr Kiessling gave and walk through what the steps were that occurred so that it's really clear what happened between the Threatened Species Scientific Committee's consideration and where we're up to at this point.

Senator RICE: Okay.

Mr Knudson: I understand your point. I think you're asking what happened in the last three years, and what I'm suggesting is I can come back with that on notice.

Senator RICE: There was a version of the plan that was released under FOI, which there were comments on in September this year. A member of the recovery team, Dr Dejan Stojanovic, criticised the plan for focusing too heavily on predation rather than addressing the real threat to the species, which is native forest logging. He told the *Guardian* that the plan was a 'lost opportunity'. He said:

Despite mountains of evidence that logging in Tasmania is the key threat to swift parrots, this government is trying to scapegoat a tiny possum ...

Was that version of the plan the version that was signed off on by the Threatened Species Scientific Committee?

Mr Knudson: Again, I'm very happy to come back and give an indication of what you're talking about—feedback in September, how that was taken into account and where we're up to today.

Senator RICE: I just want to have some clarity. This was released under FOI as a draft plan. It was reported that it was the final version of the plan. So it seems that the plan that Dr Stojanovic signed off on was indeed the plan that the Threatened Species Scientific Committee signed off on as the final plan in November 2020.

Mr Knudson: Again, we do not have the right officials here to provide details with respect to the department, but I'm very happy to come back and make sure that we're as clear as possible on what happened between the Threatened Species Scientific Committee considering this in November 2020 and today.

Senator RICE: I just want to clarify, Professor Marsh, the usual process for signing off on a recovery plan. The usual process is that, once you have signed off on it, there are no further changes made to it before it is released. This plan was not released until September 2023—almost three years later.

Prof. Marsh: My understanding is that, if there had been substantive changes proposed to the plan, a minister would have referred it back to us. I can say to you that it has not been referred back to the committee. I can't comment on the correspondence between the plan that we saw and signed off on and anything that wasn't released under FOI, because I simply don't know.

Senator RICE: Thank you, Professor Marsh. Thank you, Chair.

Senator DUNIAM: Professor Marsh, thank you. I echo the comments of the chair thanking you for your efforts and tremendous work over time. The relief that this is your last Senate estimates is very evident on your face, but we are very grateful for the work you have done.

Prof. Marsh: Thank you.

Senator DUNIAM: How many times has the minister attended a meeting with the full membership of the Threatened Species Scientific Committee?

Prof. Marsh: The minister has met with the full committee once—I think on 5 September.

Senator DUNIAM: Your date recall is amazing.

Prof. Marsh: Well, I did anticipate that you may be asking me that. I also met with the minister in July 2022 and on two other occasions. I'd like to point out that actual formal meetings are only part of the interaction between the committee, the ministers and the minister's office. I have also had a number of telephone calls with the minister's office, and they have been very helpful. We have quite a lot of business correspondence with the minister. I've been in Canberra this week for a meeting with the Threatened Species Scientific Committee. We get a record of correspondence, and I have counted 17 letters from the minister in response to our advice about various things in the last six weeks. So you can see we have a lot of interaction with the minister and her office.

Senator DUNIAM: Very good. On notice, could you provide to us a record of those interactions—formal meetings, formal correspondence and informal as well, as you've alluded to?

Prof. Marsh: Yes.

Senator DUNIAM: In relation to the skate in Macquarie Harbour in Tasmania, has the committee travelled to Macquarie Harbour to examine the situation down there? If so, how many times and what was the last date on which you were in Macquarie Harbour?

Prof. Marsh: I have been to Macquarie Harbour once, in a private capacity, but we do have a member of the scientific committee who is an expert in sharks and rays, and he's on the recovery team. He's based in Tasmania. I haven't asked him how many times he's been to Macquarie Harbour, to be honest, but I can say that the committee is brought up to date about that situation, and I think having a member on the recovery team who is an expert is very useful for keeping the committee informed of the situation.

Senator DUNIAM: On notice, you might just provide us details on that member of the committee's site visits to Macquarie Harbour. If you're able, that would be great. If I can move to Bathurst Harbour, how many times since the start of 2022 have the committee or members of the committee been to that location, on notice?

Prof. Marsh: We can take that on notice. Sorry, I don't have the answer to that.

Senator DUNIAM: No, I wouldn't expect you to, completely. That's fine. I have a final question to either the secretary or the minister in relation to the issue that has emerged, which has catalysed the more recent public commentary on this issue. One of the correspondents with the minister who have put in their request for this to be reviewed is the Environmental Defenders Office. That is the same Environmental Defenders Office that has received funding from the Commonwealth government—is that right?

Mr Fredericks: I'm at the limit of my knowledge on answering that, but I'm very happy to take it on notice.

Senator DUNIAM: I'd appreciate that, Thank you.

CHAIR: Senator Pocock.

Senator DAVID POCOCK: Professor Marsh, can I echo the thanks from the committee and apologise that politicians maybe haven't taken the advice that you've provided, given we're dealing with the same swift parrot recovery plan three years later and how critical it is. When it comes to something like the swift parrot, at what population do you start talking about them being functionally extinct? Has that been discussed?

Prof. Marsh: We didn't use those terms. As an ecologist, of course, I'm familiar with those terms. I wouldn't like to use that term in this situation.

Senator DAVID POCOCK: You haven't made suggestions to the government about at what point the population starts to get critical?

Prof. Marsh: There obviously are deep concerns about the status of the swift parrot. I have absolutely no doubt about that. I don't think it's yet functionally extinct. I wouldn't use that term.

Senator DAVID POCOCK: No, not yet. I'm interested if you can recall looking almost three years ago at the plan and whether it adequately addressed what I understand to be the prime threat, which is logging native forests.

Prof. Marsh: Under section 189 of the act, the committee has to advise the minister, and we are not allowed under that act to give detailed advice about documents that we advise the minister about. I really think that that sort of detail is better requested of the department, because they are not so bound. I really do have to observe the provisions of the act.

Senator DAVID POCOCK: The Threatened Species Scientific Committee is constrained in the detail of advice it can provide to the Commonwealth?

Prof. Marsh: We are not constrained in our advice to the minister, but, when we have made advice to the minister about a document, until that document is released the act constrains our providing advice to other bodies. That's my understanding.

Senator DAVID POCOCK: Were you satisfied that it adequately addressed native forest logging?

Prof. Marsh: We were. Otherwise we wouldn't have signed off on it. We have quite a rigorous process. We have experts on the committee, including experts on parrots. The material is provided to us online in advance of the meeting. There is a collaborative comment process that happens in the lead-up to the meeting so that the departmental officers are aware of the main concerns of the committee, which are then discussed. Then we may actually make some recommendations for change, and if necessary those are considered again out of session with the experts on the committee. If the recommendations are substantive, we will have extra meetings of the committee to consider all of this. It's actually quite a rigorous process, and there are also checklists et cetera that

we have to check. My committee is very committed to giving the best scientific advice, and I believe that we try to do that in the most robust way possible.

Senator DAVID POCOCK: Is there a reason why it's been three years and we're still waiting for this?

CHAIR: Last question.

Prof. Marsh: I think that's a matter for the minister and the department. I understand that with complicated plans it's very important to engage other jurisdictions, but, once we sign off on the plan, it's beyond our remit.

Senator DAVID POCOCK: Finally, Dr Stojanovic at the ANU—I'm sure you're familiar with his work on swift parrots—was a member of the recovery team and he has said:

... successive governments try to distract from their ongoing failure to fix the problems caused by logging in Tasmania.

To stop swift parrots going extinct in the next 10 years we need to protect what's left of their Tasmanian breeding habitat today—there's no more time to waste.

Are you confident that the plan you have signed off on would deliver that?

Prof. Marsh: I believe so. The committee can't comment directly on matters that are beyond the Commonwealth's control, and some of that is true, but we really looked at that plan very, very carefully, and I believe we gave it a very rigorous scientific assessment.

Senator DAVID POCOCK: Okay, thank you.

CHAIR: Senator Whish-Wilson.

Senator WHISH-WILSON: Thanks again to you, Professor Marsh. I hope you stay involved in World Heritage matters and many other things, even though we may not see you again.

Prof. Marsh: I'll see you again.

Senator WHISH-WILSON: On the Maugean skate, I'm obviously following this very closely. You upgraded the conservation advice recently. On 24 October the CEO of Salmon Tasmania, Luke Martin, on ABC Radio commented:

It would be an extreme outcome to do any pullback on the aquaculture that's occurring in the harbour. Certainly we don't believe the science will support that outcome.

Mr Martin has made a number of comments saying they've been blindsided by the science—that the science and the conservation advice doesn't align with their science. Has the salmon industry raised any concerns around the science that's been provided by the Threatened Species Scientific Committee?

Prof. Marsh: The Threatened Species Scientific Committee can advise about the science. I want to say that we were briefed in detail by three of the key scientists from IMAS at our meeting in March. We were deeply concerned about the information that they provided. In our recommendation to the department from that meeting we recommended that a conservation advice be developed—there was a conservation advice, you know that, which I think dated from 2008, and we advised that we thought that that conservation advice was now dated. It didn't reflect the up-to-date scientific advice and we asked that it be revised as soon as possible—and it was.

Senator WHISH-WILSON: Are you confident that that is the best scientific advice?

Prof. Marsh: I am. I also say that, as you know, there is a very active recovery plan, there's an active plan of research, there's a taskforce et cetera. It is possible—and, I would say, indeed likely—that the scientific advice will improve. I note that it's on the FPAL, the final priority assessment list, for a listing revision, which is also happening at the same time. In the process of that listing revision, it is likely that new information will arise that may be reflected in a revised conservation advice, but we talk about the skate all the time.

Senator WHISH-WILSON: We've talked about it for a very long time here in estimates.

Prof. Marsh: Yes. We have just had a meeting this week, which concluded this afternoon. It was on the agenda. There is Professor Simpfendorfer, a shark and ray specialist, who's on the recovery team. Nothing has been brought before the committee to indicate that at this time there is a need for substantive change to that conservation advice. If there were, conservation advice can be changed, but at the moment I would say that the very detailed scientific advice that's there is current, and—

Senator WHISH-WILSON: You believe that that's the best advice we currently have.

Prof. Marsh: Yes. I think it's a very challenging and worrying scientific situation. Obviously, the policy responses to that are a matter for the minister, not the committee. The committee's job is to provide scientific advice.

Senator WHISH-WILSON: Indeed it is. Yesterday, the Tasmanian Premier essentially declared war on the environment minister. He wrote:

Last night I received a letter from the Federal Minister regarding salmon farming in Tassie.

I want to be clear.

I will not stand by and allow bureaucrats in Canberra to kill off our Salmon Industry, or any other jobs on the West Coast.

He went on with his diatribe for some time about that. You have a member of the Threatened Species Scientific Committee on the recovery team, but so does the salmon industry and so does the Tasmanian government. My question is: when they're clearly not happy with the letter that the minister has written and the advice that you've provided, how does it work from here?

Mr Knudson: I think that's actually a question more—

Senator WHISH-WILSON: Okay. Yes, Mr Knudson.

Mr Knudson: Unfortunately, where that's going to lead to is—

Senator WHISH-WILSON: Being a senior bureaucrat in Canberra, would you like to respond to the Premier, too?

Mr Knudson: I couldn't possibly comment on that! What I was going to say is that we also canvassed this a fair amount in the last estimates. If there's any more detail that we can provide with respect to the functioning of the recovering team and the actions that are being undertaken, we're very happy to do that so you've got the most up-to-date information.

Senator WHISH-WILSON: For example, obviously the advice is clear to look at reducing the biomass in Macquarie Harbour as a priority. I don't have the wording in front of me, but it's there. How does the recovery team assess how they do that if it's clear there are conflicts within that team, which does not want and refuses to move a single fish or to budge at all on the key component of the advice provided by the threatened species committee?

Mr Knudson: The job of the recovery team—and, again, I am not intimately involved with that recovery team, but the recovery team in general will be looking at the advice provided by the Threatened Species Scientific Committee and making sure that they're taking appropriate actions within the harbour.

Senator WHISH-WILSON: I want to say on the record that I think they're all great. I've looked at the composition of the recovery committee. I know they're all doing their best job. But it just seems to me there's an inherent conflict of interest there, and I don't know how it's going to work. You've got views from the salmon industry. They're saying that they don't believe the science and the conservation advice and that they're not going to budge, and the state government is not going to budge. Clearly something is going to have to give. Could I ask—

CHAIR: You're well over your five-minute block which we agreed to previously. I believe Senator Rice has more questions and we have precisely one and a half minutes.

Senator RICE: I'm done.

CHAIR: Okay, you're done. One and a half minutes are all yours, Senator Whish-Wilson.

Senator WHISH-WILSON: No worries. What's the next step? Perhaps this is better directed to you, Mr Knudson or Mr Fredericks. If the minister, in her letter, says that, depending on where the Commonwealth lands with their legal advice, they may have to pause salmon farming in the harbour this summer, what does that mean exactly? Have you gone into that kind of detail yet?

Mr Knudson: No. Again, I think this was canvassed with the regulatory arm of the department at the last estimates.

Senator WHISH-WILSON: It was.

Mr Knudson: I think we walked through what the various steps were from a generic standpoint. I think we also committed to come back on notice with even more detail.

Senator WHISH-WILSON: Has there been discussion with the salmon industry on this particular—

Mr Fredericks: I don't think we can say much more than what Mr Knudson said. I know you respect that. We'll come back to you on sufficient notice, because these are important questions. We'll do the right thing by you and take that on notice.

CHAIR: Once again, Professor Marsh, thank you from all of the threatened species in Australia. Our general biodiversity and our threatened communities all thank you for your amazing work over 13 years.

Clean Energy Regulator

[19:10]

CHAIR: Mr Parker, would you care to make an opening statement?

Mr Parker: No, we don't have an opening statement.

CHAIR: Fantastic. We'll go directly to Senator Hughes.

Senator HUGHES: Good evening, everybody. Mr Parker, is it possible to get an update on how the administration and management of the ACCU scheme is progressing?

Mr Parker: There are several dimensions to that. There is the day-to-day administration, if you like. Certainly we can provide you with advice on that. The second element is the response to the recommendations which came out of the Chubb committee, which were accepted by the government. Do you have a preference for an element of that?

Senator HUGHES: Because I'm conscious of time, I want to talk about the HIR method—which was recently discontinued, wasn't it?

Mr Parker: Yes. It sunsetted.

Senator HUGHES: So it was sunsetted. But that was about 30 per cent of the market?

Mr Parker: That's about right, yes.

Senator HUGHES: Were participants compensated?

Mr Parker: No, a question of compensation doesn't arise. The method sunsets for new project registrations. There is a range of work which is underway to do a replacement method, if you like—the so-called Integrated Farm and Land Management method. That is still working its way through the processes, which are now run by the department and ERAC, which will translate ultimately into the Carbon Abatement Integrity Committee, but existing registered projects continue under that method.

Senator HUGHES: There are some reports from the NAB suggesting that prices would likely soar in coming years. Is that a projection you agree with?

Mr Parker: Are those the prices for the ACCU scheme?

Senator HUGHES: Yes.

Mr Parker: I'm an old economic forecaster, so the first thing I always say in response to questions of that sort is that projecting the future is difficult.

Senator HUGHES: But if you've got the safeguard mechanism in place now, that's going to require ACCU purchases purely and simply for supply and demand.

Mr Parker: Looking at it at that level of detail, you would say that there would be more demand coming into the market progressively as baselines in the safeguard mechanism decline. Equally, there's an old saying in economics which runs to the effect of, 'There's nothing that fixes high prices quite so well as high prices'—the point being that higher prices bring on additional supply through new project registrations. Where that winds up is a very interesting question.

The other dimension to that, of course, is that we wouldn't expect all of the decline in baselines coming through the safeguard mechanism to be met through the purchase and surrender of the ACCU scheme, which is the compliance arrangement there. We would expect companies to progressively, over time and more and more, implement what you might call in-situ emissions reduction investments. Some of that will await the development and rollout of new technologies. For others, there is technology that is effectively already in place which they could adopt. For example, we are seeing this in the electrification of some existing processes, including through investment in renewable generation. There are a lot of things in the mix, to that question, so I would hesitate to put a precise view on the price path of ACCUs.

Senator HUGHES: We know that the safeguard mechanism is targeted at the most intensive—some of the biggest—emitters and a lot of these are very important industrial facilities. They make a huge contribution to our economy, whether it's via exports or producing products like fertiliser and cement. Before the safeguard mechanism was legislated, and coming to your point about technological advancements, was there any work done by the CER through facility-by-facility research and consultation to see whether or not the owners had viable technological pathways that could assist them to reduce their emissions?

Mr Parker: Not on a facility-by-facility basis. There have been various other advice pathways into government and into successive governments on potential technology pathways for abatement. You mentioned

two of them. Steel and other metals is another one in the hard to abate sector, as well as plastics. They're in a sense the four things that are quite key to modern economics. If I could describe it at a general level, the overall pathway in many of those is to electrify everything that you can with that electricity generated through renewables, with demand on the use side of electricity varying and also through storage to settle that out. Where electricity doesn't work—and a classic example here is probably long-distance aviation—the pathway is to use a molecular fuel that's ultimately created through the use of renewable electricity. That's the very broad story.

The application of that—the more patterned story as it applies at individual plant levels—is something that in the past we haven't done a lot of work on. But it's something that we're looking at increasingly, including because of the safeguard mechanism arrangements, which provide a series of compliance possibilities. This includes the multi-year monitoring program, where you don't have to comply year by year but you do have to comply over a run of years. There's a mechanism legislated into the safeguard mechanism where, if you can reasonably demonstrate that you have a pathway to reduce your emissions over time, such that your emissions over a longer period are within your baseline requirements, then we can grant a multi-year monitoring period. That provides time for investments to be put in place, including, as I mentioned, through the maturing of technology. We will be looking at the transition plans that business needs to prepare in the process of applying for a multi-year monitoring period, and we'll have to make an assessment of whether those transition plans are reasonable. So we will be looking at this on a plant-by-plant basis.

Senator HUGHES: Has there already been some sort of discussion with these facilities about: How are they going to pay for it? Can they afford to pay for the transition? Do they expect that they can then pass those costs on to their consumers?

Mr Parker: I don't think so, but let me just check. No, not in terms of cost, but certainly in terms of the feasibility, yes.

Senator HUGHES: What I'm concerned about is twofold. Are these industries going to remain financially viable in Australia with having to outlay these transition costs? Also, we are in a cost-of-living crisis, and the way business works is that, if your costs go up, your price goes up for what you sell to the consumer. I'm very concerned that no-one has actually modelled that through and thought about it.

Mr Parker: That's probably a question more for the department than for us. Could I flag that that issue was a substantive issue raised with the department through their consultation process on this, and industry has advocated for a so-called CBAM—a carbon border adjustment mechanism—so that they're not outcompeted by companies—

Senator HUGHES: Where are we with that?

Mr Parker: That is a matter for the department, but it is something that is being considered.

Senator HUGHES: We're back in February.

CHAIR: Senator Hughes, we will have to rotate the call.

Senator HUGHES: Mr Parker, I'll put anything else on notice. I know that we're trying to keep to time.

Mr Parker: Thank you, Senator.

CHAIR: Senator Pocock, we do have another senator coming and we only have 10 minutes left, so anything that you can put on notice would be great.

Senator DAVID POCOCK: I have four questions, so it depends on the answers. I am referring to an extract from one of your documents called *HIR gateway audit requirements* and 'Step 8: Conduct an independent review of all gateway checks'. Has an independent reviewer has been appointed yet?

Mr Parker: Yes, they have.

Senator DAVID POCOCK: Who is that person?

Mr Parker: I will pass to Michelle Crosbie to tell you the story.

Ms Crosbie: We now have a contract with Associate Professor Cris Brack, an experienced ecologist and forestry expert from the ANU. Associate Professor Cris Brack is currently working with us on looking at a sample of the gateway checks that were done prior to 6 May, and we've got a sample of 25 gateway checks that he is looking at. He is looking at the individual projects and whether it is reasonable that the projects have passed the gateway check. All of them are at year 5—there's year 5, year 10 and year 15. He will publish, in December, a public-facing report on the projects and his assessment of them at an aggregate level. He will also feed information back, on a project-by-project basis, to the Clean Energy Regulator, and we can feed that into our own compliance processes.

From 6 May, we will do what we refer to as a 215 gateway audit for every five-yearly gateway check, and Associate Professor Cris Brack will then review every one of those projects—that's our intent—that have gone through that gateway process. We've currently got 20 projects that are going through an audit, and they likely won't be finished before the end of the year. The expectation is that Associate Professor Cris Brack will look at them next year. So every six months we'll do another public-facing report, and every six months he will pick up the next batch of the five-yearly gateway checks.

Senator DAVID POCOCK: So he's doing 25 at the moment?

Ms Crosbie: At the moment, yes, and that's of the ones we had done prior to the new gateway checks being—

Senator DAVID POCOCK: There were only 25 done, prior to—

Ms Crosbie: No, 112, but because—

Senator DAVID POCOCK: What happens to those 112?

Ms Crosbie: There are 112 projects that have already gone through the process. It is time consuming looking at each project, and we estimate, moving forward, that every six months we'll get roughly 50 projects. It wasn't possible for him, in the time frame that we had, to be able to look at the 112, so we selected a sample, and Associate Professor Cris Brack agreed to the process by which we randomly selected the projects that have been done. So it wasn't the CER selecting them.

Senator DAVID POCOCK: Do you have a time frame for how long it takes for each project to be reviewed, on average?

Ms Crosbie: Yes. The first step in the process is that we receive the five-yearly gateway report, and the Clean Energy Regulator then undertakes an assessment to see for ourselves if we're satisfied that the project meets the requirements of the gateway and that it continues to have forest potential and hit the gateway reviews.

Senator DAVID POCOCK: The time for the professor is what I'm after. How long is that taking him?

Ms Crosbie: Initially, when we first engaged with him, he had a look at two projects just to get a feel for the timing, and then the next 25 will help to inform that as well. In terms of timing, we're looking at between now and December that he should be able to do that. He started, I think—I don't have the exact date—about four weeks ago. He started looking at the 25 and he expects to have those finished and then a report out by the end of the year. But it will inform future projects.

Mr Parker: It's a thorough process.

Senator DAVID POCOCK: And, as part of that process, can he request more information?

Ms Crosbie: At the moment, with the 25 that we're looking at, and the intent with the ones moving forward, he would have the information that's provided by the project proponents as part of their gateway report. He would have the information that we—

Senator DAVID POCOCK: I'm interested in whether he can request more information.

Ms Crosbie: We're not saying he couldn't, but at this stage we intended to provide what the project provided, what we looked at and also the audit by the independent auditor. At this stage it was our intent that he would look at those three pieces of information. Of course, there's nothing stopping further information being provided, but it would slow down the process.

Mr Parker: If he did make that request to us—

Senator DAVID POCOCK: If he requests more information, would it be—

Ms Crosbie: Yes.

Mr Parker: we would do our best to comply with that request. If we can have the information, then it would be possible for the professor to suggest to us in his report that we make a request for further information under our regulatory powers. There are several layers that the process could go through.

Senator DAVID POCOCK: In terms of the publication of that—you said it was every six months. Does that go on your website? Where do we look for it?

Ms Crosbie: Yes. It will be the first one in December and it would go up on our website. As we go through, every six months, things may change depending on whether we think there are better ways of doing it. But, yes, at this stage, we would intend to put it up on the website.

Senator DAVID POCOCK: What is the process if he finds that projects don't meet the gateway check?

Ms Crosbie: Sure. As I said, there will be, at an aggregate level, the HIR portfolio health report publicly available, but, for the individual projects that he will look at and for every project now moving forward, he'll feed

that back to the Clean Energy Regulator and then it will be on a case-by-case basis depending on what concerns he has. But we have a broad range of powers in terms of what we can do. We have information and monitoring powers so we could, as I think Mr Parker was referring to, get additional information. We could pause crediting. We could require relinquishment of ACCUs. We could refuse issuance of ACCUs. We could look at, depending on what it is, whether they're a fit and proper person and enforceable undertakings. There are criminal and civil penalties if we need to go there, and, of course, we've only very rarely had to go into that more serious place under the ACCU scheme because proponents generally have been doing the right thing. But there are a broad range of powers depending on the matter at hand.

Senator DAVID POCOCK: For these initial 25 in the aggregate report, will we know if any aren't up to scratch according to him?

Ms Crosbie: I guess it's up to Associate Professor Brack how he prepares that report, as it is an independent report. I'm not actually sure at this point, and we'll get to see that once the report is published. I'm sorry, I can't help with that.

CHAIR: I will get you to wind up, Senator Pocock.

Senator DAVID POCOCK: Last one, yes.

Mr Parker: We would be happy to pass on that view.

Senator DAVID POCOCK: I know we covered this in detail in the safeguard mechanism discussions. Clearly, there have been some very valid concerns about HIR and there's a need to, essentially, deal with those concerns and rebuild trust. I'm interested in the transparency around the process. We now have an independent person who everyone agrees has the credentials, but what I am hearing is that he may say, 'Listen, this project really doesn't cut it.' But then it just goes back to you and there's potentially no transparency there for the public about what then happens.

Mr Parker: Can I firstly observe, about the validity of the concerns that have been expressed—

Senator DAVID POCOCK: We've gone over this a lot.

Mr Parker: This was looked at in detail by the Chubb review, and I can quote to you add nauseum about that, so can I just not accept the premise of the question. But in terms of—

Senator DAVID POCOCK: The questions haven't been about the methodology. It's about the application of the methodology. I'm not criticising the methodologies, but we've heard some pretty critical evidence—

Mr Parker: We provided substantial evidence to the Chubb review on the administration that we undertake, including detailed information on tree growth and so forth. The Chubb review said—and I won't quote it—that the HIR method was sound and was backed by a robust regular framework.

Senator DAVID POCOCK: Which I don't—

CHAIR: I'm just going to intervene because we are at the cut-over point—

Senator DAVID POCOCK: The method was sound, sure.

CHAIR: and the minister does need to leave.

Mr Parker: It said the method was sound and it was backed by a robust regular framework.

Senator DAVID POCOCK: Sure.

Mr Parker: Okay? Look—

Senator DAVID POCOCK: The defensiveness maybe suggests otherwise. It's—

Mr Parker: Vote 1 for transparency, can I say. All in favour of the transparency—we've said that and we're very happy that Professor Brack is doing his work. In terms of it coming back to us, we will respond—

CHAIR: Glad to hear it, Mr Parker. Thank you very much. I would like to take the opportunity to thank the minister for stepping in at the last minute due to Minister McAllister's clash with a bill in the chamber. Thank you so much for joining us. Thank you, Mr Parker, and the Clean Energy Regulator. You are now all released.

INFRASTRUCTURE, TRANSPORT, REGIONAL DEVELOPMENT, COMMUNICATIONS AND THE ARTS PORTFOLIO

In Attendance

Senator Carol Brown, Assistant Minister for Infrastructure and Transport

Department of Infrastructure, Transport, Regional Development, Communications and the Arts

Mr Richard Windeyer, Deputy Secretary

Classification Board

Ms Fiona Jolly, Director

Mr Tristan Sharp, Deputy Director

Classification Review Board

Ms Susan Bush, Convenor

CHAIR: I welcome Senator the Hon. Carol Brown, Assistant Minister for Infrastructure and Transport, representing the Minister for Communications. Minister, would you like to make an opening statement?

Senator Carol Brown: No, thank you.

Department of Infrastructure, Transport, Regional Development, Communications and the Arts

Classification Board

[19:37]

CHAIR: Officers from the Classification Board, Ms Fiona Jolly—would you like to make an opening statement?

Ms Jolly: No, thank you.

CHAIR: Okay. We will go directly to questions. Senator Roberts.

Senator ROBERTS: First question—thank you for being here; that's the first thing. I've asked the Classification Board before about publications that must be considered obscene material for children. Last time it was the books *The Boys* and *Gender Queer*. Since then, the publisher, Hardie Grant, has released *Welcome to Sex*, which is targeted at 10-year-olds, and the author said actually eight and up. The distinction between eight and 10 is academic. This book was on the shelves of retailers like Target, where a child of any age could purchase it.

My question now is the same as it was last Senate estimates. Does the Classification Board have a rating system available to it for graphic novels that allows the board to make an accurate rating, or do you need something between anyone being able to access a publication and R—restricted for sale to adults, in plastic wrapping? Do you need an intermediate classification?

Ms Jolly: As you've outlined, the options available for the Classification Board are restricted publications of different types, but they're restricting publications for over 18-year-olds or freely available. The other option we have is to produce consumer advice, which is not legally restrictive, which advises that the material is not suitable for people under 15.

Senator ROBERTS: Do you need an intermediate classification, then?

Ms Jolly: I think the board's submission to the Stevens review back in 2020 was that we felt that there would be benefit in having some greater—

Senator ROBERTS: Another category.

Ms Jolly: gradations in classifications.

Senator ROBERTS: Thank you very much. Your answer's really clear. Minister, in my meeting with Minister Rowland, I was advised that a review of the classification system would be commenced shortly. Has that review commenced?

Senator Carol Brown: The review is being taken in two stages. Stage 1, of course, you would understand, included the piece of legislation that was passed recently in the parliament and received royal assent on 14 September, and that will commence next year, in March 2024. The stage 2 reforms aim to bring the scheme into alignment with the modern media environment, particularly the treatment of online content. Do you want me to tell you what those reforms go to?

Senator ROBERTS: I really just want to know: is it looking into options available for written publications?

Senator Carol Brown: This is a result of the 2020 review of Australian classification regulation, the Stevens review, which was handed to government in 2020 and released in 2023, and one of the things that it is looking at is to ensure that the classification criteria are evidence based and responsive to evolving community standards and expectations.

Senator ROBERTS: Is it looking into the options available for written publications—another classification, for example?

Senator Carol Brown: The review is quite broad, and it will refine the purpose and scope of the National Classification Scheme, so it will establish—

Senator ROBERTS: The review has commenced?

Senator Carol Brown: Informal consultation with government stakeholders has commenced. Public consultation will occur early in 2024.

Senator ROBERTS: So it is looking into options available for written publications. The public will get the opportunity to comment early in 2024. What is the time frame for recommendations?

Senator Carol Brown: I might hand to the deputy secretary to give you some time lines—if that's what you're after?

Senator ROBERTS: Yes, please.

Mr Windeyer: I don't think I can give you a date for conclusion at this point. I'm happy to take on notice to see if we've got some more precise time lines developed at this point, but the key point is: we've started preliminary consultations with internal-to-government stakeholders. Public consultation will commence early next year. But I don't have a set date for the conclusion of the review.

Senator ROBERTS: Could you take that on notice.

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

Senator ROBERTS: *Welcome to Sex* is an instruction manual for a wide range of adult sexual activity—literally a how-to, with illustrations. This is targeted at 10-year-olds but currently unclassified and available to children of any age. In our opinion, the tutoring of children aged eight and up in adult sexual practices is in breach of community standards. Will the Classification Board use its power to initiate a review of this publication?

Ms Jolly: Our understanding is that the book clearly states that it's targeted to teenagers from 13 up.

Senator ROBERTS: But it says 10 and up.

Ms Jolly: In making a decision about whether to call in a publication, we have to look at whether we think the publication is likely to be refused classification—so not available at all—or whether it's likely to cause offence to a reasonable adult to the extent that the publication should not be sold or displayed as an unrestricted publication, or that it's unsuitable for a person under 18 to see or read. Our view is that it's unlikely that that book would meet any of these criteria.

Senator ROBERTS: Yes, I think it's suitable for teens, but not for 10-year-olds.

Ms Jolly: I've just—

Senator ROBERTS: And your media classification would take care of that?

Ms Jolly: Yes. My power to call in is: if I have reasonable grounds to believe that the publication is submittable, and a submittable publication meets one of those three criteria that I just gave to you.

Senator ROBERTS: So what were the three again, please?

Ms Jolly: If we think that the publication contains depictions or descriptions that are likely to cause the publication to be classified 'refused'—so not available to anyone—or that it's likely to cause offence to a reasonable adult to the extent that the publication should not be sold or displayed as an unrestricted publication, or that it's unsuitable for a minor to see or read, and 'minor' is defined as being a person under 18. So, unless it meets one of those criteria, it's not a submittable publication.

Senator ROBERTS: So the new legislation doesn't give you the power to review something that doesn't meet those criteria?

Ms Jolly: Correct, unless there's an application for board classification put in.

Senator ROBERTS: This book tutors children aged eight and up in how to take nude selfies and send them safely—as if you can do that! Minister, can you explain to me how a child can send a nude selfie, and is that a safe practice?

Senator Carol Brown: I didn't really catch the first part of your question.

Senator ROBERTS: This book tutors children aged eight and up in how they—

Senator Carol Brown: I haven't seen the book, Senator Roberts.

CHAIR: I'm going to pull you up there, Senator Roberts. Nobody else has the book in front of them.

Senator ROBERTS: Well, basically, we don't even need the book. If the book's—

CHAIR: No. We're working off your interpretation, not a factual piece of material. As you know, with the situation we're in, you can't table that.

Senator ROBERTS: No, that's fine. I don't need to table it. But I call for—

CHAIR: Then I think it's very difficult for the minister, who hasn't seen this publication, to provide you with any answers.

Senator ROBERTS: Minister, perhaps I could ask the question differently. Do you think the community would think it's safe and acceptable for an eight-year-old, or older, to take a nude selfie and then send it?

Senator Carol Brown: No, I do not.

Senator ROBERTS: I don't think it's a safe practice either. Legally, the sending of the selfie is producing and disseminating child porn for the sender and the receiver. That's both a state and federal criminal offence, I understand. How can you not review a book that incites serious illegal behaviour?

CHAIR: I'm going to say to you, again, Senator Roberts, that nobody else has the book in front of them.

Senator ROBERTS: Okay.

CHAIR: And I don't know if anyone else here has read it or engaged in—you're telling us a whole bunch of things that are in that book, but none of us has seen it.

Senator ROBERTS: I'm just telling you one thing, Chair. I understand the situation you're in, and I thank you for continuing the hearing. Ms Jolly, how can we not review a book that incites serious illegal behaviour: an eight-year-old sending, basically, child porn? This is not to trap you.

Ms Jolly: The criteria for calling in a publication are as I've said. Going to the chair's point: when we're looking at a publication, we have to look at things in the context; we have to look at whether it has descriptions or depictions; we have to look at the intended audience; and I think we also have to look at, for example, the length of the publication, and what that might amount to in the context. So I can't make a blanket yes or no response to that sort of statement.

Senator ROBERTS: I understand the position you're in. To me—and the minister's said it very bluntly and clearly—that's not safe for an eight-year-old to do. It would seem to me, Chair—

CHAIR: No, I'm sorry, Senator Roberts; I am going to pull you up because you are making a whole range of statements, and we have no evidence in front of us, and, if you make me say it out loud, we have to stop.

Senator ROBERTS: Okay. I'm just giving you my opinion, then.

CHAIR: I know.

Senator ROBERTS: Thank you very much. That's it.

CHAIR: As you well know, we are not quorate. I've let you go for as long as I possibly can.

Senator ROBERTS: Yes. Thank you. I appreciate that.

CHAIR: Otherwise, I would have asked you to table it, and we could have looked at the evidence, but, unfortunately, our colleagues have not offered you quorum.

Senator ROBERTS: Thank you.

CHAIR: Ms Jolly and Mr Sharp, thank you very much. Minister Brown, thank you so much for your time; we really appreciate it, as always. Mr Windeyer, lovely to see you. We will now adjourn.

Committee adjourned at 19:48