

Question on notice no. 602

Portfolio question number: 8

2023-24 Budget estimates

Foreign Affairs, Defence and Trade Committee, Defence Portfolio

Senator the Hon. Matthew Canavan: asked the Australian War Memorial on 31 May 2023—

Senator CANAVAN: Can I just confirm this? You did confirm in the February estimates that it was still the War Memorial's position that there were no forces that fought against the Indigenous population. So when was this change? When was this new evidence presented to the council?

Mr Anderson: It continues to be presented. There continues to be literature, both academic literature-

Senator CANAVAN: But my specific question is whether, from February to now, being May—in the space of three months or so—you've changed your position. Last estimates, you confirmed that you hadn't had that evidence. So when, over the last three months, was that evidence brought to your attention, and when was it presented to the council?

Mr Anderson: We've considered more closely the evidence that was presented in the paper to council.

Senator CANAVAN: When was that paper presented to council?

Mr Anderson: There have been several—twice, I think. I'm just looking-

Senator CANAVAN: When was that paper presented to the council?

Mr Hitches: In August 2022.

Senator CANAVAN: Hang on. Now I'm a little bit confused. You're saying that you had a paper presented to the council in August last year. You presumably read that paper and reviewed that paper. At two estimates since then, I've asked you this question and you said, 'We don't have any evidence of homegrown military units fighting against the Indigenous population.' Now you're coming here and telling me that you've got a different view based on a paper that was prepared last August—which you had different conclusions from at the last two estimates. Can you explain? That's perplexing me a little bit.

Mr Anderson: We know more. We continue to know more. Of course it's not only what's in the council paper. It's in the books that are published almost on a monthly basis. We know more about the nature of the violence in-

Senator CANAVAN: Aren't you just changing your tune-

Mr Anderson: No.

Senator CANAVAN: to suit the narrative today? What extra evidence have you reviewed since August last year to reach a different conclusion?

Mr Anderson: It's the weight of evidence over time. Books are published almost monthly on this topic by very, very credentialled institutions and academics, and they continue to point to that and continue to discover-

Senator CANAVAN: Can you name any of them?

Mr Anderson: Certainly-

Senator Davey: [inaudible]

Senator CANAVAN: I think you already have. To me, I'm sorry, this doesn't sound credible-your evidence. At the last two estimates, you said you'd come to a certain conclusion apparently based on a paper written in August last year. Now you've come to a different conclusion based on the same paper. Who's to say that in a few months time you won't have a different view? It doesn't make any sense.

Mr Anderson: I think it's pretty clear, Senator, that forces were raised in Australia that were engaged in warlike activities against the First Australians. That's what we're talking about here. We've been covering it in our gallery since 1986, it must be reminded.

Senator CANAVAN: Given the significance of your change in opinion-you gave evidence to a parliamentary committee saying otherwise a few months ago-can you provide me with an example of a military force raised to fight against Indigenous Australians?

Mr Anderson: Yes, certainly-Macquarie's loyal associations, for example. These were forces-they were settlers-that were raised and then they were armed by the colonial government. They were trained by the colonial government, and the leaders, the captain and the lieutenant-the commanding officer and the second-were given ranks and commissions in the colony of New South Wales. So that is-

Senator CANAVAN: And what did they do?

Mr Anderson: Originally, they were trying to deal with Irish dissidents, I think, at the time. They were then asked to go out and hunt down and engage with First Australians.

Senator CANAVAN: Was this evidence in the August paper?

Mr Anderson: Yes, it was in the paper that-

Senator CANAVAN: So why didn't you mention that at the last two estimates?

Mr Anderson: It was in the paper that you had, Senator.

Senator CANAVAN: I asked you a direct question, and you said there was no evidence that homegrown military units fought against Indigenous peoples, and now you're saying the exact opposite.

Mr Anderson: That's the evidence, Senator.

Senator CANAVAN: Why didn't you correct the record, then? You gave evidence to a parliamentary committee which was, on your own evidence today, misleading, and you didn't think to correct the record to the committee-before I asked you questions? If I hadn't asked you questions tonight, it would have stayed where it's at. Why didn't you correct the record?

Mr Anderson: I think the council's position on this and the memorial's position on this, as I said, continues to evolve as we know more, as we engage more, as we engage with academics. As we engage in the process of the memorial, we continue to discover more, and the memorial is a living, breathing organisation. But it must be said-you say 'over time'-that certainly since 1986 the Australian War Memorial has depicted frontier violence in its galleries.

Answer —

Answer attached.

Senate Standing Committee on Foreign Affairs, Defence and Trade
Budget Estimates 2023-24 – 31 May 2023
Answers to questions on notice from the Veterans' Affairs portfolio

Question 8

Outcome: All Program: All

Topic: Frontier Wars - previous Estimates hearings

(FADT Hansard Proof 31 May 2023, p 110)

Senator Matthew Canavan asked:

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Answer

Senator CANAVAN asserts, on multiple occasions that the official, Mr Anderson, confirmed in the last two estimates hearings that the 2014 position regarding frontier conflicts was still the position:

- *That there were no forces that fought against the Indigenous population; and*
- *Last estimates (Feb) you confirmed you haven't had that evidence.*

The last two hearings were held on 8 November 2022 and 15 February 2023. The question of whether the Australian War Memorial Act 1980 allows for the depiction of frontier violence was discussed at both the November 2022 and February 2023 hearings in great detail. Mr Anderson does not confirm there is no evidence that no forces fought against the Indigenous population. A compilation of every question asked by Senator Canavan, and Mr Anderson's responses, are included at **Appendix A**.

Mr Anderson clarified the position regarding evidence of colonial-raised forces in the November 2022 hearings, and it was not revisited in February 2023. Whether or not the Act allows for the Memorial to depict frontier violence was raised and Mr Anderson is clear that it can.

In Question on Notice 4 from November 2022, the Committee was provided with a copy of the Council paper. The Council paper was originally presented to the Australian War Memorial Council on 27 August 2021 and again in August 2022.

The Council paper contains the following (unredacted) information,

The definition of the Defence Force given in the Australian War Memorial Act 1980 includes any colonial naval and military force of the Crown raised in Australia before the establishment of the Commonwealth. Naval and military development in Australian colonies followed different historical trajectories. As far as is known, the volunteer militia, artillery, and other units of the second half of the nineteenth century did not take part in frontier violence. Other forces raised in the colonies, however, did take part in frontier violence, and some were clearly military in nature. Below are five historical examples of colonial-raised forces that did take part in frontier violence.

- (1) Macquarie's use of "Associations", New South Wales, 1816*
- (2) The Black Line, Van Diemen's Land (present-day Tasmania), 1830*
- (3) Battle of Pinjarra, Western Australia, 1834*
- (4) Waterloo Creek massacre, New South Wales, 1838*
- (5) Native Police, Queensland, 1848–c. 1910*

Senator Canavan asks Mr Anderson why he didn't correct the record. The records of the previous two estimates do not need to be corrected. However, it is the intention of the Memorial to provide this summary of relevant questioning from previous hearings in order to clarify the previous testimony and conclusions. This clarification will assist the Committee with future questions should there be any.

Appendix A

Date of Hearing	Hansard page #	Text
8/11/22	30	<p>Senator CANAVAN: Thanks for appearing today. I have some questions on proposals for the memorial to commemorate frontier wars. In asking these questions, I do want to place on record and recognise the hurt that especially First Nations people felt in those times. And I do think that should be reflected in some form of</p>
8/11/22	31	<p>memorial. I do note, Mr Anderson, under the media releases section of your website, an article titled 'Will the Australian War Memorial tell the story of colonial conflicts?', published on 27 January 2014. That article states: ... the Memorial has found no substantial evidence that home-grown military units, whether state colonial forces or post-Federation Australian military units, ever fought against the Indigenous population of this country.</p> <p>Is that statement still the position of the Australian War Memorial?</p> <p>Mr Anderson: That's correct, Senator, with regard to military units, correct.</p> <p>Senator CANAVAN: Later on in that article it also states: As defined in the Australian War Memorial Act 1980, the Memorial's official role is to develop a memorial for Australians who have died on, or as a result of, active service, or as a result of any war or warlike operation in which Australians have been on active service. The definition does not include internal conflicts between the Indigenous populations and the colonial powers of the day.</p> <p>Again, is that still the position of the Australian War Memorial?</p> <p>Mr Anderson: It certainly is.</p> <p>Senator CANAVAN: Thank you very much. Just to be clear, you are saying, if I am not getting this wrong, the Australian War Memorial Act does not provide a function for the War Memorial of including internal conflicts between the Indigenous populations and the colonial powers of the day?</p> <p>Mr Anderson: It also goes into defining, under our act, military history, and that military history is defined as two things. It's both those wars and warlike operations that Australians have been engaged in, and the history of the Defence Force. The definition under 'Defence Force' includes any naval or military force of the Crown that was raised in Australia prior to the establishment of the Commonwealth of Australia. So it does go back a fair way and does actually also include those forces raised by the Crown in Australia, both naval and military.</p> <p>Senator CANAVAN: So that's the definition of 'Defence Force' and the interpretation: 'Defence Force raised in Australia before the establishment of the Commonwealth'. I have the act in front of me. Under section 5(1)(e) of the act, you have the function of disseminating information relating to a number of things, including Australian military history; is that correct?</p> <p>Mr Anderson: That's correct.</p> <p>Senator CANAVAN: How does that link in with the definition of 'Defence Force'? 'Defence Force' is not listed in that particular section.</p> <p>Mr Anderson: The Defence Force is listed, where it says: "Australian military history" means the history of: (a) wars and warlike operations ... and (b) the Defence Force.</p> <p>Senator CANAVAN: The key thing, though, is that section 5(1)(e) mentions Australian military history; it doesn't include or capture, necessarily, before the Commonwealth. Do you see where I'm going?</p> <p>Mr Anderson: I see where you're going in terms of the definition of 'Australian military history', but it does two things. It expands the definition of 'Defence Force' to being that pre-Federation, but the act also goes on to say the memorial has broad powers under 6(1) of the act, which gives the memorial the general power 'to do all things necessary or convenient to be done for or in connection with the performance of its functions'.</p> <p>Senator CANAVAN: Yes, that does link back to its functions, though. I suppose we could go round and round on this. I'm not sure about you, Mr Anderson, but I'm certainly not a lawyer. Has the War Memorial asked for or received legal</p>

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		<p>advice about the definition of the functions there in the act and/or your ability to capture providing a memorial for the frontier wars, given those functions?</p> <p>Mr Anderson: The memorial did, back in 2013, seek advice from the Solicitor-General on the interpretation of the act.</p> <p>Senator CANAVAN: There has been no advice since 2013?</p> <p>Mr Anderson: No.</p> <p>Senator CANAVAN: The conclusion on your website that I read out before—that the definition does not include internal conflicts between Indigenous populations and the colonial powers of the day—was presumably based on that 2013 legal advice?</p> <p>Mr Anderson: I believe so.</p>
8/11/22	32	<p>Senator CANAVAN: I know it goes back a while, but I appreciate that. That being so, I am struggling to understand on what legal basis the War Memorial would now be considering, I believe, or planning to showcase the frontier wars. The legal advice seems to indicate that that's not a function under your act.</p> <p>Mr Anderson: The Australian War Memorial has, since about 1986, had frontier violence in its galleries. Successive councils since 1986 have interpreted the broader functions of the Australian War Memorial to enable it to tell that story as it relates particularly to pre-colonial forces—those forces raised in Australia prior to Federation—and the impact they had on Australians. That has been the interpretation. If can just—</p> <p>Senator CANAVAN: I've been to the Australian War Memorial many times—it has been a little while—and I agree with you that there are the Boer War exhibits. Can you tell me exactly what exhibits you're referring to?</p> <p>Mr Anderson: For instance, prior to the development taking place, we had what were called the 'colonial galleries', and within those colonial galleries we covered the Boer War, the Boxer Rebellion, the Sudan—</p> <p>Senator CANAVAN: I remember that.</p> <p>Mr Anderson: and we also included frontier violence in that section. For example, we had some lithographs and other things relating to Slaughterhouse Creek. They've been in there at least since 1986.</p> <p>Senator CANAVAN: Are there any plans for the War Memorial to take legal advice on the current plans?</p> <p>Mr Anderson: There are no plans simply because we believe that we have the discretion available to us to do this.</p> <p>Senator CANAVAN: On what basis do you believe you have that discretion, if you haven't taken legal advice?</p> <p>Mr Anderson: On the basis of the legal advice that was provided in 2013, which did give us the broad powers under subsection 6(1) of the act, which gives the general power 'to do all things necessary or convenient' with regard to the performance of its functions.</p> <p>Senator CANAVAN: With all respect, I thought we had gone over that, and you agreed with the conclusion that—this is your quote, not the War Memorial's: 'The definition does not include internal conflicts between Indigenous populations and the colonial powers of the day.' That's pretty clear to me. What has changed since then, if that was based on the legal advice?</p> <p>Mr Anderson: A couple of things have changed, frankly, in terms of the Australian War Memorial's engagement with the public and our understanding of Australian military history. Australia's understanding of our mission is to lead the nation's commemoration and understanding of the Australian experience of war.</p> <p>Senator CANAVAN: The vibe has changed. This is about the law. I'm asking if you're complying with your act and the law. We pass certain laws here in this parliament that you, as an independent statutory agency, must comply with. With all due respect, saying that somehow the understanding has changed is not a very firm basis in law. What different advice have you received to draw what seems to be a totally different conclusion than what you published just eight years ago?</p>

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		<p>Mr Anderson: It's important to note that in 2013 we sought advice, and that advice did provide the broad powers to interpret the functions of the memorial and for the council to determine the functions of the memorial. Peacekeeping is one example—that was not considered war or 'warlike'; however, council took the decision that some of those peacekeeping operations were worthy of recognition at the Australian War Memorial, and they have subsequently been acknowledged. That's the exercise of the same broad powers or functions that council has been exercising since 1986.</p> <p>Senator CANAVAN: Given that you have quoted from, or at least referred to, the legal advice quite specifically here today, could you table that legal advice from 2013?</p> <p>Senator McAllister: I think you understand the constraints that have been accepted by the Senate for a very long time in providing legal advice.</p> <p>Senator CANAVAN: I'll ask specifically if you, minister could respond with the public interest immunity you're relying on there not to provide such advice. I'm happy for you to take that on notice. I also make the point that there is a well-established principle that, once officials start referring to legal advice for justification, there is normally the publication of at least a summary of that advice. The confidentiality normally has to include a strict confidentiality, not being able to cherrypick from it for what might be—</p> <p>Senator McAllister: I'll take it on notice, and I appreciate—</p>
8/11/22	33	<p>Senator CANAVAN: self-interested purposes. I want to go to an FOI document that was released by the Australian War Memorial in the 2020-21 financial year, titled '<i>AWM PWC report—key talking points</i>'. In those talking points composed by the War Memorial were included:</p> <p>With more space as part of the Development Project will you be including frontier wars in the galleries?</p> <p>This was clearly a question in these talking points. The talking points propose the answer:</p> <p>Aboriginal and Torres Strait Islander peoples have a longstanding tradition of defending Country, and continue to serve with honour among our military forces. We are committed to telling their stories in the context of the Memorial's charter and throughout conflicts. I just want to clarify here: in those talking points, what is the charter? Is that something different than the functions of the act that we've just been through?</p> <p>Mr Anderson: No, it's not.</p> <p>Senator CANAVAN: So you're referring just to the functions of the act?</p> <p>Mr Anderson: The functions of the memorial act, yes.</p> <p>Senator CANAVAN: Okay. Moving on to a related but somewhat different issue, I'm sure you're aware the budget has provided \$5.8 million over three years to establish an independent Makarrata commission to oversee the process of agreement-making and truth-telling. Have you submitted, or are you intending to submit, any of the proposed showcasing of frontier wars to the Makarrata commission?</p> <p>Mr Anderson: We're not proposing to, no.</p> <p>Senator CANAVAN: I'm going back now to the War Memorial media release, or article, on your website from 2014. In that it says:</p> <p>It is important to note that the state police forces used Indigenous Australians to hunt down and kill other Indigenous Australians ...</p> <p>Will those aspects of the frontier wars be part of the planned showcase?</p> <p>Mr Anderson: I imagine they would. In fact, one of the largest paintings we currently have in the Australian War Memorial is an APY Lands painting, which is in the start of the galleries, and that's called 'Country and Culture will be protected by spears'. That painting, at the top of it, features spears coming inwards to acknowledge that, prior to the European settlement of Australia, Aboriginals were often at war with each other. It's certainly an acknowledgement.</p>

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		<p>Senator CANAVAN: I'm sure you're aware of the article in the <i>Australian</i> over the weekend about these issues. A spokesperson for the Australian War Memorial is quoted in that article as saying: Frontier violence is a part of our story as a nation and all cultural institutions have a role to play in telling our story. That same newspaper said that the minister was unavailable to comment on the issues we've gone over today. Did the War Memorial liaise with the minister's office before providing its response?</p> <p>Mr Anderson: My understanding is that the questions came to us, and we responded to the questions put to us.</p> <p>Senator CANAVAN: Directly?</p> <p>Mr Anderson: Directly.</p> <p>Senator CANAVAN: You didn't liaise with the minister's office on your response at all?</p> <p>Mr Anderson: No, Senator.</p> <p>Senator CANAVAN: I'm sure also that the War Memorial is aware that funding has been approved to build a Ngurra complex in Canberra. The budget paper says this will be 'a learning and knowledge centre, a national resting place, and a new home for the Australian Institute of Aboriginal and Torres Strait Islander Studies'. Have you had any discussions with the builders of the Ngurra about how they will showcase domestic conflicts and how you might work with them?</p> <p>Mr Anderson: Very preliminary discussions just to get a sense. We've had Craig Richard, the CEO, into the War Memorial to give us a briefing on the general details of the Ngurra precinct, and we certainly asked him whether or not frontier violence would feature, and he told us that it would.</p> <p>Senator CANAVAN: This one might be for the minister—or other officials. I haven't been here all day. I'm referring to the portfolio budget statements for Veterans' Affairs. From the advice I've been given, there's not a single mention of the words 'Aboriginal', 'Torres Strait Islanders', 'Indigenous' or 'First Nations'. This is quite</p>
8/11/22	34	<p>strange given the plans of the War Memorial and other cultural institutions to showcase frontier conflicts. Is there a reason there's no mention of Aboriginal peoples in anyway in the PBS for the veterans' affairs department?</p> <p>Senator McAllister: I'll take it on notice. I obviously was not personally involved in the preparation of the PBS. I'm representing Minister Keogh here.</p> <p>Senator CANAVAN: You'll probably have to take it on notice, but how many times has the Australian War Memorial been involved with discussions directly with the minister in talking about showcasing frontier wars? If so, on what dates did those discussions occur, and were any notes taken at the meetings? Could you provide them to the committee? I'm happy for you to take that on notice.</p> <p>Mr Anderson: Thanks.</p> <p>Senator CANAVAN: It seems to me that there's been a change in the interpretation of the legal advice from 2014 to today. The interpretation that you've got now of using section 6(1)—has that been discussed recently at your meetings of council?</p> <p>Mr Anderson: It was certainly part of a paper that was presented to council—the legal historical paper that was prepared on—</p> <p>Senator CANAVAN: When was that?</p> <p>Mr Anderson: The most recent council meeting was back in August.</p> <p>Senator CANAVAN: Did you have any discussions with the minister or the minister's office before that?</p> <p>Mr Anderson: When the chairman and I called on the minister, when he took up his position—I know it was 15 June—we were the ones who raised this. We were the ones who raised what the memorial was doing, what our priorities were and what our processes were. It was raised by us.</p> <p>CHAIR: Thank you very much, Senator Canavan.</p>

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		<p>Senator CANAVAN: Could I just quickly ask if you could table that paper that was at the August meeting?</p> <p>Mr Anderson: It's already been FOied.</p> <p>CHAIR: Thank you very much. I hand over the call to Senator Thorpe.</p>
8/11/22	36	<p>Senator CANAVAN: I just have a couple of quick clarifications regarding this August paper that came up last. I'm just thinking about it. You took that to the meeting in August. Can you tell me when the war memorial started drafting that paper?</p> <p>Mr Anderson: It was a resubmission of a paper that had been drafted—I don't know the exact time.</p> <p>Major Gen. Dawson: In the previous August it was first submitted to the players, so that's August 2021.</p> <p>Senator CANAVAN: Did you receive advice or take advice from the Solicitor-General?</p> <p>Mr Anderson: Not on that paper, no.</p> <p>Senator CANAVAN: Was any legal advice provided for the paper?</p> <p>Mr Anderson: No, it was a paper that was largely driven by the team in our history unit to try to draw together all of the information. It was almost a compendium of all of the issues surrounding frontier violence and the extent to which it's been considered by the memorial since Geoffrey Blainey first raised this issue in 1979 and tried to bring it all together in one place.</p> <p>Senator CANAVAN: Are any of you lawyers? From what the senator said, this paper said that under section 6(1) of the act—</p> <p>Mr Anderson: The senator referred to the legal advice—</p> <p>Senator CANAVAN: She referred to the act. Did any lawyers provide advice for the paper?</p> <p>Mr Anderson: That wasn't the point of it, but, no, we didn't send it out for independent legal advice.</p>
8/11/22	37	<p>Senator CANAVAN: It just seems very strange, given how anomalous this paper seems to be compared to your 2014 edition and you haven't got any legal advice at all on what seems to me to be a reinterpretation of your act. You haven't got any legal advice.</p> <p>Mr Anderson: There was no legal advice on that paper. It was—</p> <p>Senator CANAVAN: Finally, that FOI request you mentioned, I've had a look and I don't think it's been published. I think this was to do with the August paper.</p> <p>Mr Anderson: Yes, it was.</p> <p>Senator CANAVAN: It was subject to an FOI request, but it hasn't been published, so I ask you to provide that to this committee separate to the FOI process. Could you take that on notice?</p> <p>Senator McAllister: We'll take that on notice.</p>

Date of Hearing	Hansard page #	Text
15/2/23		<p>Senator CANAVAN: You might be aware, Mr Anderson, that earlier this year the government revoked a public service direction around working on public holidays. Before the last election, the coalition government had issued a direction that public servants should work on Australia Day, Anzac Day and the Queen's birthday, which is now the King's birthday. Earlier this year, the government revoked that direction. While the publicity was all around Australia Day, that revocation also meant that public servants are now free to swap, if you like, the observance of Anzac Day. Was the Australian War Memorial consulted on this decision before it was made by the government?</p> <p>Mr Anderson: Not to my knowledge.</p> <p>Senator CANAVAN: Given that you are the national custodian for the memory of those who have fought and died in service, would you have expected to be consulted on a decision around the observance of Anzac Day?</p>

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		<p>Mr Anderson: I didn't expect to. I can just assure you that almost all my staff are working every Anzac Day. That's all I'm going to say.</p> <p>Senator CANAVAN: I'm sure they are. You're in a special category, and, thankfully, I'm sure your staff do do that. I hope others do—but now they are not required to. Are you aware of any veteran groups or military history organisations being consulted by the government around the decision?</p> <p>Mr Anderson: No, but I wouldn't imagine I would be.</p> <p>Senator CANAVAN: Are you aware of any consultation that the government did with veteran groups or returned and services leagues about this decision to allow public servants to swap Anzac Day?</p> <p>Senator McAllister: Senator, if you look more closely at the direction provided by the previous government, it was simply a direction in the context of a bargaining process and didn't have force. So, I think, the characterisation of a revocation is not accurate.</p> <p>Senator CANAVAN: Well, I'm just quoting from an article in the <i>Mandarin</i>, from themandarin.com.au. It's a fairly well-known news service for public servants, keeping them up to date with the government's decisions. It directly says: Labor reversed a pre-election Coalition decision that forced bureaucrats to take a day off on three observed days: Australia Day, Anzac Day and Queen's (King's) birthday. That was the decision made by the government. I'm simply asking: are you aware of any consultation that occurred with returned and services leagues, veterans or others involved in the military history of Australia about this decision?</p> <p>Senator McAllister: I'll take the specific question about consultation on notice, but I will just make the point again that—I think this was canvassed in the House earlier today—the broad circumstances of the government's decision around the bargaining process are better addressed to the minister responsible for public service.</p> <p>Senator CANAVAN: Okay, thank you, Minister. I presume, as we highlighted there, Mr Anderson, you won't be looking kindly on staff who want to swap out a public observance of Anzac Day; they're expected to work anyway?</p> <p>Mr Anderson: Senator, I always look kindly on my staff.</p>
15/2/23	99	<p>Senator CANAVAN: But if someone does come to you and say, 'I don't want to observe Anzac Day,' would you accommodate that request consistent with the government's direction?</p> <p>Mr Anderson: It's hypothetical. Honestly, I can't imagine it. At the Australian War Memorial I'm invoking volunteers to help me to man the gates on the busiest day of the year.</p> <p>Senator CANAVAN: I'll turn to an interview that your new chair, Mr Beazley, conducted around 10 days ago, on 6 February. In that interview, he mentioned that he was inducted the week of the interview. What was involved with Mr Beazley's induction?</p> <p>Mr Anderson: It's a process of sitting down and being briefed on the organisational structure, meeting all of the assistant directors and the various work units, undertaking tours of our facilities in Mitchell, WOTSO in Dickson and Campbell, understanding the development—basically trying to get him across the business of the Australian War Memorial, who is running it, how we're running it and what's on our agenda. You call it an induction, but it's also a deep dive.</p> <p>Senator CANAVAN: Were briefing materials provided to the chair? Is there an induction pack or incoming brief of some kind?</p> <p>Mr Anderson: There is certainly an induction pack he would have received, just to make sure he undertakes and fills out all the necessary forms and things. It may surprise you, Senator, but lots of forms are required to be inducted into any Public Service organisation, and he certainly would have had to fill out a number of forms and declarations and other bits and pieces. The briefings that I gave him were oral</p>

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		<p>briefings about the things that engage me most regularly and the ways in which I engage with council and key stakeholders. My briefing was absolutely oral.</p> <p>Senator CANAVAN: So there were no briefing materials provided, as such, on issues and what have you?</p> <p>Mr Anderson: No, Senator.</p> <p>Senator CANAVAN: Can I ask you to take on notice to check if there were any and if we could have a copy of them.</p> <p>Mr Anderson: Yes, Senator.</p> <p>Senator CANAVAN: Were any briefing materials provided to Mr Beazley when he was appointed to the board in October last year?</p> <p>Mr Anderson: The same process, Senator. He wasn't inducted as chair; he was inducted as member of council. That was the process that he went through.</p> <p>Senator CANAVAN: Specifically, were briefing materials provided to new council members?</p> <p>Mr Anderson: That's the process I've just outlined.</p> <p>Senator CANAVAN: Just oral, no written briefings? I would also ask you to take on notice just in case there were any written briefings. Did you or anyone from the War Memorial brief Mr Beazley before the interview he had with Patricia Karvelas on 6 February—specifically about the interview?</p> <p>Mr Anderson: No, but as part of his induction and meeting of staff, I know he met with our Indigenous liaison officer, amongst others, so he would certainly be across the issues as they affect the Australian War Memorial.</p> <p>Senator CANAVAN: Since joining the board in October, has Mr Beazley had any meetings with the Minister for Veterans' Affairs? Has he had any meetings since he was appointed chairman?</p> <p>Mr Anderson: I can't speak to that, but I can clarify that he only was appointed to the board—the vacancy from Dr Nelson—on 1 December.</p> <p>Senator CANAVAN: Right, okay. It was announced in October, was it? Okay. No problems. From whenever he was appointed. Could you take that on notice?</p> <p>Mr Anderson: Yes, Senator.</p> <p>Senator CANAVAN: Could you also take on notice if there were any outcomes from those meetings and how they were recorded. Turning to the interview, obviously this interview largely focused on Mr Beazley being introduced as the new incoming chairman of the War Memorial. He was, however, asked about his opinion on the Voice. He spoke about how he was worried about if it didn't pass. Are there any policies in place around the chairman of the War Memorial's commentary around political issues?</p> <p>Mr Anderson: Not that I am aware, Senator.</p>
15/2/23	100	<p>Senator CANAVAN: I'm asking this because—I've got great respect for Mr Beazley, I should say, but I am mindful that your previous, equally meritorious chair, Mr Nelson, studiously avoided comment on political matters as chair. But that wasn't written down as a policy, was it Mr Anderson?</p> <p>Mr Anderson: Not that I am aware.</p> <p>Senator CANAVAN: It was up to the discretion of the chair at the time. I think Mr Nelson's approach was prudent. Now I just want to turn to the question of the frontier wars issue and more generally on other issues. Has the War Memorial ever been approached to display a roll of honour for men, women and children killed during war—not actively serving members of armed forces, but just, if you like, civilian casualties of war?</p> <p>Mr Anderson: Not in my time, but I'm happy to take that on notice.</p> <p>Senator CANAVAN: Okay. Has the War Memorial ever been approached to house a memorial for the merchant navy?</p> <p>Mr Anderson: From time to time the merchant navy has met with me to ask whether or not the merchant navy Roll of Honour could be incorporated inside the</p>

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		<p>cloisters of the Australian War Memorial. But that Roll of Honour is in the gardens of the Australian War Memorial. So, it's onsite.</p> <p>Senator CANAVAN: But not in the memorial itself.</p> <p>Mr Anderson: That's correct.</p> <p>Senator CANAVAN: But, just to be clear, the representatives of the merchant navy you've met would like it to be inside the building.</p> <p>Mr Anderson: Yes. They would like the greatest and equal prominence.</p> <p>Senator CANAVAN: Have you given them reasons for the decision not to do that?</p> <p>Mr Anderson: It's longstanding council policy.</p> <p>Senator CANAVAN: What are the reasons for that longstanding policy? What were the original reasons for it being made?</p> <p>Mr Anderson: That they weren't members of the Defence Force.</p> <p>Senator CANAVAN: Right. As we've been through, your act requires you to give memorial to people in active service. So, just to be clear: The key reason the merchant navy's is not inside the building is that they were not in active service at the time of any casualties or involvement in wars.</p> <p>Mr Anderson: Their stories are certainly inside the memorial. But the Roll of Honour that captures the seamen lost in the merchant navy is on a memorial outside.</p> <p>Senator CANAVAN: And there are no plans to include that Roll of Honour in the planned extensions?</p> <p>Mr Anderson: No.</p> <p>Senator CANAVAN: At the last estimates I asked whether or not the War Memorial had met with representatives from the Ngurra complex. Looking at the transcript here, I think you mentioned that you've had 'very preliminary discussions'. Have you had any further updates on the Ngurra project or consultation with them, especially on how it will showcase early settler conflicts?</p> <p>Mr Anderson: Not specific to that, but of course it's a small town, and I know Craig Ritchie well, and we see each other regularly. I've not specifically asked him yet how they will portray frontier violence in the Ngurra Cultural Precinct, but certainly it would be my expectation that they would.</p> <p>Senator CANAVAN: Where is the Ngurra complex meant to be installed?</p> <p>Mr Anderson: In Reconciliation Place, on the other side of the lake—basically between Old Parliament House and the foreshore.</p> <p>Senator CANAVAN: So, right across the lake from here—you could see it from the front steps.</p> <p>Mr Anderson: That's correct.</p> <p>Senator CANAVAN: Is there any reason you haven't had a formal meeting with those representatives, given your plans to commemorate frontier wars?</p> <p>Mr Anderson: The support that we're providing the Ngurra precinct at the moment simply is that as they're developing their business case and they're working, it is preliminary for them to understand what they're going to be putting in their galleries. At the moment they're going through their interim detailed business cases.</p> <p>Senator CANAVAN: Last estimates I asked you about papers that were put before your board on 19 August last year, especially in regard to the consideration of the frontier wars and how a memorial to them would be</p>
15/2/23	101	<p>consistent with your act. I've got some questions that relate to the Ngurra section on this, but just before I get to that detail, there are a number of sections of these papers that you've submitted to the committee that have been blacked out, and there's a reference to section 47C. Could I just clarify: is this document that you provided to the committee something that has been also FOI'd and provided under that process?</p> <p>Mr Anderson: Yes, it is.</p> <p>Senator CANAVAN: And the reference to section 47C is a reference to section 47C of the Freedom of Information Act 1982?</p> <p>Mr Anderson: Yes.</p> <p>Senator CANAVAN: I'm just mindful that this process, the tabling of information to a Senate committee, is different and separate to the Freedom of Information Act.</p>

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		<p>There are separate arrangements around the nonprovision of information. Are you able to tell us what's under the black parts, especially in this line of questioning? There's a part on page 22, if you've got the document there in front of you—</p> <p>Mr Anderson: Yes, I do.</p> <p>Senator CANAVAN: Obviously it was something submitted to this committee. It was question 4 from the last estimates. There are three lines there in the middle of the page. It's a paragraph around the Ngurra precinct. That's been blacked out. Are you able to reveal that to us?</p> <p>Mr Anderson: I couldn't tonight, but I'm happy to go back—and I'm looking at Leanne here. My understanding is that where we identified particular individuals or where we involved information that relates to, for example, deliberative content that specifically relates to some of the information that we're hoping to have in the development that relates to galleries and curation and these things, they're still very much subject to going to market. Certainly I know that some of that was taken out, but I couldn't speak to that particular point.</p> <p>Senator CANAVAN: Before providing this document to the committee, did you or any of your staff get advice around the public interest immunity requirements of Senate committees separate from the requirements of the Freedom of Information Act, particularly in regard to the blacking out of these sections?</p> <p>Mr Anderson: I didn't take any advice, no.</p> <p>Senator McAllister: Senator, I think I see the point that you are in the process of making—</p> <p>Senator CANAVAN: Yes, it's a pretty clear one.</p> <p>Senator McAllister: and it's not an unreasonable one. Can I perhaps offer this. I think the officials have sought to provide you with information and, as you've observed, consistent with the way they deal with an FOI request, I think we would be happy to revisit that information and consider the extent to which it meets the Senate's requirements in terms of providing information.</p> <p>Senator CANAVAN: Yes, public interest immunity. I just wanted to be clear—and I'll finish up on this line of questioning. Section 47C of the Freedom of Information Act is around deliberative content, and you've already mentioned that, Mr Anderson. However, I just want to check: You're not claiming that this is deliberative content before cabinet, I presume?</p> <p>Mr Anderson: No.</p> <p>Senator CANAVAN: Okay. So, this is deliberative content before an agency, which does trigger 47C. I would be happy to be corrected by the secretary, the chair or others, but I doubt that that would meet the threshold for public interest immunity of a Senate committee. Deliberations of cabinet would; deliberations of an agency, I very much doubt. So, I would appreciate if you could look at that in light of the actual requirements for a Senate committee.</p> <p>Senator McAllister: That would be the approach that we would intend on taking.</p> <p>Senator CANAVAN: Thank you very much.</p>
15/2/23	102	<p>Senator CANAVAN: I want to go to the request for legal advice. You provided an answer to question on notice No. 11 from last time. You provided some commentary there on why you believe a reinterpretation of the Australian War Memorial Act to allow the commemoration of the frontier wars is allowed. In that you say there is an alternative reading of the act and state:</p> <p>... that Australian military history is the history of "wars and warlike operations in which Australians have been on active service, including the events leading up to, and the aftermath of, such wars and warlike operations" ...</p> <p>I refer to the Anzac Day Act. It's a very small act. Section 3 of that act says: The national day of commemoration to recognise and commemorate the contribution of all those who have served Australia ... in time of war and in war-like conflicts ...</p> <p>Given that you're now effectively using that same definition for frontier wars, are you planning and does the War Memorial have plans to commemorate the frontier wars on Anzac Day?</p>

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		<p>Mr Anderson: Could you repeat the question? Sorry, Senator.</p> <p>Senator CANAVAN: Your interpretation of the act is now very similar to the definition in the Anzac Day Act of what Anzac Day is about in terms of frontier wars. Does the War Memorial have any plans to commemorate frontier wars on Anzac Day?</p> <p>Mr Anderson: Not that I'm aware of.</p> <p>Senator CANAVAN: It's just that, if you're using that definition, it would seem logical. The next sentence in that answer you provided to us says: This second reading—the alternative reading—would appear to allow consideration of Memorial treatment of the Frontier Wars ... I want to focus on the words 'would appear to allow consideration'. That actually doesn't say that in your view the act gives you the power to commemorate frontier wars. It says it that would appear to allow you to consider whether to do that. What the legal view on this matter? Can the War Memorial commemorate frontier wars under your act?</p> <p>Mr Anderson: I'll go back one step, if I may, to note that we've had frontier wars depicted in our galleries since 1986. That's what we know. The legal advice that was sought in 1992-93 was asking that specific question: 'Well, can we?' The advice back then was so long as two matters of fact were established. If it was war or warlike was the first of the tests. The second one was that it involved—</p> <p>Senator CANAVAN: Active service?</p> <p>Mr Anderson: Yes, and the second one was that it involved the Aboriginals or First Australians and the Defence Force, and the Defence Force being defined as any force—naval or military—raised by the Crown in Australia prior to Federation. So those are the two tests we need to establish for the memorial. The other thing I would say is that, when we're talking about depiction in our galleries—and I think the memorial has at least 62 works of art related to frontier violence in its collection—the act expressly states that we are to make the collection available and we have a responsibility to exhibit things that are within our collection. We certainly have items related to frontier violence in our collection and under our act we're able to display them and to exhibit them.</p>
15/2/23	106	<p>Senator CANAVAN: I was probably a bit loose in my language before about legal advice, because I believe at the last estimates it was revealed that there hasn't been any more updated legal advice around this issue since—</p> <p>Mr Anderson: Not since 2013.</p> <p>Senator CANAVAN: I just want to check that, since the last estimates, you haven't sought any legal advice.</p> <p>Mr Anderson: No, Senator, we've not.</p> <p>Senator CANAVAN: Has the minister or the minister's office requested any updated advice or briefings around this issue?</p> <p>Mr Anderson: No, Senator.</p> <p>Senator CANAVAN: Has the minister or the minister's office requested any legal advice be put before the minister?</p> <p>Senator McAllister: I'll take that on notice.</p> <p>Senator CANAVAN: The answer to question No. 15 at last estimates revealed that the minister had not been provided with a copy of the previous legal advice that had been sought. Is that still the case? Has a copy of that legal advice been provided to the minister or his office?</p> <p>Mr Anderson: I'll take that on notice.</p> <p>Senator CANAVAN: I'll turn to one final issue before, I think, we can move on. I want to go to the installation of a geothermal heating project at the War Memorial. Are you familiar with that?</p> <p>Mr Anderson: Yes, I am.</p> <p>Senator CANAVAN: What's the budget for the geothermal heating project.</p> <p>Mr Hitches: The budget for our geothermal is \$10.1 million.</p>

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		<p>Senator CANAVAN: Was that the original allocated budget?</p> <p>Mr Hitches: It is.</p> <p>Senator CANAVAN: Do you have any updated costs or final cost estimate for the project?</p> <p>Mr Hitches: We don't, but we have let three parts of that work, which are the major parts, and they're currently on budget.</p> <p>Senator CANAVAN: Do you have any information indicating that you may not come within that \$10.1 million budget to date?</p> <p>Mr Hitches: There's some work that we're going through at the moment where the replacement of plant appears to be a little more expensive, but we're working through that at the moment.</p> <p>Senator CANAVAN: Do you have an estimate of what increased costs that could be?</p> <p>Mr Hitches: I don't have an accurate one, but it's not a large difference, so we expect that we will be able to get back to budget or, if not in budget, then very close.</p> <p>Senator CANAVAN: The \$10.1 million budget?</p> <p>Mr Hitches: Correct.</p> <p>Senator CANAVAN: Is this project required or partially required because of ACT government regulations?</p> <p>Mr Hitches: It wasn't required because of that, but it was envisaged to assist with ACT forecasts of where we're going with reducing gas usage.</p> <p>Senator CANAVAN: Was it in any way part of the conditions of the development approval?</p> <p>Mr Hitches: No, it was not.</p> <p>Senator CANAVAN: So, just to be clear, you volunteered this to the ACT government to help them?</p> <p>Mr Hitches: That's correct.</p> <p>Senator CANAVAN: There was no requirement placed on you. My understanding is that, in the minister's press conference announcing this, he mentioned that there would be a cost saving from this. Is that still the case, especially given the risk of the higher budget for it?</p> <p>Mr Hitches: That's correct. At the moment we believe it will save in the order of a million dollars a year in energy costs and some thousand tonnes of CO2 equivalents per year, and we see that that will still be recovered in somewhere between eight and 10 years.</p> <p>Senator CANAVAN: Was there a spreadsheet or some kind of calculations done to get to that figure?</p>
15/2/23	107	<p>Mr Hitches: There's a full business case that is put together for it.</p> <p>Senator CANAVAN: Could we, on notice, get that document and any related spreadsheets that allowed that calculation?</p> <p>Mr Hitches: Certainly.</p> <p>Senator CANAVAN: Can you explain what you're doing? Where's the geothermal heat coming from?</p> <p>Mr Hitches: We're drilling holes underneath the Bean building, which is to the east. Those holes go down some 150 metres and there are 216 plant holes. We send either warm or cool water down and the earth then changes the temperature of the water and brings it back up and—</p> <p>Senator CANAVAN: It goes through a standard steam turbine?</p> <p>Mr Hitches: No. It's very much using the temperature of the earth to either lift or reduce—</p> <p>Senator CANAVAN: Just straight heating?</p> <p>Mr Hitches: That's all it is. It's very passive.</p> <p>Senator CANAVAN: So it doesn't generate electricity; it's just for heating?</p> <p>Mr Hitches: No, it does not. It's heating and cooling.</p>

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		<p>Senator CANAVAN: Is there any indication that the efficiency of the project will be the same as first expected?</p> <p>Mr Hitches: Currently we believe it will be, and the equipment we're using is very efficient equipment, which is part of this most recent review of costs, which is just the equipment part. What I would say is that that's only about one-third of the overall cost and, as I said, the other two-thirds are currently on or under budget.</p> <p>Senator CANAVAN: I might leave it there. Thank you very much, Chair.</p>
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