



COMMONWEALTH OF AUSTRALIA

# Official Committee Hansard

## SENATE

EDUCATION, EMPLOYMENT AND WORKPLACE RELATIONS  
LEGISLATION COMMITTEE

ESTIMATES

**(Additional Estimates)**

WEDNESDAY, 10 FEBRUARY 2010

CANBERRA

BY AUTHORITY OF THE SENATE

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**SENATE EDUCATION, EMPLOYMENT AND WORKPLACE RELATIONS****LEGISLATION COMMITTEE****Wednesday, 10 February 2010**

**Members:** Senator Marshall (*Chair*), Senator Cash (*Deputy Chair*), Senators Back, Bilyk, Jacinta Collins and Hanson-Young

**Participating members:** Senators Abetz, Adams, Barnett, Bernardi, Birmingham, Mark Bishop, Boswell, Boyce, Brandis, Bob Brown, Carol Brown, Bushby, Cameron, Colbeck, Coonan, Cormann, Crossin, Eggleston, Farrell, Feeney, Ferguson, Fielding, Fierravanti-Wells, Fifield, Fisher, Forshaw, Furner, Hansen-Young, Heffernan, Humphries, Hurley, Hutchins, Johnston, Joyce, Kroger, Ludlam, Lundy, Ian Macdonald, McEwen, McGauran, McLucas, Mason, Milne, Minchin, Moore, Nash, O'Brien, Parry, Payne, Polley, Pratt, Ronaldson, Ryan, Scullion, Siewert, Sterle, Troeth, Trood, Williams, Wortley and Xenophon

**Senators in attendance:** Senators Abetz, Back, Bilyk, Brandis, Cameron, Cash, Collins, Cormann, Crossin, Fifield, Fisher, Marshall, Mason and Ronaldson

Committee met at 9.00 am

**EDUCATION, EMPLOYMENT AND WORKPLACE RELATIONS PORTFOLIO****In Attendance**

Senator the Hon. Mark Arbib, Minister for Employment Participation

Senator the Hon. Kim Carr, Minister for Innovation, Industry, Science and Research

**Department of Education, Employment and Workplace Relations****Cross Portfolio**

Ms Lisa Paul, Secretary

Mr Robert Griew, Associate Secretary

Mr Michael Manthorpe, Deputy Secretary

Dr Michele Bruniges, Deputy Secretary

Mr Colin Walters, Acting Deputy Secretary

Ms Sandra Parker, Acting Deputy Secretary

Mr John Kovacic, Deputy Secretary

Mr Ewen McDonald, Deputy Secretary

Mr Craig Storen, Chief Finance Officer and Group Manager, Finance Group

Mr George Kriz, Chief Legal Officer and Group Manager Procurement, Legal, Investigations and Procurement Group

Mr Simon Gotzinger, Acting General Counsel and Group Manager Investigations, Legal, Investigations and Procurement Group

Mr Glen Casson, Acting Deputy Chief Internal Auditor, Internal Audit Group

Ms Robyn Kingston, Chief Internal Auditor, Internal Audit Group

Mr Glenn Archer, Chief Information Officer and Group Manager, IT Services Group

Mr David Pattie, Branch Manager, Specialist, Communications Group

Mr Brant Trim, Branch Manager, Communications Delivery Branch, Communications Group

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Mr Ben Johnson, Group Manager, People Group  
Ms Sue Saunders, Branch Manager, People Services Branch, People Group  
Ms Chris Silk, Branch Manager, Remuneration and Performance, People Group  
Mr Ben Wyers, Branch Manager, Capability Development and Agility Branch, People Group  
Ms Helen Skrzeczek, Group Manager, Applications Systems Group  
Ms Helen Willoughby, Group Manager, Communications Group  
Ms Barbara Grundy, Branch Manager, Strategy, Communications Group  
Mr Tim Pigot, Branch Manager, Media, Communications Group  
Ms Susan Smith, Group Manager, Delivery and Network Group  
Dr Alison Morehead, Group Manager, Social Inclusion and Participation Group  
Ms Margaret Kidd, Group Manager, Job Strategies Group

**Outcome 1—Office of Early Childhood Education and Childcare**

Ms Vicki Rundle, Group Manager, Early Childhood Development  
Ms Robyn Calder, Branch Manager, Early Childhood Development and Workforce Branch, Early Childhood Development  
Ms Lis Kelly, Branch Manager, National Quality Agenda, Early Childhood Development  
Ms Joan Ten Brummelear, Branch Manager, Early Childhood Quality Branch, Early Childhood Development  
Ms Madonna Morton, Branch Manager, New Early Learning and Care Services, Early Childhood Development  
Ms Kathryn Shugg, Acting Group Manager, Indigenous Pathways and Early Learning  
Mr Russell Ayres, Branch Manager, Early Childhood Education Reform Branch, Indigenous Pathways and Early Learning  
Mr Matthew Hardy, Branch Manager, Performance and Analysis Branch, Indigenous Pathways and Early Learning  
Ms Helen Lamming, Acting Branch Manager, Indigenous Early Childhood, Indigenous Pathways and Early Learning  
Mr Anthony Parsons, Group Manager, Early Childhood Programs Group  
Mr Murray Kimber, Branch Manager, Child Care Policy and Payments, Early Childhood Programs Group  
Ms Rose Giumelli, Branch Manager, Finance and Strategic Development, Early Childhood Programs  
Mr Mark Wright, Branch Manager, CCMS and Compliance Branch, Early Childhood Programs

**Outcome 2—Schooling and COAG**

Ms Gillian Mitchell, Branch Manager, Building the Education Revolution, Schools Group  
Ms Kylie Emery, Branch Manager, Building the Education Revolution, Schools Group  
Ms Helen McLaren, Branch Manager, Digital Education and Youth Transitions  
Ms Rhyan Bloor, Branch Manager, Broadband and Digital Education Branch, Digital Education Group  
Ms Catherine Wall, Group Manager, Lifting Educational Outcomes Group  
Ms Gabrielle Phillips, Branch Manager, Inclusive Education Strategies Branch, Lifting Educational Outcomes Group

Ms Louise Hanlon, Branch Manager, Literacy and Numeracy Strategies Branch, Lifting Educational Outcomes Group

Mr Matt Davies, Branch Manager, School and Student Support, Lifting Educational Outcomes

Mr Shane Hoffman, Branch Manager, Indigenous Education Reform, Lifting Educational Outcomes

Ms Margaret Banks, Branch Manager, Teacher Reforms Branch, Lifting Educational Outcomes

Ms Janet Davy, Group Manager, National Curriculum Assessment and Reporting Group

Mr Tony Zanderigo, Branch Manager, Reporting and Accountability, National Curriculum Assessment and Reporting Group

Ms Suzanne Northcott, Branch Manager, National Curriculum Branch, National Curriculum Assessment and Reporting Group

**Outcome 3—Tertiary, Youth and International**

Ms Margaret McKinnon, Group Manager, Youth and Industry Skills

Ms Katy Balmaks, Branch Manager, Infrastructure and Connections Branch, Youth and Industry Skills Group

Mr Daniel Owen, Branch Manager, Office for Youth, Youth and Industry Skills Group

Ms Robyn Priddle, Branch Manager, Foundation Skills and Pathways, Tertiary Skills and Productivity Group

Ms Donna Griffin, Branch Manager, Australian Apprenticeships, Youth and Industry Skills Group

Ms Jan Febey, Acting Branch Manager, Trades Recognition Australia and ATCS, Youth and Industry Skills Group

Ms Julie Yeend, Assistant Secretary, COAG National Licensing Taskforce, Youth and Industry Skills Group

Mr Robin Shreeve, CEO, Skills Australia, Youth and Industry Skills Group

Ms Fiona Buffington, Group Manager, Higher Education Group

Ms Jennifer Chadwick, Branch Manager, Policy and Stakeholder Engagement Branch, Higher Education Group

Mr Jason Coutts, Branch Manager, Equity Performance and Indigenous Branch, Higher Education Group

Ms Susan Bennett, Branch Manager, Funding and Student Support Branch, Higher Education Group

Ms Julie Randall, Branch Manager, Education Investment Fund Branch, Higher Education Group

Ms Catherine Vandermark, Branch Manager, Quality Branch, Higher Education Group

Mr David Syme, Director, Equity Performance and Indigenous Branch, Higher Education Group

Ms Jennifer Taylor, Group Manager, Tertiary Skills and Productivity Group

Ms Nicky Govan, Branch Manager, National Resources Sector Employment Task Force, Tertiary Skills and Productivity

Ms Hilary Riggs, Acting Branch Manager, Higher Level Skills Branch, Tertiary Skills and Productivity Group

Ms Maryanne Quagliata, Branch Manager, Skills Quality Branch, Tertiary Skills and Productivity Group  
Ms Linda White, Branch Manager, Industry Engagement Branch, Tertiary Skills and Productivity Group  
Ms Christine Dacey, Branch Manager, Youth Industry and International, Tertiary Skills and Productivity Group  
Mr Tony Fernando, Branch Manager, Workforce Development, Tertiary Skills and Productivity Group  
Mr Neil McAuslan, Branch Manager, Policy, Funding and Performance, Tertiary Skills and Productivity Group  
Mr Colin Walters, Group Manager, International Group  
Ms Linda Laker, Branch Manager, International Student Task Force, International Group  
Mr Scott Evans, Branch Manager, North Asia, Americas and Middle East, International Group  
Ms Di Weddell, Branch Manager, Strategic Engagement Scholarships, International Group  
Ms Tulip Chaudhury, Branch Manager, International Quality, International Group  
Mr Vipin Mahajan, Branch Manager, Strategic Engagement Scholarships SSEA, International Group

**Outcome 4—Employment and Strategic Policy**

**Outcome 5—More Productive and Safer Workplaces**

Ms Michelle Baxter, Group Manager, Safety and Entitlements Group  
Ms Flora Carapellucci, Branch Manager, Safety and Compensation Policy Branch, Safety and Entitlements Group  
Mr Derren Gillespie, Assistant Secretary, Remuneration Tribunal Secretariat, Safety and Entitlements Group  
Mr James Hart, Branch Manager, Employee Entitlements Branch, Safety and Entitlements Group  
Ms Helen Marshall, Federal Safety Commissioner, Office of the Federal Safety Commissioner, Safety and Entitlements Group  
Ms Michelle Boundy, Director, Safety and Compensation Policy Branch, Safety and Entitlements Group  
Mr James Smythe, Acting Group Manager, Workplace Relations Implementation Group  
Ms Jody Anderson, Branch Manager, Private Sector Branch, Workplace Relations Implementation Group  
Ms Helen Bull, Branch Manager, Public Sector Branch, Workplace Relations Implementation Group  
Mr Jeff Willing, Branch Manager, Building Industry Branch, Workplace Relations Implementation Group  
Ms Kate Driver, Branch Manager, Implementation Taskforce, Workplace Relations Implementation Group  
Ms Sandra Parker, Group Manager, Workplace Relations Policy Group  
Ms Colette Shelley, Assistant Secretary, Bargaining and Industry Framework Branch, Workplace Relations Policy Group  
Mr Mark Roddam, Assistant Secretary, Wages Policy and Economic Analysis Branch, Workplace Relations Policy Group



Mr Stewart Thomas, Assistant Secretary, Strategic Coordination Branch, Workplace Relations Policy Group  
Ms Fiona O'Brien, Acting Branch Manager, Fair Work Framework Branch, Workplace Relations Policy  
Mr Paul Dwyer, Director, Fair Work Framework Branch, Workplace Relations Policy  
Ms Sharon Huender, Director, Fair Work Framework Branch, Workplace Relations Policy  
Mr Jeremy O'Sullivan, Acting Chief Counsel, Workplace Relations Legal Group  
Mr David Bohn, Assistant Secretary, Safety Net Branch, Workplace Relation Legal Group  
Mr Peter Cully, Assistant Secretary, Building, Organisation and Protections Branch, Workplace Relation Legal Group  
Mr Henry Lis, Assistant Secretary, Bargaining, Safety and Compensation Branch, Workplace Relation Legal Group  
Ms Elen Perdikogiannis, Assistant Secretary, National System and Legislation Team, Workplace Relation Legal Group

**Comcare**

Mr Paul O'Connor, Chief Executive Officer  
Mr Steve Kibble, Deputy Chief Executive Officer

**Fair Work Ombudsman**

Mr Nicholas Wilson, Workplace Ombudsman  
Ms Natalie James, Chief Counsel, Legal and Advice  
Mr Michael Campbell, Executive Director, External Affairs Branch  
Mr Mark Scully, Chief Financial Officer, Finance Branch  
Mr Bill Loizides, Group Manager—South West, Field Operations Branch  
Mr Alfred Bonggi, Group Manager, Customer Service Branch  
Ms Ann Smith, Executive Director, Process Innovation and Knowledge Services Branch  
Ms Janine Webster, Executive Director, National Litigation Practice

**Australian Building and Construction Commission**

The Hon. John Lloyd, Commissioner  
Mr John Draffin, Assistant Commissioner Operations  
Mr Ross Dalgleish, Deputy Commissioner Legal  
Ms Heather Hausler, Assistant Commissioner Corporate  
Mr John Casey, Chief Financial Officer

**Fair Work Australia**

The Hon. Geoffrey Giudice, President  
Mr Tim Lee, General Manager  
Mr Brendan Hower Director  
Mr Dennis Mihelyi, Director  
Mr Terry Nassios, Director  
Ms Bernadette O'Neill, Director

**Safe Work Australia**

Mr Rex Hoy, Group Manager  
Ms Amanda Grey, Branch Manager, Policy and Strategic Services Branch  
Mr Drew Wagner, Branch Manager, Regulations  
Ms Michelle Cullen, Director, Policy and Strategic Services Branch

Ms Justine Ross, Acting Branch Manager, Legal Policy Branch

Mr Wayne Creaser, Assistant Secretary, Research Data Branch

**Australian Curriculum, Assessment and Reporting Authority**

Dr Peter Hill, Chief Executive Officer

Professor Barry McGaw, Chair

**CHAIR (Senator Marshall)**—I open this public hearing of the Education, Employment and Workplace Relations Legislation Committee. On behalf of the committee I wish to acknowledge the traditional owners and custodians of the land on which we meet today and pay my respects to their elders, both past and present. The Senate has referred to the committee the particulars of proposed additional expenditure for 2009-10 and related documents for the Education, Employment and Workplace Relations portfolio. The committee has set Thursday, 1 April as the date by which answers to questions on notice are to be returned. Under standing order 26, the committee must take all evidence in public. This includes answers to questions on notice. Officers and senators are familiar with the rules of the Senate governing estimates hearings. If any officers need assistance, the secretariat has copies of these rules.

I particularly draw the attention of witnesses to an order of the Senate of 13 May 2009, specifying the process by which a claim of public interest immunity should be raised, and which I now incorporate in *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).

(Extract, Senate Standing Orders, pp 124-125)

**CHAIR**—The committee will begin today's proceedings with Cross Portfolio, and will then follow, in general terms, the order as set out in the circulated program. Proceedings will be suspended for breaks generally as indicated on the program.

[9.01 am]

### **Cross Portfolio**

**CHAIR**—I welcome the minister representing the Minister for Education, Employment and Workplace Relations, Senator the Hon. Mark Arbib and the departmental secretary, Ms Lisa Paul, and other officers of the department. Minister, would you like to make an opening statement to the committee?

**Senator Arbib**—No, that is fine.

**CHAIR**—Ms Paul?

**Ms Paul**—No, thank you, Chair.

**CHAIR**—On that basis, we will go to questions in the Cross Portfolio area, and I believe Senator Mason is seeking the call.

**Senator MASON**—Thanks, Chair, and good morning Minister, Ms Paul, officers. I will be very brief this morning. I think we will share some more time tomorrow together. I have some questions on AusTender, and I think, Ms Paul, that there are four contracts I want to ask about. I understand the numbers have been relayed to the department.

**Ms Paul**—Thank you. They have, Senator.

**Senator MASON**—If you could just quickly go through them.

**Ms Paul**—Yes, we should be able to go through each one for you.

**Senator MASON**—Pretty quickly? Okay. Could we just quickly then go to 241314?

**Ms Paul**—Yes.

**Senator MASON**—It is for \$73,920, and it says it is for ‘the procurement of reference publications and other such resources’. What is that about? Can you, perhaps, expand on that, Mr McDonald?

**Mr McDonald**—Senator Mason, Mr Johnson will handle that particular one.

**Senator MASON**—Mr Johnson, good morning.

**Mr Johnson**—The contract is actually to secure reference material to access a building and construction index. It is part of an information provision service for the Office of the Federal Safety Commissioner, and we engage the services of a third party to access information under a national building and construction database.

**Senator MASON**—Is this for books, or for a database or for software?

**Mr Johnson**—No, it is actually to access information on a national database about building and construction projects.

**Senator MASON**—This would be in relation to potentially what has been happening under the Building the Education Revolution, for example, or some other.

**Mr Johnson**—My understanding is that it relates principally to a function of the Office of the Federal Safety Commissioner about administering an OH&S scheme in the building and construction sector.

**Senator MASON**—All right. Thank you, Mr Johnson. The next one, Ms Paul, is 243663. It relates to education training services. The description is:

Education and personal development program for young people aged 13 to 19 years.  
It relates to lifting educational outcomes.

**Mr McDonald**—That would be me, Senator.

**Senator MASON**—That is you, Mr McDonald? What is that about?

**Mr McDonald**—This is an outreach program that has been in place since 2002. In relation to this particular proposal there was an RFT conducted in 2006 where there were 60 service regions where support would be provided. This is particularly for people or kids in that age bracket that become disconnected with education, so it is about tailoring a service to those kids to try and get them to reengage.

**Senator MASON**—What are the services provided? What service is provided by Northern Joblink?

**Mr McDonald**—Northern Joblink. Some of the services that are provided depend on the individual circumstances of the child’s environment, if you like, and some of the support they need to recognise the value that they have and what they can bring forward, in terms of reconnecting with education. So it is about supporting them: life skills support to reengage with the education system.

**Senator MASON**—So counselling?

**Mr McDonald**—Yes, counselling could be one, absolutely. As I say, this program was originally a pilot in 2002 and then it was a full RFT in 2006. Of the 60 regions there were still eight that were not filled and this was one of them. We went out to a select tender and Northern Joblink was selected as part of that to provide that service.

**Ms Paul**—Do you remember the old program called POEM?

**Senator MASON**—No, Ms Paul.

**Ms Paul**—Never mind. So the old program called POEM has been going on for a long time and this is the continuation of it, and it basically attempts to reconnect disengaged young people back with school.

**Senator MASON**—Okay. And is this ongoing?

**Mr McDonald**—No, the contracted ended at the end of 2009 and they are just finishing the reporting between now and March, and there is a new RFT out for continuation of the program that is on foot.

**Senator MASON**—Okay. Can I just now move to contract number 254748. It is for about \$77,000. Provision of education training. Is that you, Mr McDonald?

**Mr McDonald**—That is me, too, Senator.

**Senator MASON**—What does that involve?

**Mr McDonald**—This is an instructional DVD that ACARA.

**Ms Paul**—Australian Curriculum, Assessment and Reporting Authority.

**Mr McDonald**—This is an instructional DVD for the My School website where there has been a DVD produced for schools to explain the site.

**Ms Paul**—We can give you a copy, if you like, or ACARA can give you a copy.

**Senator MASON**—Would that be all right, Ms Paul? I have a copy of it. Has this gone out to all schools?

**Mr McDonald**—I am not sure if it has actually gone yet. I think it has. It is going to all schools and educational authorities. There will be two copies for each school, so they might pop one in the library. It is basically to explain—

**Senator MASON**—The website.

**Mr McDonald**—Yes.

**Senator MASON**—For teachers or for students?

**Mr McDonald**—In the library it would be accessible to parent committees, for example. It would be accessible to teachers and the like. It is just explanatory material, really.

**Senator MASON**—How long does the DVD go for?

**Mr McDonald**—Gee, that is good question. I think probably about 20 minutes, half an hour. I have watched it.

**Senator MASON**—They are expensive, these things, Mr McDonald, aren't they?

**Mr McDonald**—Well, it is a professional product. Senator, I would be interested in what you think, but from my point of view—

**Senator MASON**—It is going out to thousands of schools. That is your point.

**Mr McDonald**—Yes, there are 10,000.

**Senator MASON**—All right. Finally, Mr Chairman, the last contract number 241297. It is for about \$38,000, and it is the provision of mapping services, the Youth Transitions Program maps. Sinclair Knight Merz was the supplier. What is that about? Mr McDonald, is that yours?

**Mr McDonald**—Yes, Senator. That is a map that was developed for 113 service regions for Youth Attainment and Transitions. So there was an RFT that went out to the public. Those transitions service regions are all mapped, so they needed to be professionally mapped. There were 113 maps, 113 different regions. They were prepared and professionally put in the RFT that went out into the public for tender.

**Senator MASON**—And the job is finished, in effect?

**Mr McDonald**—Yes.

**Senator MASON**—Has it been done before?

**Mr McDonald**—Yes, it has. It has been done previously, and in terms of the value for money, that is about the right cost for a map of that kind. It was a direct source, so under our tender arrangements it was about \$38,000 or \$39,000. We had had work previously done by this company and it had been quality work.

**Senator MASON**—Thanks, Mr McDonald. Thank you, Chair.

**CHAIR**—Thank you. Senator Cormann.

**Senator CORMANN**—Thank you, Mr Chairman. Just a few questions in the Cross Portfolio section around the stimulus package. The minister, on taking on the job, told a *Lateline* interview that most of his jobs is related to the stimulus package, so I assume that the department provides advice to the minister to support him in that role?

**Ms Paul**—Yes. Our role in the stimulus package is particularly through Building the Education Revolution.

**Senator CORMANN**—Sorry?

**Ms Paul**—I am sorry; our role in the stimulus package delivery is particularly through Building the Education Revolution, and so in that regard we would advise the Deputy Prime Minister and also the minister.

**Senator CORMANN**—So did you provide any input when the original sort of stimulus package was put together as to the scale, as to how it should be structured to have the best possible impact on employment?

**Ms Paul**—No, that was not our role. Our role has been to deliver the Building the Education Revolution.

**Senator CORMANN**—So your role is, essentially, an implementation role rather than a policy role. Is that so?

**Ms Paul**—Correct.

**Senator CORMANN**—Have you monitored, evaluated or, in any way, formally assessed how successful the stimulus package has been in terms of achieving its objectives from the jobs point of view?

**Ms Paul**—In terms of Building the Education Revolution, yes. The overall responsibility for looking at the economic impact rests with Treasury and they have already identified the overall impact on unemployment avoided and, in terms of jobs in the Building the Education Revolution, we did answer a question on notice in that regard.

**Senator CORMANN**—I am more focused on the Keep Australia Working side of things.

**Ms Paul**—Yes, we can talk about that.

**Senator CORMANN**—So have you conducted any formal evaluation? Have you monitored in any way how successful or unsuccessful it has been?

**Ms Paul**—It is still, of course, ongoing. If you are referring to the priority regions and to a place based approach to Keep Australia Working, which has been our responsibility as well, yes, we are taking an evaluation approach as we go and, in particular, monitoring the changes that happen in each of those priority employment regions. So, for example, there have been job forums in each of those communities and how many jobs have resulted out of those we have kept a track of and so on. So if you would like us to provide some of those things on notice I am happy to do so.

**Senator CORMANN**—That would be very much appreciated.

**Ms Paul**—Sure.

**Senator Arbib**—Senator, could I just make the point as well, just for clarity—

**Senator CORMANN**—I was hoping that you would try—

**Senator Arbib**—Keep Australia Working is not part of the stimulus—just so you know it is not part of the stimulus package.

**Senator CORMANN**—It is not part of the overall stimulus package?

**Senator Arbib**—No, the stimulus package is a \$42 billion package.

**Senator CORMANN**—Okay.

**Senator Arbib**—It is a nation-building and jobs package, which is administered by individual portfolios. I have a coordination role, which is out of the Office of the Coordinator-General—which obviously is Prime Minister and Cabinet. The Keep Australia Working program has got nothing to do with the stimulus package.

**Senator CORMANN**—Minister, excuse me, but it seemed to me that you were feeding just about everything you do into the stimulus package because every second word was about it being all part of the stimulus package and it being creative. But I think it might have been part of some—

**Senator Arbib**—Well, the stimulus package is—

**Senator CORMANN**—I am trying to separate this very clearly, so let us—

**Senator Arbib**—Senator, you are right, in that the stimulus package is the government's main response to the global recession and, as Treasury has outlined, it has supported 210,000 jobs. As the master builders have said, it is supporting 50,000 jobs in the construction sector. If the coalition's plan to roll it back happens we will lost 100,000 jobs.

**Senator CORMANN**—Thank you very much for that 'clarification', Minister.

**Senator Arbib**—You were asking the questions on it.

**Senator CORMANN**—I did not actually ask you a question. I asked Ms Paul a question.

**Senator Arbib**—I am clarifying it for you.

**Senator CORMANN**—So the department's role is more of an implementation role, but you do conduct some assessments, monitoring and evaluation as to how successful it is. You would be aware of the statements by Glenn Stevens making it clear that the stimulus package and the massive spending program are putting enormous pressure on interest rates. And, of course, increasing interest rates will have an impact on jobs. Do you assess the impact of interest rates on jobs as part of assessing the success of the stimulus package?

**Ms Paul**—No, we do not. The overall role as to that would rest with Treasury.

**Senator CORMANN**—So, essentially—

**Senator Arbib**—Nor did the Governor of the Reserve Bank say that, Senator. That is your interpretation, not his.

**Senator CORMANN**—In assessing the success or otherwise of the stimulus package if you do not take into account the degree to which it puts upward pressure on interest rates, you do not really have a full picture of the impact of the stimulus package on jobs, do you? You really have got a very narrow view of the impact on jobs.

**Ms Paul**—Our window on stimulus is particularly through Building the Education Revolution, as I said before.

**Senator CORMANN**—So it is a very specific focus. It does not take the whole picture into account.

**Ms Paul**—In terms of the economic analysis of the whole stimulus package, that is a matter for Treasury.

**Senator CORMANN**—Yes, okay.

**Senator Arbib**—These matters could have been raised with Treasury. I note that with the Office of the Coordinator-General when the coordinator-general people presented themselves to the estimates hearing for Prime Minister and Cabinet, there was not one question from coalition senators. So, again, as Ms Paul has said, the department is involved in the implementation of Building the Education Revolution. That is the aspect of the stimulus package.

**Senator CORMANN**—Minister, it was you who said that most of your job is related to the stimulus package. You would not be surprised as to why I am here to ask questions in your area of responsibility, so I thank you again for that commentary.



**Senator Arbib**—Senator, I do not have a problem with that. What I am trying to do is just clear up a misunderstanding and make sure you understand that the job of this department is as Ms Paul has described.

**Senator CORMANN**—I am very clear about that, Minister. I am very, very clear.

**Senator Arbib**—It did not sound like that.

**Senator CORMANN**—Ms Paul, you would not have any input then into any government decision making around scaling back or scaling up the stimulus spending that currently gets administered through your department? Essentially, you have got a pure implementation role. You do not provide any input in terms of whether stimulus spending should be scaled back?

**Ms Paul**—That is correct. I think it is a matter for government to make those considerations.

**Senator CORMANN**—But do you provide advice assisting the government in making those decisions around whether the stimulus package should be scaled back?

**Ms Paul**—Our advice is basically about the progress of the Building the Education Revolution, so we track very carefully the number of projects, the speed of rollout and so on and we are able to report on that. You see the evidence of those reports through the coordinator-general's regular public reports.

**Senator CORMANN**—If I can summarise, your level of involvement is you are getting—this is to simplify it—a particular budget allocation and you are given some targets: 'Build this much. Roll out that much.' You report back: 'You gave us this much money; mission accomplished' or 'We are still a bit short, but we think we could achieve it by X.' Is that the way you do it?

**Ms Paul**—That is essentially it. We were not given targets. We were given a national partnership, signed by all the premiers and the Prime Minister through COAG, which had a key performance indicator in it and so on. But I think your characterisation is pretty fair.

**Senator CORMANN**—Was the department given any employment participation related performance indicators?

**Ms Paul**—The performance indicator in the national partnership as to Building the Education Revolution was the number of projects.

**Senator CORMANN**—I suspect what you are saying is no.

**Ms Paul**—I think we have reported on economic participation, as I said, and there is a question on notice which goes into that.

**Senator CORMANN**—That is a very different question. I understand that the government is, from time to time, rolling out figures obviously for politically purposes. My question was much more specific than that. Were you given, as part of the stimulus package and the funding allocation given to your department, employment participation performance targets?

**Ms Paul**—In terms of numbers of jobs and so on, do you mean?

**Senator CORMANN**—Yes.

**Ms Paul**—That is not actually possible because it was not possible to predict entirely how many jobs would be created. But Treasury is able, through the amount of activity that goes on, to come out with its estimates. It did not make much sense for the implementer to be given a target because that is up to the nature of construction. But Treasury certainly has been able to estimate, given the amount of activity—

**Senator CORMANN**—So you are answering for Treasury now?

**Ms Paul**—I am sorry?

**Senator CORMANN**—You are answering for Treasury now?

**Ms Paul**—I hope not. I am just saying that they have already come out publicly and said this.

**Senator CORMANN**—If you can leave Treasury to Treasury, and what I am understanding you to say is that you were given some activity targets but you were not given outcome targets as far as employment participation impacts were concerned.

**Ms Paul**—In terms of the estimates of the amount of unemployment avoided and so, that is a matter for Treasury.

**Senator CORMANN**—So you were given activity targets like ‘Build that many houses’, ‘Put that much into schools’ or ‘Build that many school halls’? You were not given any targets in terms of what it was meant to do in terms of employment?

**Ms Paul**—The targets were more in terms of the amount of funding per project and so on. You could get a feel for the likely number of projects from the funding available and so on, but there were not particular targets because, of course, the whole point of the stimulus measure was to maximise activity. You would not actually want to have particular caps on them; you would actually just want to go for it and try to maximise construction, and that is what has happened.

**Senator CORMANN**—Thank you, Ms Paul. Minister, a question to you: what level of involvement will you have, as Minister for Employment Participation, in making a recommendation to the government as to whether or not the stimulus spending should be scaled back?

**Senator Arbib**—They are matters for Treasury. In terms of the stimulus, though, as has been put forward, the stimulus is already phasing down. As you saw, the First Home Owner Grant was phased out in December. You had the change in terms of the business investment allowance. That has been phased out. And, as was announced last week, we are 12 months into the Nation Building and Jobs Program and we are already through something like 31,000 projects that have been approved.

**Senator CORMANN**—All right, so it is the responsibility of Treasury. So I assume what you are saying is that you will not have any involvement and you are telling me that it has already scaled back to a certain degree, which was part of the original construct, as you have previously said.

Now, most of your job relates to the stimulus package. Half the stimulus spending is not yet spent. There are clearly some concerns emerging from the Governor of the Reserve Bank, who always couches his words very carefully. Minister, if rising interest rates will have a

detrimental impact on jobs to an extent beyond any positive impact that might come out of the stimulus package, will you go to the Prime Minister or will you go to the Treasurer and ask for the stimulus to be scaled back in the interest of Australian jobs?

**Senator Arbib**—Well, Senator Abetz—sorry—Senator Cormann; I know you two are very similar.

**Senator CORMANN**—I could say something here about the minister, the chairman and the senior shadow minister.

**Senator Arbib**—Master and apprentice!

**CHAIR**—I think, Minister Arbib, you have given both Senator Cormann and Senator Abetz grounds to sue you.

**Senator Arbib**—In terms of the stimulus—and I think you are aware of this because it has been made plain on a number of occasions and I have just gone through this—the stimulus, when it was put together, was put together in a way so that it phased down so that it would not have inflationary impacts, and that is taking place right now as we complete projects. That was the strategy. We are supporting 210,000 jobs. The master builders recently put out a release, Senator—and I know you have heard this because I have raised it in the chamber many times—saying we are supporting 50,000 jobs in the construction sector. There is capacity in the economy at the moment—and that has been made clear—and, in terms of construction and what we are doing at the moment, 70 per cent of the stimulus is infrastructure. We are talking about the productive capacity of the country, and that should have a long-term impact to drive down inflation because we are talking about not just the schools program but also roads. There are 14 major road projects.

**Senator CORMANN**—Minister, you are not actually answering my question.

**Senator Arbib**—There are 17 major rail projects.

**Senator CORMANN**—You are rattling off your talking points and your press releases, and I understand why you are doing it. You say that was the strategy but we now have the Governor of the Reserve Bank starting to come out and express concern.

**Senator Arbib**—I reject that is what he is doing.

**Senator CORMANN**—Clearly, increasing interest rates will have an impact on jobs. Your stimulus package is designed supposedly to protect jobs. If rising interest rates will be having a worse impact on jobs and the stimulus package cannot protect them, will you go to the Prime Minister or the Treasurer and recommend that the stimulus package be scaled back? You talk about what was the strategy. If the facts change, do you change your advice? Do you change your attitude? Ms Paul has told us that there are actually no performance targets around jobs. As for the job figures that you are mentioning, I do not know where you pull them from.

**Senator Arbib**—I am giving you Treasury figures.

**Senator CORMANN**—Minister, as the Minister for Employment Participation, so as the minister with the responsibility for jobs, if the stimulus package is found to have a counterproductive effect because it puts upward pressure on interest rates, will you go and see the Prime Minister and the Treasurer and urge them to scale back the stimulus package?

**Senator Arbib**—I think the premise of your question and the way you have used comments from the Governor of the Reserve Bank are not correct, therefore I reject the question on that basis. But, as I have said in the chamber on a number of occasions, if you look at issues like the Jobs Fund, the issue of skills and flexibility and recalibrations—and, again, I refer you to the Office of Coordinator-General report that goes over the 12 months—there have been occasions when we have spoken to industry and they have talked to us about capacity issues and we have provided flexibility, either through the Building the Education Revolution or other parts of this stimulus, to ensure that we put downward pressure on costs. I know this will be something that will be discussed tomorrow in the Building the Education Revolution section of this estimates but on one occasion the Victorian government did re-tender part of their schools package to ensure they got best value for money and at the same time to ensure that costs were reduced.

So we do take decisions at the governmental level to ensure that the stimulus does not put pressure on interest rates or costs. At the same time as that, after talking to business, we had a very good look at the figures for apprentices—I am sure you would be very interested in this, given apprenticeships is part of your portfolio—and we noticed that over 12 months apprenticeship commencement numbers had dropped by 10,000, or close to 25 per cent, and we were able to reconfigure the Jobs Fund, which is part of the overall stimulus package. We were able to reconfigure that to put in place Apprentice Kickstart in an attempt to try and support 21,000 apprentices, which will build the future capacity of the country, creating tradespeople for the future and putting downward pressure on inflation.

**Senator CORMANN**—It is great how you can feed those talking points in again and again, Minister. I really admire you for that.

**Senator Arbib**—It is in my head, Senator.

**Senator CORMANN**—That must be the Sussex Street training: just bring those talking points out.

**Senator Arbib**—These are the achievements of the government.

**Senator CORMANN**—There was a little pearl in there, Minister. You mentioned how you do make decisions, if I heard you correctly, at the government level to ensure that the stimulus package does not put upward pressure on interest rates. So can you talk us through some of the decisions that you have made to ensure that the stimulus package does not put upward pressure on interest rates since interest rates have been starting to go up?

**Senator Arbib**—I think I have just answered that.

**Senator CORMANN**—You mentioned your talking points on apprentices, but I am talking more about the 50 per cent of the stimulus package that is not yet spent. Have you had any discussions in government and have you made any decisions in government to scale back the stimulus beyond what has already been part of the original announcement, like the stage-back announcement? Have you made any decisions to scale back the stimulus package further in order to avoid upward pressure on interest rates?

**Senator Arbib**—What I have said to you is we have taken decisions in terms of the implementation of projects to ensure that costs were minimised.

**Senator CORMANN**—If I can summarise, you do not actually take a strategic view on jobs; you take a service delivery implementation view on jobs, and the strategic view on jobs is entirely a matter for the Treasurer. That is really what you are saying.

**Senator Arbib**—No. My role, in terms of the stimulus, is government service delivery, which is helping to coordinate the rollout of projects.

**Senator CORMANN**—But, as you are the Minister for Employment Participation, if the stimulus were found to have a counterproductive effect on jobs, because it put upward pressure on interest rates, would that be something that would concern you and you would take action on—or would that not be?

**Senator Arbib**—That is hypothetical.

**Senator CORMANN**—It is not hypothetical. Interest rates are increasing.

**Senator Arbib**—You cannot ask me to be hypothesising on something that is not happening.

**Senator CORMANN**—Let us be very specific. Interest rates have been increasing. The governor of the Reserve Bank has started to make statements about how stimulus spending is putting upward pressure on interest rates.

**Senator Arbib**—No, he is not. That is not true.

**Senator CORMANN**—Have you read the front page of the *Sydney Morning Herald* today, Minister?

**Senator ABETZ**—Your own local paper.

**Senator Arbib**—Yes, and you are interpreting that the way you want to interpret that. It is not the case.

**Senator CORMANN**—So let me ask you a final question then. Put it on record. You are not concerned then, Minister, about the impact of increasing interest rates on jobs. Is that what you are saying?

**Senator Arbib**—No, I am saying to you that your interpretation of the Reserve Bank governor's comments are incorrect.

**Senator CORMANN**—Minister, let us be very clear. Are you or are you not concerned—either/or—about the impact of increasing interest rates on jobs?

**Senator Arbib**—No, I am saying to you, Senator, your whole premise—

**Senator CORMANN**—I am asking you a new question.

**Senator Arbib**—Senator, the premise of your questions were all based on your incorrect interpretation of what the Governor of the Reserve Bank has said. That is my answer.

**Senator CORMANN**—Let us leave the governor aside.

**Senator Arbib**—I am not leaving him aside, because your whole question is based on a false premise.

**Senator CORMANN**—Minister, interest rates have been increasing. Are you or are you not concerned about the impact of increasing interest rates on jobs?

**Senator Arbib**—Senator, I have answered your question.

**Senator CORMANN**—No, you have not.

**Senator Arbib**—Yes, I have answered your question.

**Senator CORMANN**—For the record, the Minister refuses to answer whether he is concerned about increased interest rates.

**CHAIR**—That makes no difference to the record. You can say what you like. It is on the record. The Minister has answered the question in the way he—

**Senator CORMANN**—He has not answered, Mr Chairman.

**CHAIR**—The Minister has answered the question. You may not like the way he has answered the question and it is fair for you to have that view, but that does not change the record.

**Senator CORMANN**—I think it will be the view of the Australian people, Mr Chair.

**CHAIR**—That is also a matter for them.

**Senator Arbib**—They will all remember that you voted against it six times; school after school after school after housing project, you voted against it.

**Senator ABETZ**—They are laughing at you at the cost of each school.

**Senator Arbib**—Is that right, Senator? Obviously, you do not visit many schools, because that is not what they are saying to me.

**Senator ABETZ**—I do, indeed.

**CHAIR**—Senator Cormann, do you have any further questions?

**Senator ABETZ**—No, he has finished.

**Senator CORMANN**—For the time being.

**CHAIR**—Senator Abetz?

**Senator ABETZ**—Thank you, Chair, and welcome to the officers. Let me say how delighted I am to appear at this committee as the actual shadow rather than in a representative role. Can I ask you, Minister, and also the department, whether you agree that the award modernisation process has caused significant confusion and angst amongst workers?

**Ms Paul**—Senator, that is not a Cross Portfolio question. We should probably deal with that under the program as it comes around this evening, under workplace relations, I think. I do not have the people here for that. I have the people here for Cross Portfolio.

**Senator JACINTA COLLINS**—It is outcome 5.

**Ms Paul**—It is outcome 5. That is right.

**Senator ABETZ**—Wait a minute. Outcome 5. Just bear with me.

**Senator JACINTA COLLINS**—Outcome 5 states:

To promote fair and more productive workplaces for employers and employees by promoting and supporting the adoption of fair and flexible workplace arrangements.

**Senator ABETZ**—Yes, but then we have all these subtitles. Where would it fit in under that? It does not.

**Ms Paul**—It would fit under outcome 5.

**Senator ABETZ**—Just general, outcome 5?

**Ms Paul**—It is a workplace relations matter, yes.

**CHAIR**—Generally, we have tended to simply do the outcomes as a block.

**Senator CORMANN**—The initial advice that we received was that it would come under Cross Portfolio because my office checked that too.

**Senator JACINTA COLLINS**—Who gave you that advice?

**Senator ABETZ**—Look, we do not need to lay blame on anybody.

**Senator JACINTA COLLINS**—That is just strange advice. That is all.

**Senator ABETZ**—Both offices got that, but that is by the by. So we cannot talk about award modernisation this morning then?

**Ms Paul**—I think we should probably wait for the relevant officers to join us. That is probably a fair thing.

**Senator CORMANN**—At 10 o'clock at night tonight.

**Senator ABETZ**—10 o'clock?

**Senator CORMANN**—It is very convenient, isn't it?

**Senator ABETZ**—That is very helpful to overcome any embarrassments.

**Senator Arbib**—We did not set the time frame for the committee.

**CHAIR**—I beg your pardon. What do you mean it is convenient?

**Senator ABETZ**—Well, the program is set.

**CHAIR**—We have been able to get through the program in previous years. I am not sure what you mean by that, Senator.

**Senator CORMANN**—I am just making a statement of fact, Mr Chairman.

**Ms Paul**—It is the same order we had last time.

**Senator JACINTA COLLINS**—We are doing employment first and then we are doing workplace relations. It is a time-honoured principle for this committee.

**CHAIR**—I am happy to finish with Cross Portfolio now, and if you want to go to outcome 5 then we have time to do that.

**Senator ABETZ**—Just bear with me. I have got to go through this folder then.

**CHAIR**—Then, really, the timing is in your hands.

**Senator ABETZ**—So the powers of the ABCC and the legislation that is currently before the parliament, where should that be asked?

**Ms Paul**—Outcome 5.

**Senator ABETZ**—My Cross Portfolio could be very brief then.

**Senator JACINTA COLLINS**—Although, Senator Abetz, we do have the Office of the ABCC as an agency earlier.

**Senator ABETZ**—Yes, but they cannot talk about the change.

**Senator JACINTA COLLINS**—No, that is right.

**Senator ABETZ**—I suppose they might have their independent assessment of the legislation, but in relation to what the minister may or may not be able to do under those amendments, that would need to come up under outcome 5, Ms Paul.

**Ms Paul**—That is probably better for us, I think.

**Senator ABETZ**—The appointment of the Minimum Wages Panel?

**Ms Paul**—Likewise.

**Senator ABETZ**—So if I were then to ask about whether or not you have got any advertising campaigns scheduled, is that a Cross Portfolio matter?

**Ms Paul**—It is, Senator?

**Senator ABETZ**—It is. I finally got something. Any advertising campaigns proposed?

**Mr McDonald**—Senator, not to my knowledge, no. We have not at this point.

**Senator ABETZ**—Not to your knowledge? Minister, what about to your knowledge? Is there something that you have not told the department yet?

**Senator Arbib**—No.

**Ms Paul**—No, there are none.

**Senator ABETZ**—The answer is no? Possibly if you could take on notice staff numbers, things of that nature. That is Cross Portfolio as well?

**Ms Paul**—Sure. Happy to. Yes, it is.

**Senator ABETZ**—Staff numbers, the increase of decrease in the staff numbers, staff turnover, and whether there has been any higher staff turnover in any particular area, and rates of absenteeism over the last two years.

**Ms Paul**—Sure.

**Senator ABETZ**—Thank you. I think I will put a lot of other questions there on notice. What about questions about building an older workforce? Outcome 5?

**Ms Paul**—That is probably outcome 4, which we will do after the agencies.

**Senator ABETZ**—In that case, that is Senator Cormann's area. I will pass that on to you, because it is one of those rare occasions where I might actually say there is a kernel of some sense in what the CFMEU is saying about the need for an older workforce and I wanted to explore that, but I might not be around. So I will hand that over to Senator Cormann. I think that does me. In that case, what have we scheduled for outcome 5, time wise, this evening, because I think the indicative timings were—

**CHAIR**—I do not have indicative timings. If you have organised your program on that, that is good. I encourage that.



**Senator ABETZ**—We will need to now reconfigure because the Cross Portfolio is virtually dead now, and we will have to revisit this folder in outcome 5. Believe it or not, I think we will take more than an hour to get through it.

**Senator JACINTA COLLINS**—Senator Abetz, can I suggest that you consult with Senator Cash about overall opposition questioning to make sure that we allow you the time you want?

**Senator ABETZ**—We will do that during the morning tea break. That is all good.

**CHAIR**—Have we concluded Cross Portfolio?

**Senator ABETZ**—Yes. Let us go to Comcare.

**CHAIR**—Thank you, officers for Cross Portfolio. We will now move to agencies.

[9.40 am]

#### Comcare

**ACTING CHAIR (Senator Cash)**—The committee welcomes people from Comcare. Do you have an opening statement that you wish to make?

**Mr O'Connor**—No, Senator.

**ACTING CHAIR**—We will go straight to questions. Senator Abetz.

**Senator ABETZ**—Thank you, and welcome to officials from Comcare. Can I ask how many applications seeking a declaration under section 100 of the Safety, Rehabilitation and Compensation Act for self-insurance were on foot in December 2008 when the minister announced the moratorium?

**Mr O'Connor**—Senator, that is a matter that needs to be addressed by the department because the applications are initially to the department for ministerial assessment, and they are then passed to the Safety, Rehabilitation and Compensation Commission. It is a two-stage process.

**Senator ABETZ**—How many were with you at the time of the moratorium? Do you have any say in whether or not a declaration is made?

**Mr O'Connor**—No, that is with the department and the minister.

**Senator ABETZ**—So you only administer once a declaration is made?

**Mr O'Connor**—Correct, and that is done by us on behalf or through the Safety, Rehabilitation and Compensation Commission.

**Senator ABETZ**—Right. So there are some more questions for Cross Portfolio in outcome 5. Thank you. When were you advised of the minister's moratorium?

**Mr O'Connor**—I believe the moratorium was announced in December of 2007, but I will take that on notice to confirm the exact date.

**Senator ABETZ**—I think you are right, because we are talking 18 months. Yes. Legislation was passed in relation to this moratorium. Did you have any input in relation to that?

**Mr O'Connor**—No, that is a government initiative with regard to the—

**Senator ABETZ**—And you were not asked your views or asked to make a submission in relation to that?

**Mr O'Connor**—That is correct.

**Senator ABETZ**—Right. Thank you. Have you had any discussions with current self-insurers to ascertain their views about moving back to state OH&S jurisdictions?

**Mr O'Connor**—Yes, Comcare facilitates a forum of licensed self-insurers on a regular basis. At the last forum meeting in December, the issue was canvassed by the licensees, and the attendees received a presentation from the department about that policy decision. Later this week, we are facilitating a workshop with self-insurers, as their regulator, to look at the logistics and ideas that they may have about how that proposed transfer might work.

**Senator ABETZ**—Are you able to tell us, out of those who wanted—if I can use the term—‘cover under Comcare’, how many were there?

**Mr O'Connor**—At the forum?

**Senator ABETZ**—No, sorry. How many have received a declaration on the books, as we speak?

**Mr O'Connor**—There are 29 licensees. If I understand—

**Senator ABETZ**—Yes, 29 licensees. That was the term I was looking for.

**Mr O'Connor**—Yes.

**Senator ABETZ**—Out of those 29 licensees, are you able to tell us how many are based in New South Wales?

**Mr O'Connor**—Headquartered in New South Wales? I will take that on notice, Senator. Is that what you mean by ‘based’?

**Senator ABETZ**—Yes.

**Mr O'Connor**—Yes.

**Senator ABETZ**—Because we have, of course, that excellent decision from the High Court in the Kirk case, dealing with that notorious piece of New South Wales legislation, and I was just interested to see how many there were—27, 29?

**Mr O'Connor**—Twenty-nine, Senator.

**Senator ABETZ**—Twenty-nine licensees might be thrown back into the mess of New South Wales, but I do not expect you to comment on that.

**Mr O'Connor**—Except I should clarify, Senator, it is not a function of their headquarters; it is a function of workplaces that are in New South Wales.

**Senator ABETZ**—Sorry, of what?

**Mr O'Connor**—Of workplaces in New South Wales, is the—

**Senator ABETZ**—Right. In that case, can you tell us, from the 29 licensees, how many of them have workplaces in New South Wales?

**Mr O'Connor**—Yes, we can do that on notice, Senator.

**Senator ABETZ**—Thank you. Does Comcare have any views or anything to share with us about what appears to be the ever-increasing problem of bullying in the workplace? Are you able to share any figures with us from your covering as to the cost of that? I think we just had a Productivity Commission report suggesting it might be costing \$15 billion per annum? It seems a huge problem within our workforce, and I was just wondering whether you had any views.

**Mr O'Connor**—Yes, Senator. I can confirm that the Productivity Commission's draft report—

**Senator ABETZ**—Draft, you are correct.

**Mr O'Connor**—has been released for comment. In one of its chapters it looked at psychosocial problems, and it addressed and examined the different approaches around Australia in the different jurisdictions—federal, state, and territory—with regard to the impact of disease claims, we say, as opposed to injury claims, and especially those that relate to bullying as a subset of overall stress incidents. The Productivity Commission's draft report analysed the different approaches taken in those states and territories and in the Commonwealth. The recent decision in Victoria highlights and sends a very strong message to the Australian community and to employers about the importance that employers and colleagues at the workplace have to keep a focus on making sure that not just the health but the welfare of people at the workplace is kept as a priority and a focus. In the Comcare jurisdiction, we have been quite active in promoting an understanding and improving the effectiveness of workplace initiatives to identify when there is a risk of bullying, when those incidents occur, and the reporting and the response to that.

**Senator ABETZ**—How do you do that? Do you just send a bit of paper around? Do you have officers that visit workplaces? How do you achieve that?

**Mr O'Connor**—The approach that Comcare has taken in the federal jurisdiction was that, in 2007-08, we initiated a major targeted investigation into workplace bullying. Twenty-eight worksites around Australia across 14 employers, and we focussed in this proactive initiative to look at five particular indicators as to whether or not the appropriate systems and processes were in place in those workplaces, with those employers and with those workforces, about workplace bullying.

**Senator ABETZ**—Was that a 24-month project? You said 2007 to—

**Mr O'Connor**—It was a 12-month project, Senator.

**Senator ABETZ**—Starting when?

**Mr O'Connor**—I would need to give you the precise date in 2007, but in that financial year, that was a—

**Senator ABETZ**—So financial year 2007-08, just roughly?

**Mr O'Connor**—Correct.

**Senator ABETZ**—With the payouts, have you seen an increase for the psychosocial, if you like, as opposed to the old—

**Mr O'Connor**—Injury claims.

**Senator ABETZ**—Yes, the strained back or whatever else the actual physical injury is. Whilst I accept that physical injuries often do have psychosocial impacts as well, if it is not too artificial a delineation, with those that at least had their genesis in a physical injury as opposed to those that we might call the psychosocial, what is the divvy-up between them?

**Mr O'Connor**—Across the Comcare scheme, both for self-insurers and premium-paying agencies in the ACT government that we regulate, and also the ADF from a workplace health and safety perspective, we do make a distinction between what we call 'injury claims' and 'disease claims'. These type of issues that arise in harassment and bullying cases are a subset of that. What we have seen over the last five years with regard to federal workplaces—that is, Commonwealth government workplaces—is a decline in the number of claims that have been received that relate to work related harassment or workplace bullying. In the calendar year 2009 we saw almost 50 of those claims being assessed and processed in the Commonwealth jurisdiction. That is certainly a substantial reduction on earlier years. We see that as the result of a mixture of greater awareness in federal workplaces, a greater skilling on the part of federal employers in terms of line managers and people in federal workplaces to understand that is the case, and also the encouragement by the Australian Public Service Commission to focus on the APS values and for people to feel free to speak up and have these matters addressed.

**Senator ABETZ**—You might be too modest to acknowledge the impact of your 2007-08—what do I call it?—information campaign.

**Mr O'Connor**—It was a targeted investigation. We hope it had some impact in awareness building and we have been following that through in our normal regulatory interventions. In the last calendar year, up until 31 December, we became aware of just over 40 events that were assessed for a potential breach of the federal occupational health and safety legislation.

**Senator ABETZ**—On the classifications of the psychosocial: we have not changed the definition or categorisation of that over recent years like state governments have with waiting lists? They just reclassify and, all of a sudden, the waiting list is halved. We have not had that sort of situation, which may potentially provide us with these good-looking figures of what seems to be—and I welcome it—a substantial decline in the bullying/harassment type activities?

**Mr O'Connor**—I cannot comment on the state sector, but certainly, as far as I am aware, there has been no change in the coding. The injury coding that we use has been consistent over this period of time.

**Senator ABETZ**—Excellent. Thank you.

**CHAIR**—Senator, can I just follow up on that, if you do not mind?

**Senator ABETZ**—Yes, of course.

**CHAIR**—I thought there was legislation introduced in recent years—well not recent years; it was under the previous government—which actually did redefine the definition of 'disease' and the ability to actually make claims under these areas?

**Mr O'Connor**—That is correct. There were amendments to the legislation in 2007. My answer related to the Senator's question about changing the coding of that. But there certainly

was a change in the legislative environment that addressed the impact of broadly stress related claims, and certainly excluded from compensation those types of claims where it was a result of reasonable management action.

**CHAIR**—Could that have impacted upon the results that you were quoting?

**Mr O'Connor**—That certainly is possible, and that is one of the categories of analysis that the Productivity Commission looked at in terms of trying to understand the points of difference between states and territories and the Commonwealth schemes in terms of the way the rules apply. These matters will be, of course, covered under the new model work health and safety laws that the workplace relations ministers have agreed to.

**CHAIR**—Sure. Sorry to interrupt, Senator Abetz.

**Senator ABETZ**—It was a very good question. Can I ask in relation to the psychosocial category: can we bring that down further between—once again, I trust this is not an artificial delineation—bullying and what we might call harassment/sexual harassment? I would be interested to know whether the sexual harassment issues that you are confronted with have either increased or decreased. In that total data set, I am just wondering whether bullying may have increased but sexual harassment decreased, which has seen an overall decrease in the numbers but nevertheless bullying is on the rise, or vice versa—bullying might be on the decrease but sexual harassment on the increase but the overall number is still decreasing. Can you shed some light on that for us?

**Mr O'Connor**—Yes, I will take that on notice to give you the breakdown, but certainly the mental disease claims are broken up through a coding mechanism. As I have mentioned before, that coding structure has not changed, and there is a category for work related harassment and/or workplace bullying. There is a separate injury code for other harassment, which might be racial vilification, it might be sexual or it might be violence. It does highlight the difficulty, to make sure that we have a clear understanding of the different injury coding, but I am happy to report back and provide on notice the breakdown and the history over the last few years across our jurisdiction within the categories of mental disease claims.

**Senator ABETZ**—If you could do that for me, I would be much obliged. Thank you.

**Mr O'Connor**—You are welcome.

**CHAIR**—I just want to come back to some of the questions I asked at the last estimates in relation to the five per cent superannuation deduction for injured workers. Can you just clarify for me once again why that deduction takes place?

**Mr O'Connor**—I will defer to my colleague, Mr Kibble, for continuity of discussion for the answer to that, if you are comfortable with that.

**CHAIR**—Maybe I will give you some information I would like you to address directly, because you have broadly described it on a number of occasions to me now. I just do not want to be repetitive. Can I ask you to consider this when answering it this time: whether or not the deduction is meant to be an incentive for people to return to work?

**Mr Kibble**—In terms of the policy rationale, we can attempt to provide some insight into that, but our main role is to administer and explain. That is perhaps a matter you can take up with our colleagues in outcome 5.

**CHAIR**—Yes, I intend to, but Comcare have told me on a number of occasions—I thought, and I just wanted to be very clear—that it was purely a matter of applying a formula. You gave some policy rationale for why the formula was there. I had never ever heard before that it was in fact an incentive to people who have been permanently injured and disabled and who are unable to ever return to work and are therefore superannuated out, as if somehow punishing them by reducing their benefits by five per cent would act as an incentive for them to somehow miraculously return to the workforce. That policy rationale has been forwarded to me by one of your colleagues in outcome 5, which I will get to. I just wanted your view once again of the policy rationale for the reduction of the benefit to permanently injured workers by five per cent.

**Mr Kibble**—As I have said before, one of the effects of the five per cent notional deduction is that it does put a retired—

**CHAIR**—It is not actually a notional deduction; it is a real deduction.

**Mr Kibble**—Sorry. Yes, it is a real deduction, but its effect is to put the retired person in the same place as a person who is still in employment. They are both getting incapacity payments under the workers compensation legislation. So the effect of the five per cent deduction is that it does put them in the same place.

**CHAIR**—Except that those who are getting the five per cent deducted and put into a superannuation fund get the benefit of that five per cent upon retirement.

**Mr Kibble**—As I mentioned last time, for the people who are still in work the employer is required to make superannuation payments on their behalf and also the employee is required to make payments. The difference with the retired person is that they have actually accessed their superannuation benefit.

**CHAIR**—Why is the five per cent deduction based at their old pre-injury rate? In actual fact, it is larger than the five per cent deduction, is it not, because the five per cent is at their pre-injury calculation? And that is then deducted in totality from their post-injury earnings. It is quite a substantial amount. That is the point I am making. It certainly is more than five per cent of a deduction in terms of the money they get in their pocket.

**Mr Kibble**—Just to clarify, if you are going to the outcome of the formula as a whole, certainly the five per cent is part of the calculation. Also part of the calculation is that the formula imputes an income stream to the retired person. They have accessed their superannuation benefit. They have taken it in a pension or in a lump sum or indeed in some combination of a lump sum and a pension. And there are three formulas in the legislation that take into account that they are getting an income stream. So the five per cent comes off and also the income stream. They are deemed to have earned income from the superannuation payment.

**CHAIR**—In your experience in administering Comcare, have there ever any examples where the five per cent reduction in benefit has miraculously cured someone of their permanent injuries to enable them to return to work?

**Mr Kibble**—I would have to take that one on notice. I would have to look at individual cases.

**CHAIR**—Have you had any experience where you could say that, again, the reduction in benefit for permanently injured people has in any way encouraged people to return to work?

**Mr Kibble**—We can certainly have a look at that.

**CHAIR**—Whether it be miraculous or not.

**Mr Kibble**—We can certainly have a look at that.

**CHAIR**—Could you take that on notice for me. Are there any other questions on Comcare? All right. Thank you, Mr O'Connor and Mr Kibble.

**Mr O'Connor**—You are welcome.

[10.03 am]

### **Fair Work Ombudsman**

**CHAIR**—Welcome, Mr Wilson, and to your officers. Do you have any opening remarks you would like to make to the committee?

**Mr Wilson**—No, Chair.

**CHAIR**—If not, we will go straight to questions.

**Senator ABETZ**—Welcome, Mr Wilson. Can I commence by referring to your media release of 5 January 2010, please. In it you announced in paragraph 3 that you were making transitional visits. What do you mean by transitional visits?

**Mr Wilson**—I do not have that media release with me, but from recollection it was talking about the transitional educational visits that we will be conducting over the next three years throughout the country. The visits are connected with work that we are doing with the four state governments as a result of the state referral of industrial relations powers. The visits themselves, around about half of them, from recollection, will be taken in the current year, 2010.

**Senator ABETZ**—I am not worried about the numbers, just what the term 'transitional visit' means.

**Mr Wilson**—Okay.

**Senator ABETZ**—That you were transiting through or that you were talking about the transitional period of potentially five years that employers might have to deal with.

**Mr Wilson**—Certainly. The visit is intended to be an educational visit to workplaces which generally have not been under the federal system previously. The intention is to visit the workplace and apprise them of the fact that they now probably do fit within the federal system and to leave with the employer information which can assist them in complying with their obligations.

**Senator ABETZ**—When did these visits start?

**Mr Wilson**—They started in January.

**Senator ABETZ**—What day?

**Mr Wilson**—Mr Scully might be able to answer that better than I.

**Mr Scully**—The first visit was conducted on 4 January.

**Senator ABETZ**—On 4 January.

**Mr Scully**—I beg your pardon, it is 5 January.

**Senator ABETZ**—On 5 January. That is what I thought—coinciding with what I thought was the first press release from the Fair Work Ombudsman of 2010. You agree with me that this new regime started on 1 January 2010?

**Mr Wilson**—The new regime, in many respects, started on 1 July 2009.

**Senator ABETZ**—All right, in relation to the modern awards.

**Mr Wilson**—In relation to the modern awards and also the referral of the four state systems to the Commonwealth, yes, on 1 January.

**Senator ABETZ**—So why did we not undertake any transitional educational visits before it actually started so that you educated people prior to the commencement of these changes?

**Mr Wilson**—The focus of the visits is particularly on the businesses which are moving from the state systems to the Commonwealth. The arrangements for the referral of the powers to the Commonwealth, from recollection, were concluded during December, I believe. It might have been November in some instances. I am not precisely sure of the dates. But the intention was then to ensure that as quickly as we could in the New Year that we would visit places and apprise them of the changes. At the same time both our organisation and the referring states made a lot of information available to our various audiences about the system changes. And so in many respects the information was already being made available to people. But the visits themselves were scheduled to commence in January.

**Senator ABETZ**—If you had been visiting workplaces, let us say, in November, would you have been able to actually tell them what changes they were going to be confronted with?

**Mr Wilson**—In some respects, yes; in some respects, no. I am not trying to be disingenuous with that.

**Senator ABETZ**—Because most of the modern awards came out of the sausage machine, if I can refer to it as such, or Fair Work Australia in December and backing up on to Christmas Eve as well.

**Senator Arbib**—But, Senator, can I just remind you—

**Senator ABETZ**—Is that correct?

**Senator Arbib**—Senator, can I just remind you that the finalised bill was delayed in the Senate, because at that stage—

**Senator ABETZ**—Oh it is the Senate's fault! Silly me.

**Senator Arbib**—At that stage, Senator—and you were not the shadow minister then, but obviously Mr Keenan was—you were blocking legislation.

**Senator ABETZ**—Excuse me; was Fair Work Australia dealing with modern awards during the period—the bill that you describe as being delayed in the Senate?

**Senator Arbib**—Just in terms of—

**Senator ABETZ**—Yes, it was. The award modernisation process was taking place whilst that bill was in the Senate. So do not try and dissemble here—



**Senator Arbib**—But the national system—

**Senator ABETZ**—Do not try and dissemble here and put the blame—

**Senator Arbib**—Senator Abetz, your party was blocking in the Senate—

**Senator ABETZ**—No, we were not.

**Senator Arbib**—And also, Senator, there were, as at 30 November 2009, over 1,700 workshops and seminars held. So there were a great deal of education and training activities undertaken during that period.

**Senator FISHER**—That implementation of the national system is irrelevant to the entire fabric and implementation of modern awards.

**Senator Arbib**—I know. I am just making the point, Senator.

**Senator ABETZ**—Can I ask whether the government, at any stage, let this legislation slip down the government program in the Senate, removing it from number 1 and putting it further down?

**Senator Arbib**—I am not aware of that, Senator.

**Senator ABETZ**—We blame the Senate for its delay, but you do not know how your own government managed that particular piece of legislation.

**Senator Arbib**—I do know that you delayed the legislation and at the last—

**Senator JACINTA COLLINS**—Senator Abetz, he did not say that, anyway. You are wasting your energy.

**Senator Arbib**—minute on the last day—

**Senator ABETZ**—Can I go back—

**Senator Arbib**—you agreed to allow it through in a five-minute debate after filibustering for weeks and weeks and weeks. We do remember that.

**Senator ABETZ**—Can I go back to the question that was actually asked? Was award modernisation taking place within Fair Work Australia during the months of October, November and December of last year?

**Mr Wilson**—As a matter of record, Senator, yes, it was.

**Senator ABETZ**—Yes, it was, and, in fact, earlier. When did that process start?

**Mr Wilson**—Senator, I am afraid I do not have that information with me directly, but from recollection it was some months previous to that.

**Senator ABETZ**—Quite some months, because the whole award modernisation regime was passed by the parliament in 2008, was it not? You are able to tell us that, Mr Wilson, because you have to administer part of that new legislation, do you not?

**Mr Wilson**—I cannot tell you the precise date that it was passed.

**Senator ABETZ**—No, but the year 2008.

**Mr Wilson**—From recollection, 2008 or 9. I would need to check the detail.

**Senator ABETZ**—I am sure Ms James could tell us when the legislation—

**CHAIR**—This is the Fair Work Act. Is it in general, or—

**Senator ABETZ**—I will tell you.

**CHAIR**—I am not sure whether there are any other extra bits.

**Senator ABETZ**—The Workplace Relations Amendment (Transition to Forward with Fairness) Act 2008. That was passed in 2008, I assume, because it is called the act of 2008.

**CHAIR**—That is a big leap of faith.

**Senator ABETZ**—I know nothing stands to reason with this government, but I am willing to take it on face value.

**Senator JACINTA COLLINS**—I do not know. I think some of the titles of acts of the former government were more amusing.

**Senator ABETZ**—In 2008?

**Mr Wilson**—Senator, the framework, as you are aware, was passed in 2008 and then there were obviously further bills and transitional arrangements from there.

**Senator ABETZ**—Yes, but the modern award regime was in, from memory, Part 10A of that legislation, was it not?

**Mr Wilson**—Correct.

**Senator ABETZ**—Yes, it passed through the parliament. So the award modernisation process was not delayed in the Senate, so thank you for that. I just wanted to clear that up for the record. Now, back to award modernisation and Fair Work Australia. There were three new awards, weren't there, that came out? A lot of the other 119 awards—I think there were 122 or 123 modern awards—came out in a huge logjam just before Christmas. Is that something that is within your knowledge?

**Mr Wilson**—Senator, my recollection is that there were several tranches of information provided to employers and unions and employees about modern awards.

**Senator ABETZ**—But the actual specific award that would apply in individual workplaces only came out for the vast majority of workplaces in the month of December 2009?

**Mr Wilson**—In relation to that part of your question, the answer is yes.

**Senator ABETZ**—Yes. Thank you.

**Mr Wilson**—In relation to the former part of the question, which I was still answering, Fair Work Australia itself may be best to speak to the timing about the awards, but my recollection is that there were several tranches of exposure drafts put to industry, certainly at least throughout 2009 and, from recollection, possibly in 2008, as well.

**Senator ABETZ**—One of your problems, as well, with your educational visits was that on 5 January, as you were going around, you would have had to say to some employers, 'Sure, this is the new modern award, but guess what? It is subject to applications to vary and, if they are made, they are going to be backdated to 1 January.'

**Mr Wilson**—Yes, to the first part of the question. In relation to the backdating, that would be a matter for Fair Work Australia's determination. I could not presume that it would only be backdated to 1 January, but in relation to the proposition—

**Senator ABETZ**—Sorry, changes to modern awards: could they be backdated to before 1 January when they actually came into being?

**Mr Wilson**—I am not saying that, but what I am saying is that the commencement date for awards is a matter for Fair Work Australia.

**Senator ABETZ**—When did they all start? You are going around, advising employers—I assume you are able to tell employers when these modern awards start.

**Mr Wilson**—Senator, your question was whether we advised people that these commenced on 1 January. The answer to that is yes. In relation to whether we would also have to advise that these were subject to variation applications, the answer is also yes. In relation to whether we would then have to advise them that those backdating variations might be to 1 January, the answer is no, because that is something which is within the province of Fair Work Australia to determine.

**Senator ABETZ**—Sorry, I misinterpreted your answer and I accept what you are saying. How many small businesses are there in Australia, Mr Wilson?

**Mr Wilson**—That is a very good question. I am afraid I do not have the precise information with us, but we believe there are certainly many hundreds of thousands of small businesses.

**Senator ABETZ**—So what percentage of small businesses do you think you might be visiting in this campaign? You say in I think the sixth or seventh paragraph of this media release of 5 January:

This year, the Fair Work Ombudsman plans to call on 10000 small businesses ...

I am just wondering what sort of percentage coverage you believe that would be?

**Mr Wilson**—I have not done that percentage calculation.

**Senator ABETZ**—All right. If you could take—

**Senator JACINTA COLLINS**—Senator Abetz, are you still on the transitional education program, or is this a broader release you are referring to?

**Senator ABETZ**—I am referring, as I said before, to the Fair Work Ombudsman media release of 5 January 2010. In that, we are told:

This year, the Fair Work Ombudsman plans to call on 10000 small businesses ...

I want to know how many small businesses does Mr Wilson think there are, and then what percentage of that number, whatever it might be, does this 10,000 represent?

**Senator Arbib**—Senator, do you have a copy of the release? Are you reading off the release in front of you?

**Senator ABETZ**—I am; chances are Egyptian scholars would be interested in all the hieroglyphics on it—

**Senator JACINTA COLLINS**—All I am trying to clarify, Senator, is: is that with respect to your earlier question about the transition education program, which is about employers moving into the national system, or is this a broader one?

**Senator ABETZ**—No, they are saying they are making visits to 10,000 small businesses, and I assume that they are general visits, but I have got no idea what those visits may or may not include.

**Senator JACINTA COLLINS**—There are different educational programs, so I am trying to work out if you are still on the transition education program, or if it is a more broader statement about the broader education role of the ombudsman.

**Senator FISHER**—It is all very simple, Senator; very simple.

**Senator ABETZ**—It is very simple and straightforward. Much as I would like to interpret what was in the mind of Mr Wilson when he made this media release, I do not think—

**Senator JACINTA COLLINS**—No, we are trying to understand the release you are referring to.

**Senator ABETZ**—It is this one I have identified. There is no secret about it.

**Senator JACINTA COLLINS**—I will go on the website, if it helps you, Senator. You obviously cannot answer. I will look on the web.

**Senator Arbib**—This is just one part of what the government is doing in terms of education information. But we are also giving money to employer organisations.

*Senator Cormann interjecting—*

**Senator Arbib**—Senator, that is not true. We are. You cannot just say we are giving money to unions and not to employer organisations because the figures are pretty clear.

**Senator CORMANN**—We will get to that.

**Senator ABETZ**—In these numbers, Mr Wilson, how do you determine which businesses to visit? When you decide to call on them—I daresay this is a proactive activity by you—what do you do? Do you ring them, get them out of Yellow Pages? What do you do?

**Mr Wilson**—Senator, by way of clarification, I am not precisely sure of what is said in the media release. I do not have it front of me, but my understanding is that we would expect to conduct 26,000 transitional educational visits in this calendar year, 2010.

**Senator ABETZ**—My apologies. I have misquoted it; 10,000 small business in New South Wales, 10,000 in Queensland, 5,000 in South Australia and 1,000 in Tasmania.

**Senator Arbib**—That is why it is always better, Senator, to get the actual research. That would be very helpful.

**Senator ABETZ**—Twenty-six thousand.

**Senator JACINTA COLLINS**—It is very simple, isn't it, Senator Fisher?

**Senator BILYK**—It is very simple!

**CHAIR**—Order. Senator Abetz has clarified the position and that is quite proper. So let us just move on with some order?

**Senator ABETZ**—There were 26,000 visits, and I want to know what that percentage is.

**Mr Wilson**—Senator, we have not done the percentage calculation, but can I can go further in relation to those visits: they are particularly targeted, not at small business generally, but at people who are moving from the state system to the federal system. Thank you.

**Senator ABETZ**—So why do we use the term ‘small business’ rather than ‘businesses transition from the state to the federal arena’?

**Senator JACINTA COLLINS**—Because they are targeting small business.

**Senator BILYK**—To keep it simple!

**Senator ABETZ**—Is that to try and make small business feel good and massage small business, who are feeling particularly hurt and let down during the month of January?

**Senator JACINTA COLLINS**—No, because larger businesses usually are represented by employer organisations, Senator. It is basic.

**Senator BILYK**—It is simple.

**CHAIR**—Senator Abetz is asking the officers questions and I would prefer the officers answer Senator Abetz’s questions.

**Senator ABETZ**—Has the Fair Work Ombudsman had a sex change or not? No? No, it is still Mr Wilson; not Ms Collins. I just want to know who is answering here. Who is the Ombudsman?

**Senator JACINTA COLLINS**—Well, it is just that Senator Fisher says it is simple. We just do not know why you do not get it.

**CHAIR**—I do make a casual observation that we do seem to lose track of things just before the break. If we can all just keep a grip for the next seven minutes before the break. Now, Senator Abetz has the call. Thank you.

**Senator ABETZ**—Chair, can you just guide me. Should I be asking these questions of Senator Collins or Mr Wilson?

**Senator JACINTA COLLINS**—You will get over it, Senator. You will learn eventually.

**CHAIR**—You should be asking questions to the minister or to the officers.

**Senator ABETZ**—All right, to the minister—even better than both of them put together!

**CHAIR**—They are the people who should be answering your questions too.

**Senator ABETZ**—Can I ask then, Mr Wilson, why did you say ‘small business’ in the release when, in fact, the target is not small business, necessarily, but those businesses that are transitioning from state to federal?

**Mr Wilson**—At the risk of possibly confusing it further, the target actually was small business who are transitioning. Now, that is possibly not quite the wording that you could use in a—

*Senator Jacinta Collins interjecting—*

**Senator ABETZ**—Sorry. Mr Wilson, when I said ‘small business’ you said it was not necessarily small business but those transitioning, which was not in your media release. That

is why I picked up on what you have said. You are now saying ‘small business transitioning’. Is that correct?

**Mr Wilson**—Senator, the program is aimed at businesses who are transitioning from the state systems to the federal system. The idea was that we target businesses who may not be members of industry or employer associations or others and that predominantly they would be small businesses. In addition, you asked a moment ago how we would go about targeting those and the answer is that we have information within the Fair Work Ombudsman databases. We have information available to us from the state inspectorates about areas of need in their states as well and, of course, from time to time, we also speak to industry associations and unions. Coming out of those discussions and intelligence searches, we form a view about where, perhaps, the best need might be.

**Senator ABETZ**—So how do you determine whether a small business is or is not a member of, let us say, a local chamber of commerce?

**Mr Wilson**—We do not.

**Senator ABETZ**—How would you determine that?

**Mr Wilson**—We do not.

**Senator ABETZ**—Right. Because you said before ‘businesses that are not members’ and I was wanting to know how you would find that out? So do you do not know that?

**Mr Wilson**—No—

**Senator ABETZ**—No. Thank you.

**Mr Wilson**—That is possibly putting words into my mouth.

**Senator ABETZ**—I think the *Hansard* record will disclose—

**Mr Wilson**—What I did say, though, was that we were targeting transitional businesses who usually will be small businesses and who are often not members of industry associations or employer associations.

**Senator ABETZ**—Right. But there is this fanfare, ‘We are here to help small business.’ You see, I want to know what is your definition of ‘small business’?

**Mr Wilson**—We look at businesses who employ only a few people.

**Senator ABETZ**—What is a ‘few’?

**Mr Wilson**—Less than 20, less than 50.

**Senator ABETZ**—Less than 20; less than 50. Fine.

**Mr Wilson**—Senator, we do not have a fixed definition of it but the targets—

**Senator ABETZ**—Right. See, this government has made a great song and dance that any business with more than 15 employees should not be considered a small business, especially in relation to the unfair dismissal regime. So here is me in the marketplace with 20 employees and I see, ‘We are here to help small business,’ and I think, ‘Well, I know that’s not me because I’ve got too many employees, according to Ms Gillard and Mr Rudd.’ Where do I go for assistance?

**Mr Wilson**—We do assist businesses, whether they are the largest in the country or the smallest in the country. During January, for example, we had more than six and a half thousand telephone calls every working day. We had, during that period, a very large number of people who were very small.

**Senator ABETZ**—But let us get us a handle on this. Six thousand seems a great figure. We are talking in the context of small business, but only 35 per cent of those were from employers, weren't they? Only 35 per cent of those calls were from employers. It is an exaggerated figure you are putting on the public record here, Mr Wilson, isn't it, when you say 6,000 calls?

**Mr Wilson**—No, I am not putting an exaggerated figure on the public record.

**Senator ABETZ**—Only 35 per cent of those, I put to you, were from employers.

**CHAIR**—Senator Abetz, you have put the question and I think you have made a statement there, and Mr Wilson is entitled now to respond.

**Mr Wilson**—The information you referred to a moment ago was that about 35 per cent of the calls that we have are from employers. The number I have most recently is that we think it is somewhere around that number. It is a little bit imprecise because people often do not indicate whether they are employers or employees, but during that period, as I said, we had roughly six and a half thousand calls each day during January. If we took a conservative estimate of around about 31 per cent were from employers, we believe that, in January, we dealt with probably about 40,000 employers and that, overwhelmingly, most of those were small businesses and non-corporates.

**Senator ABETZ**—How would you know that they were small businesses? I ring up and say, 'I want to know what award I am under.' How would you know how many employees I had? You would not, would you? And the Fair Work info line would not necessarily demand or require that information from a caller prior to starting to answer questions.

**Senator Arbib**—If you are providing the information, you need to know what the circumstances are of the actual employer, don't you?

**Senator ABETZ**—No. 'I employ a baker. Under what award might that baker be?' It does not tell you how many other employees are in the business, does it?

**Mr Wilson**—Senator, the calls we get are generally from very small businesses.

**Senator ABETZ**—Yes, but how do you know that?

**Mr Wilson**—We have more than 200 staff who speak to people on a daily basis. We ask the name of the company that they work for. We ask where they are based. We ask whether or not they are members of an industry association or an employer association, and we cannot scientifically say to you that these are small business in a stratified manner, but we can certainly report to you that they come from the small to medium enterprise sector.

**CHAIR**—We may leave it there and now go to the break and come back with further questions.

**Proceedings suspended from 10.29 am to 10.43 am**

**Senator ABETZ**—The questions on the info line do not have to be answered, do they, by people ringing up to ascertain information?

**Mr Wilson**—No, of course not.

**Senator ABETZ**—No. Thank you. And the number of calls per day, I think I said 35 per cent were from employers and you provided the figure of 31 per cent. Is that correct?

**Mr Wilson**—That is correct, Senator. The 35 per cent was—

**Senator ABETZ**—And I do not want to hold you exactly, but I was within the ballpark saying 35 per cent. I was just wanting to confirm that, thank you. Mr Wilson, if an employer were to ring you and ask, ‘What new rights do I enjoy as an employer under the new regime?’, what would the Ombudsman’s answer be?

**Mr Wilson**—That depends very much on the operator that you speak to. But the operator would provide information.

**Senator ABETZ**—Surely the law does not change depending on the operator that one speaks to. The new rights, if there are any, must be enshrined in law and surely are known.

**Senator Arbib**—It depends on the circumstances of each business.

**Senator ABETZ**—No. What are the new rights generically for business?

**Mr Wilson**—Senator, I would have to take that on notice. If you want a specific answer I would need to find out from the scripts and the info line.

**Senator ABETZ**—Can you tell us what new rights are available to employees—if I were to ring up and say, ‘What are some of my new rights under this legislation?’

**Mr Wilson**—Senator, the difficulty I am having with the question is it is couched in the sense of being a contact to our telephone service. Obviously in asking a question such as ‘What are my rights?’, there is going to be a variation as to what that is. If you asked, ‘What award I work under?’ or ‘What circumstances might apply to me in relation to performance management that is going on in my workplace?’ you would get, obviously, a very different answer. But the operators, as you quite correctly point out, are trained to provide neutral answers and they do that very well. Have we distilled the legislation or the awards down into a bundle of ‘Here are three rights you have as an employer and here are three rights you might have as an employee’? I think we have.

**Senator ABETZ**—Are you, being the Ombudsman, able to tell us about or point us to any new rights that employers have under this regime?

**Mr Wilson**—The rights which employers have are obviously manifest in both the Fair Work Act, also in the modern awards and in the collective agreements that might operate.

**Senator ABETZ**—That is right, but are any of those rights new and can you point to one?

**Mr Wilson**—Not off the top of my head, not particularly.

**Senator ABETZ**—If you cannot, that is fine. Can I move on to the prosecution of some Transport Workers Union officials that has been in the news of late? You are aware of what I am talking about?

**Mr Wilson**—I am, Senator.



**Senator ABETZ**—Just so I get a handle on this, I understand that all four prosecutions relate to industrial action taken before the Fair Work laws came into effect in July last year.

**Mr Wilson**—Senator, if I may, I just need to correct the record. There are presently three litigations involving the Transport Workers Union, not four. There was an asserted fourth referred to in yesterday's media, but to date that is not—

**Senator ABETZ**—Can I say as far as I am concerned the number of them does not concern me, even if it is just the one.

**Mr Wilson**—It concerns me, because it is a matter of public record and I want to make sure it is clear that there are only three.

**Senator ABETZ**—I can understand that, but in relation to the prosecution or prosecutions that were reported in the media, they were under laws before Fair Work came in, in July. That is correct?

**Mr Wilson**—Correct.

**Senator ABETZ**—How has the law changed? Would you still be able to prosecute these Transport Workers Union officials under the new legislative regime for this activity?

**Mr Wilson**—Senator, I am advised the answer is yes.

**Senator ABETZ**—Then if they were to be convicted, what about the penalty regime? Would that be the same or is it lessened?

**Mr Wilson**—Again, as a matter of record, correcting the record, these are not prosecutions and convictions. They are litigations for civil penalties.

**Senator ABETZ**—All right, litigations with penalties. If the litigation were successful would the penalty regime be the same as it was previously?

**Mr Wilson**—Senator, the maximum penalties are the same.

**Senator ABETZ**—I move on and, for time sake, I will only go with one example, but I have been provided—trust me on this one, if I can be as bold as to invite you to do that—I have been inundated with—

**Senator Arbib**—That is a big ask, Senator.

**Senator ABETZ**—It should not be too hard, because—

**Senator Arbib**—I checked. There were only five actually on your sham file.

**Senator CORMANN**—It is good that you read the sham file.

**Senator Arbib**—On your shame file on your website you talk about all these examples, but I only saw five examples.

**Senator ABETZ**—Because we only have five examples on the cover page.

**Senator Arbib**—Are you sure?

**Senator ABETZ**—Yes, absolutely.

**Senator Arbib**—Because I only saw five.

**Senator ABETZ**—Here we go. I am delighted to know that the minister is educating himself and could I encourage all other ministers and backbenchers in the Labor government to do so.

**Senator Arbib**—It was such an imaginary website, [www.abetz.com](http://www.abetz.com).

**Senator ABETZ**—Then they know what they voted for. I refer to a letter from the Fair Work Ombudsman. And tell me, have we got a new scheme whereby we refer to ourselves just by our Christian name in Fair Work or not?

**Mr Wilson**—Senator, I do not know what you are referring to.

**Senator ABETZ**—This letter is signed with just a Christian name. I do not want to identify the worker. I am wondering whether, in estimates, we have to refer to you as ‘Nicholas’ while you refer to me as ‘Eric’. It just seems strange that a senior adviser for the Fair Work Ombudsman would sign themselves off just with their Christian name—but that is fine.

**Mr Wilson**—Again, I do not know what you are referring to.

**Senator ABETZ**—So there is no policy in the Fair Work Ombudsman’s office that officials sign themselves off just with their Christian name?

**Mr Wilson**—I send probably 30 or 40 emails a day, and probably most of those are signed off ‘Nick’. Is that a policy? No, it is not; it is just how I sent emails.

**Senator ABETZ**—No. This is to a small business inquiring about their rights and entitlements.

**Mr Wilson**—Again, I do not know what you are referring to.

**Senator ABETZ**—It is an official letter to one of your clients. Nothing revolves on it. It is the information above the name that concerns me. A small business in Tasmania inquired of the Fair Work Ombudsman. They rang up. I will not go through the tale of woe—how long it took, how many calls et cetera, and an email. This is in response to an inquiry. It reads:

Thank you for your email of 6 January 2010 regarding modern award coverage.

... ..

To establish which modern award applies:

- You need to look through the list of modern awards to find the modern award that deals with your industry.

That is very helpful.

**Senator Arbib**—Is it possible to get a copy of the letter that you are quoting from, please, so we can get the full context of the information?

**Senator ABETZ**—You can.

**Senator Arbib**—Thank you.

**Senator ABETZ**—That is okay. I will move onto another issue while that is copied. Can I have an update on the back wages that have been collected? Last time round I was told you were holding unclaimed moneys in the order of \$1,090,628. What is the update on that figure? One assumes it has gone up, or have we found people?

**Mr Wilson**—Both. The money has now gone to \$1,142,000.

**Senator ABETZ**—How much is outstanding for 180 days plus? The figure last time was \$647,000.

**Mr Wilson**—It has risen to \$937,560.

**Mr Kibble**—As at 31 December 2009.

**Senator ABETZ**—That was for six months or more?

**Mr Wilson**—Correct.

**Senator ABETZ**—Thank you for that. Do you undertake any litigation in relation to bullying? Is that within your bailiwick?

**Mr Wilson**—Not unless it came within the unlawful discrimination provisions, within section 351, I believe.

**Senator ABETZ**—Does that definition include the possibility of bullying?

**Mr Wilson**—That is a highly dependent legal issue that goes to the circumstances. If a person claimed that they had been discriminated against because they were a particular race or sexuality or what have you, it is not out—

**Senator ABETZ**—If they were bald, that would not be in one of those categories and therefore you could not take any action?

**Mr Wilson**—Yes. It is sad to say that is not an unlawful provision at the moment.

**Senator ABETZ**—But, of course, bullying in the workplace can still take place unrelated to one's sexuality, gender or skin colour.

**Mr Wilson**—Of course.

**Senator ABETZ**—But you cannot pursue that.

**Mr Wilson**—Yes. And, quite clearly, those sorts of issues generally fall within workers compensation or occupational health and safety legislation.

**Senator ABETZ**—I understand some colleagues have questions as well of the ombudsman. I will wait for the papers to return.

**Senator CASH**—Mr Wilson, I would also like to look at the prosecutorial side of the ombudsman's responsibilities. In terms of the problem-solving, dispute resolution pathways that your office has to assist people who phone up, would you quickly take me through the types of actions that your officers take when they are solving a problem for someone, whether they be an employee or an employer. I make the initial call, and then what happens?

**Mr Wilson**—That is quite a long process. It is a bit hard to say how many stages there are in there, but let's say four or five, for the sake of argument. Usually, the first contact we have, usually with an employee, is where they say that they think something is wrong within their pay packet, and they then seek information about what they should be paid as a shop assistant, truck driver or what have you. If the information we give to them over the telephone does not gel with what they think they are receiving, we would have a discussion along the lines of, 'You might wish to make a complaint about an underpayment of wages,' and then direct them to our website, which has a downloadable form.

To put it in context, we receive somewhere around one million phone calls a year. As we said to Senator Abetz, about one-third of those are from employers; the rest are from employees. Those one million calls then transpire into roughly 25,000 or so complaints of underpayment of wages generally and, of course, they are generally initiated by the employee. Immediately we receive the claim we register the claim. We then commence what is called assisted voluntary resolution, where we write to the employer and the employee, basically pointing out that a complaint has been made about a particular employer—‘It is asserted this person is a shop assistant and they were paid incorrectly. As the employer you have a period of time to remedy that.’ We then generally find that quite a large number of matters would be sorted out at that stage. Very often it is a lack of information on the part of the employer. They are relying upon last year’s wage sheet or they have mucked it up in some respect—they have not paid penalty rates or what have you.

There are a smaller number of matters which come out the other side of that assisted voluntary resolution process, which is when the matter is formally assigned to a Fair Work inspector. The Fair Work inspector then undertakes a process of going backwards and forwards between the employer and the employee seeking documents and establishing what is fact and what is not, and what is agreed—did the person work at this place; did they work these hours; were they doing this type of work. Coming out the other end of that process, the most usual thing that occurs is that, if a breach is established, the employer is given time to remedy that breach voluntarily, and most normally they do that. That process, in 75 per cent of cases, is concluded within a period of 90 days from the time that we first receive that complaint form. Obviously the other 25 per cent take longer, up to six or nine months in the worst cases.

In a very few number of cases, 50 or 60 per year, we would commence litigation against the party we believe has held the duty and not complied with it. Usually those matters are instigated because we are satisfied that voluntary resolution has not been possibility or that there is some sort of affecting vulnerability on the part of the worker concerned—they are migrant or young or not educated. Of course, it would then go through the courts in the usual process.

**Senator CASH**—You get approximately one million phone calls per year and you say that approximately 25,000 of them relate to underpayment of wages. How do you categorise the phone calls that are coming in so that you are able to itemise them in terms of the types of complaints that are being received by you?

**Mr Wilson**—Within the contact centre, the information at the moment is largely stand-alone, unless there is something within the phone call which indicates it needs to be escalated immediately to an inspector—that is, the call, having been answered, is recorded and probably nothing much else then gets done as a result. But, if there is some underlying reason that causes it to be referred on to a Fair Work Inspector or a more senior manager, that would occur immediately. To address your question, there is not a categorisation process beyond the raw statistics of—

**Senator CASH**—So how are you able to say that, say, 25,000 relate to underpayment? How did you determine that figure?

**Mr Wilson**—The 25,000 is effectively the number of complaint forms we get each year. They come in generally through the website or email, a lesser number by mail—and, as I said, they completely stand alone to some extent from the telephone service.

**Senator CASH**—Is there any type of information recording in relation to the complaints that are being made to you, whether or not it is from the million that you actually from phone calls? Or, is it when they are escalated—do you then start to break it down into: ‘Yes, this relates to underpayment of wages. This relates to a potential breach of an award’?

**Mr Wilson**—In relation to the contact centre, the information is largely of a general nature—general, but specific—in the sense of what is the wage rate to be paid in a certain circumstance. We categorise that according to the type of call, whether it was about termination or whether it was about an apprenticeship or wages. We also categorise it according to the industries. As I said, that is the contact centre. Within the inspectorate we have a different categorisation process which is, I suppose, more robust—it goes to the history about the particular employer. Having got a complaint about a particular business having underpaid a worker, the Fair Work inspector would generally then make a search: ‘Well, what else do we know about this company?’ That would be both within the inspectorate database and also within the contact centre. You can sometimes usefully find information which indicates that there has been a flurry of calls about this particular employer, and that would then be taken into account in forming views about the severity of the case.

**Senator CASH**—Could I get you to take on notice to provide the committee with a breakdown of the types of complaints that have been received by your office, both at the contact centre stage to the extent that you are able to, and then at the inspectorate stage, since your office commenced?

**Mr Wilson**—I am happy to do that. Can I just clarify what we can provide so there is no misunderstanding, I suppose. We categorise our contact centre work according to whether the call is about wages or awards or conditions et cetera, and we also categorise it according to industry. Would that be useful?

**Senator CASH**—Yes, please.

**Mr Wilson**—Okay. In relation to the inspectorate, we categorise it according to state and industry and size of business—no, not size of business, I am sorry.

**Senator CASH**—Yes, whatever information you are able to provide me, that would be greatly appreciated.

**Mr Wilson**—Okay.

**Senator CASH**—Thank you. Could I just turn now to the Small Business Fair Dismissal Code? Can you very briefly take me through that? I am a small business. I intend on terminating an employee. I go onto the website. I find my small business dismissal code. What do I then do?

**Mr Wilson**—I may not be the best person to ask about that. We certainly give advice about the code, and I am happy to tell you what we say to people about that, but on the other side of the coin, there having been a dismissal which the employee complains about, that would be within the province of Fair Work Australia to say what status or otherwise they give the code.

But certainly, in respect of the code, we will say to businesses that effectively, as it says in the code itself, it is a list of measures which the business can take when they have performance management problems and they, as a matter of best practice, should be following those, and that when Fair Work Australia comes to consider an unfair dismissal application they will take compliance or otherwise with the code into account.

**Senator CASH**—That goes exactly to the evidence that we are receiving. We have had small businesses phone us to say, ‘Look, I have gone through the Small Business Fair Dismissal Code checklist. I have complied with everything on the advice from the Ombudsman’s office—I have gone through and checked off everything. Of what value was that to me, because the employee is now still disputing the claim, and I am going to be prosecuted for it.’ How much value is this to the employer if, at the end of the day, they have followed the checklist on the advice from, say, your office, but the employee is still able to dispute what is actually being done?

**Mr Wilson**—I suppose, as a matter of fact, it is the case that any employee or any person, for that matter, can make a complaint to Fair Work Australia and it is then up to them to determine how they proceed. I cannot speak for their processes, but in respect of the code itself, if I were asked by someone about the proposition you advanced it would be to say, ‘Certainly, in my experience, following those steps at the very least is a helpful measure towards ensuring that you do not have problems at some later stage. It will not necessarily guarantee that. That is for Fair Work Australia.’

**Senator CASH**—So it is a general guidance.

**Mr Wilson**—But nonetheless, it is the code and you would need to raise that with Fair Work Australia.

**Senator ABETZ**—If I may briefly—

**Senator CASH**—Yes, please.

**Senator ABETZ**—it does not guarantee the small business that it will not be litigated against and incur all the costs of defending itself—and, in fact, vindicated, as we recently had out of a decision of Fair Work Australia, where they gave the employer the tick for everything, which was great, but the employer was still left with a huge, huge legal bill. You know what message that sends to small employers? Pay the go-away money, because it is a lot more economical to throw \$5,000 or \$10,000 at an unfair dismissal claim than taking it through the system, being vindicated, but costing you \$20,000. I do not expect you to comment on that, Mr Wilson—

**Senator CASH**—No, but that actually leads directly—

**Senator Arbib**—No, because it was not actually a question, Senator.

**Senator ABETZ**—but that is the dilemma.

**Senator CASH**—No, but that actually does lead directly into—

**Senator ABETZ**—No, but to highlight—

**Senator CASH**—Yes, that is the dilemma.

**Senator ABETZ**—and paint the scenario.

**Senator CASH**—Which leads directly into my next question.

**Senator Arbib**—We could go into returning balance and fairness to the system and talk about how you stripped away, through Work Choices, the rights of workers.

**Senator CASH**—Again, talking points, not assisting us at this point.

**Senator Arbib**—But Senator Abetz just put on record, so I am just putting on record, as well, that we did restore balance in the workforce and it was part of our commitment we took into the last election.

**Senator ABETZ**—That is why we only had 3.9 per cent unemployment.

**Senator Arbib**—There was a global recession, Senator, that you forget about.

**CHAIR**—Let us now come back to the process of asking questions and seeking answers. Let us try to avoid recounting to the committee people's personal conclusions they may make from that evidence. Senator Cash, you have the call.

**Senator CASH**—Mr Wilson, just leading on from what Senator Abetz has raised, if an employer was to phone the Ombudsman's office and seek advice in relation to a potential unfair dismissal claim that may be made against them, do your officials advise the employer that it is actually better, after listening to their case, to pay go-away money in order to end the matter as opposed to having it actually progressed?

**Mr Wilson**—The answer to that would be no.

**Senator CASH**—That leads to my next question. Evidence that we have received would indicate that, unofficially, officers of the Fair Work Ombudsman's office are advising employers, when they telephone in with queries regarding a potential unfair dismissal claim, that it may be better to make a payment to the aggrieved employee in order to end the matter and have it go no further. Are you aware of any unofficial advice that your officers may be giving?

**Senator Arbib**—I am sorry, Senator. Just on that point: if you have evidence or more detailed information, please provide that. We would like to trust that you have received reports, but—

**Senator CASH**—Telephone calls to my office, yes, in relation to this specific point.

**Senator Arbib**—Would you like to go into specifics so that we could actually answer it?

**Senator CASH**—Not at this particular point in time, because going into specifics sometimes has its own ramifications.

**Senator ABETZ**—So we can send the union around tomorrow.

**Senator Arbib**—In the just the same way as on Senator Abetz's shame file there are no names. I just checked, Senator, by the way and there are only five responses on the front page.

**Senator ABETZ**—That is right. I know that. On the front page, that is it.

**Senator Arbib**—You are asking Mr Wilson that I do not think can be answered without specific information.

**Senator CASH**—No, I am asking, to Mr Wilson's knowledge, is he aware that officers of his department are providing unofficial advice in relation to go-away moneys being paid.

**Mr Wilson**—Senator, I am not aware of that proposition. If I can just go further, please? Certainly, in my experience, when I have listened to calls which are being taken about dismissal or performance matters, it would generally be the case and it should be the case that the call is then referred through to Fair Work Australia. The operators have fairly strict business rules about dealing with matters going to issues of judgment and process within Fair Work Australia. If there are matters that your constituents have brought to you which you would like us to look at then certainly we can, and I would. That would be a matter of concern for us. We record calls unless the caller specifically asks that that not occur.

**Senator CASH**—Can I just stop you there? Do you know in how many calls the caller says, ‘I do not want the call recorded’?

**Mr Wilson**—No, we do not have that with us. It would be very low. We can take that on notice.

**Senator CASH**—Thank you.

**Senator ABETZ**—Whilst we are on that particular point; I ring up the Fair Work Ombudsman, unfair dismissal situation, do you tell the person then, ‘Ring Fair Work Australia,’ or can you put the call straight through to Fair Work Australia?

**Mr Wilson**—In the parlance, Senator, it is called a ‘warm transfer’ and that is what we do. We ask the person to hold and we then immediately speak to an operator in Fair Work Australia if they are available and move the call through.

**Senator ABETZ**—So for Senator Cash’s scenario, it may well be that somebody did ring your office, had the call transferred to somebody else, but not necessarily click onto the fact that they are now in a different department who was offering advice and, therefore, thought they were getting it from the Ombudsman.

**Senator CASH**—Thank you for that clarification.

**Senator ABETZ**—That is all I was trying to clarify, because we can then ask Fair Work Australia.

**Senator CASH**—It is Fair Work Australia.

**CHAIR**—I think we should, but given the evidence that you have given, Mr Wilson, that the calls are taped, I can understand any senator not wanting to necessarily reveal the names of people that complain through their offices. I think that is appropriate.

**Mr Wilson**—Sure.

**CHAIR**—I must say, I would be concerned, as I suppose you would, if your officers were actually encouraging people to pay go-away money, but it is certainly proper that, if Senator Cash has any information, could that be provided to you on a confidential basis for you to check those reportings to ascertain whether, in fact, that was the case?

**Mr Wilson**—Most certainly.

**CHAIR**—I think that would be worthwhile knowing from certainly my point of view and, I suspect, yours.

**Mr Wilson**—Senator, it would, and that is precisely why we do tape the calls. That was instituted in October or November purely as a quality control measure.



**CHAIR**—So we can take it that there is an invitation, Senator Cash, to provide that detail to you.

**Senator CASH**—Would there be any circumstances in which your office would provide that type of advice to an employer, ‘Just pay the go-away money. End it now. No pain. Move on.’

**Mr Wilson**—We never say never, but, certainly, the business rules would be completely against that and it would not be sanctioned advice.

**Senator CASH**—What type of action would be taken by you, in the event that it was found that one of your officers was giving that type of information?

**Mr Wilson**—I suppose that would depend on the severity of the matter, but we would need to, at the very least, speak to the operator about, ‘Why on Earth did you do that?’ and, in more severe cases, that may lead to further sanctions.

**Senator JACINTA COLLINS**—Sorry, Senator, could I just clarify one point here too? I presume there is the potential misunderstanding amongst the parties about advice with respect to, for example, outstanding entitlements as opposed to go-away money? Indeed, your officers would be advising people to pay outstanding entitlements?

**Mr Wilson**—That is a very useful distinction because, very often, there are a multiplicity of matters that the person will raise and, sometimes, misunderstandings do occur. There is an open invitation, if MPs are concerned about advice or others are concerned about advice that we have given, we are more than happy to go back and find out precisely what was said.

**Senator JACINTA COLLINS**—Thank you.

**Senator CASH**—In terms of the process that your office undertakes when making a decision to determine whether to upgrade compliance guidance to an enforcement activity and onto a possible prosecution, can you take me through the factors that actually come into play that would then demand the escalation? If one of your inspectors goes to an employer and there is a potential breach or a breach and they say, ‘We just need to ensure that you have got compliance guidance,’ and the employer actually fixes the matter, are there any circumstances where that would be escalated regardless?

**Mr Wilson**—There would be. There are a few matters where we have taken litigations where the severity of the matter or the vulnerability of the workers is such that that is demanded. Clearly, we have processes to make sure that that occurs. Within the individual inspectorate, we have roughly 300 or so Fair Work inspectors directly employed. We now have probably about another 200, from recollection, which come in through the state contracts. They are subject to a fairly tight set of processes and there are regular case conferences which they have with their team leader and manager. Those conferences are designed to illicit circumstances where the matters require more detailed consideration. Quite frankly, a coffee shop which had not understood, for want of a better word, that they needed to pay some different rate on a Saturday and fixed it up, unless there was some countervailing issue, that would not go further.

**Senator CASH**—In terms of your decision to actually prosecute, is there any particular civil penalty value that you actually refer to and then make a decision? A figure that had been

bandied around was: if the civil penalty is in excess of \$5,000, that may influence a decision for your office to actually take a prosecution.

**Mr Wilson**—Senator, there is a litigation policy which is contained on our website that Ms James has just given me right now, I think.

**Senator CASH**—Are you able to provide a copy of that to the committee?

**Mr Wilson**—Yes.

**Senator CASH**—Thank you.

**Mr Wilson**—Maybe if I just let Ms James organise the papers, but certainly we are prepared to do that. We will have to provide you with a clean copy. This one has got notes all over it.

**Senator CASH**—Thank you.

**Mr Wilson**—The litigation policy is couched in the sense of the negative, which is: where the matter is less than \$5,000, from recollection, and there is some vulnerability on the part of the worker and some other circumstances then, ordinarily, that would be considered for prosecution. So it is not an automatic, ‘If it is above 5,000, we consider it, and 5,000 or below, we don’t.’ Rather, if it is a small amount and there is vulnerability then we will consider it. If the vulnerability issue is not there then it possibly will not. What I could do, if you like, which might assist, is table a document which is an analysis of the matters that we commenced litigation in 2008-09 as money matter proceedings, and that will give you an indication of how we proceed.

**Senator CASH**—Thank you. Certainly, the figure of \$5,000 would have come from the litigation policy?

**Mr Wilson**—Yes, it would have.

**Senator CASH**—Thank you very much. In terms of potential prosecutions that have actually been settled where you commence a prosecution but the employer decides to actually settle the claim with the employee, how does that work via your department?

**Mr Wilson**—When we take a litigation to court, we are seeking a civil penalty and a redress of any underpayment that might have occurred. Very often people will pay the money on the court door and that is one of the factors which we take into account about whether we proceed. Generally, if they try and pay on the court door then we are still going to court, effectively, but there have been instances where it has been withdrawn.

**Senator CASH**—Do you have any figures in relation to the number that have been settled prior to actually going to court? Are you able to provide the committee with those figures?

**Mr Wilson**—We will provide that on notice. Just by clarification, you are interested in the matters where we have commenced litigation and then withdrawn it?

**Senator CASH**—Correct, and then a settlement has occurred. If you commence a litigation and the employer, for example, is found to be in breach and a civil penalty is awarded, are there any periodic payment arrangements that an employer can enter into to actually pay it, if they are unable to pay the civil penalty in full at that particular point in time?

**Mr Wilson**—That is a matter for the court, in many respects. Whether it is the Federal Magistrates Court, the Federal Court or the local court is going to depend on the rules and the determination that the judicial officer might have made at that time.

**Senator CASH**—I might defer to Senator Abetz and then continue with some questions a bit later.

**Senator ABETZ**—All right. If I may, I will backtrack completely and ask whether you can recall a Darwin prosecution in relation to a small business which was a cafe where they were fined \$22,200 for not paying a staff member the correct wages over a five-year period, as well as having to back pay the staff member.

**Mr Wilson**—I do not have direct recollection of it, but Ms Webster will go to it.

**Senator ABETZ**—To assist, I am not necessarily willing to trawl the nationality, but it was about a refugee family, I will not say from where, who had set up this particular small business in Darwin. Does that give you any further hints? Not a big jurisdiction, I would have thought.

**Mr Wilson**—I am afraid not.

**Senator ABETZ**—Smaller than Hobart.

**Mr Wilson**—I can bring to the table Ms Webster, who is our national litigation manager.

**Ms Webster**—Could I have the question again?

**Senator ABETZ**—Are you aware of a prosecution by the office of a small business cafe in a Darwin shopping centre which was run by a refugee family? They were fined \$22,200 for not paying a staff member the correct wages over a five-year period and also the back pay to the staff. The only reason I mention that case was that it was the genesis of a Mr Michael Campbell issuing a press release or talking to the media in the Northern Territory. He is the Fair Work Ombudsman Executive Director in Darwin. Is that right? Or he was.

**Mr Wilson**—No, Senator. He is based in our Melbourne office, but he is responsible for our media and communications.

**Senator ABETZ**—Your media person. And he is quoted as saying:

The Fair Work Ombudsman has a range of experts and other resources available to help employers quickly and easily determine things such as the correct award, classification and pay rates that apply to their employees.

Does the Ombudsman agree with that statement by Mr Campbell?

**Mr Wilson**—He does.

**Senator ABETZ**—He does. Right. We then turn to the case that I am referring to—

**Senator Arbib**—Senator, where were you quoting out of then?

**Senator ABETZ**—That does not seem to have a date on it, but it is related to that particular case that was reported in the papers. Mr Campbell, as a result of that finding and fines and penalties being applied, made that statement. If that is all wrong, by all means tells me and I will go back to the source and let them know.

**Senator Arbib**—I am just trying to find out when. That is fine. Thank you.

**Senator ABETZ**—I cannot give you any more definition than that. In any event, we can dismiss all that, because the Ombudsman has agreed that his office provides a range of experts and other resources available ‘to help employers quickly and easily determine things such as the correct award, classification and pay rates that apply to their employees’. We then have this small business that emails Fair Work on 6 January, after a few calls. And then this is the response:

To establish which modern award applies you need to look through the list of modern awards to find the modern award that deals with your industry.

Exceptionally helpful:

Read through the coverage clause of your chosen modern award to see if it covers all your employees. If you have employees in a wide range of occupations you might find that more than one modern award may apply.

They then say:

Based on the information provided the following award may—  
only may—  
provide coverage.

It then goes on to say, the second last paragraph:

It would appear that your bakers may not currently be covered under a modern award. Where this is the case the pre-modernised instrument continues to apply.

It makes it very, very clear for this small business. But, just in case he is questioning how much to rely on this advice, we have over the page this important note, a disclaimer:

This information has been provided by the Fair Work Ombudsman as part of its function to promote compliance with the Fair Work Act 2009 by providing education assistance and advice.

And then in parentheses:

But not legal or professional service advice. The Fair Work Office does not provide this information for any other purpose.

So this small business person, not unreasonably, says to me, ‘How can the Fair Work Ombudsman send out an inspector to check we are paying our staff correctly if they cannot even tell us what award we are under?’

**Mr Wilson**—I am not aware of the incoming questions, so I am somewhat at a disadvantage in that respect.

**Senator ABETZ**—It must have been relatively detailed for this person in Fair Work, who was a senior adviser, to be able to say, ‘Maybe the general retail award. Your baker, in fact, may not be covered under this retail award and may still be covered under a state baking award.’

**CHAIR**—That is an assumption that we do have difficulty with as a committee. Are you able to provide the details of this question?

**Senator ABETZ**—I am not going to disclose everything on the public record.

**Senator Arbib**—But do you have the email and we can take out the name?

**Senator ABETZ**—We have the detail that he has inquired about. It is pretty obvious it is a retail bakery. Some people are engaged in selling the stuff. Others are engaged in making the stuff.

**CHAIR**—Senator Abetz, the problem I have is that we have an answer without knowing what the question was. Mr Wilson has also indicated that that is a bit of a difficulty. It is okay to make assumptions about what the question may have been, but the fact is we do not know what it was. I do not.

**Senator ABETZ**—If further clarification was required for this senior adviser, why would that not have been sought rather than saying, ‘It may provide coverage,’ and ‘It would appear’? They said, ‘We trust this information has been of assistance. If you require further information please contact the Fair Work info line.’

**Mr Wilson**—Senator, the issue—

**Senator ABETZ**—And so they then go around in the circle again.

**Mr Wilson**—The issues are, as you are aware, not exactly straightforward. I do not know what came in to precipitate this answer, but it is not an unreasonable answer. It is certainly one that would be given quite routinely to businesses who are searching out what their rights and entitlements might be. Very clearly there are, and there always have been, competing different arrangements which could apply in different workplaces. These issues are, to some extent, still in a state of flux. Some of your earlier questions refer to that. It is not an unreasonable answer to give to a proposition which may have started in a retail bakehouse. The question may have been, ‘What awards apply to me?’ Without physically seeing the workplace and knowing what else they do—do they employ bread carters, do they employ—

**Senator JACINTA COLLINS**—Shop assistants.

**Mr Wilson**—Shop assistants or wholesale. We do not know, so it not an unreasonable answer.

**Senator ABETZ**—So it is all very simple, straightforward, very easy to follow. But, see, this person tells me:

... accessed the Fair Work website, which is full of lots of information pertinent to our needs. We then rang the Fair Work hotline. After 30 minutes of waiting on hold we tried the state number listed on the website. We got straight through to a receptionist, who put us back on the hotline wait list. After another 20 minutes we spoke to someone. We told the person on the phone what award we were under, the Baking Industry Award, and asked where we could access the new award.

And by this stage, your people will know exactly who I am talking about:

He looked it up and told us it was the Food, Beverage and Tobacco Award 2010. In order to access the award via the website you need to know either the name of the new award, the type of award it is, or its code. After reading the food, beverage and tobacco award, we realised that it did not cover all our staff and the hours of work listed under this award. It means we would have to pay production crew—

et cetera. So they then got into the General Retail Industry Award and the hospitality award, and that is where the confusion arises. All of this was sent by an email to the Fair Work Ombudsman—very, very detailed—and this was the answer they got: ‘A state industry award

may still apply.' Do you understand that there is still a huge, huge task out there in educating employers and, indeed, employees alike?

**CHAIR**—Can I just clarify, before you answer that, what you read out there still was not the actual email—

**Senator ABETZ**—Yes, it was.

**CHAIR**—Was that the question that was sent to—

**Senator ABETZ**—That was part—sorry—

**CHAIR**—Or that was a summary of it?

**Senator ABETZ**—It was part—

**Senator Arbib**—That is what they related to you.

**Senator ABETZ**—No, it was part of the email sent, and that is why I said, whilst I was reading it, 'By this time, I am sure the officers will have identified the person who sent the email,' because, knowing the officer who dealt with it—courtesy of the letter that I provided and the date of 6 January—I am sure you will be able to backtrack and find out, and you will be well satisfied that a lot of very good and detailed information was provided.

**Mr Wilson**—We will check the advice and whether it meets our standards. Very clearly, we want to make sure that advice is as precise as it possibly can be, and that is our objective, and if we need to improve our services then we will. In relation to the proposition about understanding modern awards, there has been a very gratifying thing that I have come to over January and February. I mentioned before that we receive about 6½ thousand or 7,000 calls per day from people. Now, that is a very large number of calls. We did not expect that number. We thought it would be closer to about 5,000. And it is somewhat surprising at one level, and unsurprising at another, that in January that was occurring. When we go into those calls, when we find out what people are asking, it turns out they have a lot of knowledge already, and that is fantastic. Part of the role that we have is to try and build upon that knowledge and make sure that they are compliant, and that is the task that we are very much working on. At the same time, there is heavy use of our website. We have a very large number of solicitors—

**Senator ABETZ**—So you are satisfied that all that can be done is being done?

**Senator Arbib**—That is not what Mr Wilson said.

**Senator ABETZ**—Despite all this wonderful activity that you are telling us about—and I understand that and welcome it—we still have this sense of confusion in the community and a concern that a lot of people are flying blind.

**Mr Wilson**—Senator, the position that I was trying to advance is that we are finding through the website, the contact centre and our linkages into industry associations and employer groups that there is a building level of knowledge and that there is probably not a perfect level of knowledge about the new system, but none of that is inexplicable, given the nature of the changes that have occurred. We will, in the course of 2010, keep building on the amount of information that we make available and get to a point where people do understand the system.

**Senator ABETZ**—Yes, but the problem is that, in the meantime, they are potentially liable for litigation, as opposed to prosecution—potentially liable to face litigation. And, in your media release of 5 January 2010, you tell small business, ‘Ignorance is no excuse.’

**Mr Wilson**—Ignorance certainly is no excuse, but we are finding that people, when they contact us, are not ignorant, that they already have some base information. They get more information as a result of us answering their questions—

**Senator ABETZ**—They have base information but they need more information, surely.

**Senator Arbib**—Senator Abetz, why don’t we allow Mr Wilson to finish his answer, please.

**Mr Wilson**—Certainly, I agree with the proposition. They come forward with base information and they are seeking more. That, by definition, is why they call us.

**Senator ABETZ**—Right. Can you tell us the average time of each call? And please do not tell us the time for which they were on hold.

**Senator JACINTA COLLINS**—Please do or do not?

**Senator ABETZ**—Tell us that as well, but do not include it as though that was meaningful engagement between the client and the Fair Work Ombudsman’s office, whilst they were on hold.

**Senator JACINTA COLLINS**—Senator, just for further clarification of the experiences with some of these other telephone systems, I would also be interested in whether there is a drop-off mechanism, in that if someone does not get responded to within a certain period of time they drop off and have to try again.

**Mr Wilson**—I think I know what you are asking.

**Senator ABETZ**—Take it on notice.

**Mr Wilson**—No, I have got the information.

**Senator ABETZ**—All right.

**Mr Wilson**—It is just a question of making sure it, I suppose, satisfies what you are after. The average wait time in 2010 is seven minutes and 16 seconds. I do not have with me the average call time. At the moment, it is about nine minutes. Now, there are periods where people spend a lot longer than that. The longest wait time that we have had in 2010 has been 34 minutes 39 seconds. Now, that is a very long period of time. We are not happy about that.

**Senator ABETZ**—When you tell us the 2010 statistics, what date do they cut out? Is that just January?

**Mr Wilson**—Until Monday.

**Senator ABETZ**—Until Monday? Right. Are you able to tell us what the figures were, let us say, up to 21 January, if that is a convenient date, or midway during January? Take that on notice. I do not need to know it now.

**Mr Wilson**—We will take that one on notice.

**Senator ABETZ**—Because I have got a funny suspicion that the average time that callers had to wait has been significantly changed by the figures that may have come in in February,

as opposed to those in early January, where the stories are that people were holding for periods of four times the average length.

**Mr Wilson**—We measure the service in various ways. We—

**Senator ABETZ**—If you can just take that on notice, please.

**Mr Wilson**—No, I do not need to take that on notice.

**Senator ABETZ**—All right.

**Mr Wilson**—We measure it in various ways. There is the average speed of answer and then also the calls that are abandoned. During the first part of January, the dates you refer to, the longest wait time was 622 seconds—10 minutes or so—and the shortest time was 373 seconds. And—

**Senator ABETZ**—Sorry, just to get this clear, you are saying no-one waited on the info line for more than roughly 10 minutes?

**Mr Wilson**—That is my advice.

**Senator JACINTA COLLINS**—During which period, sorry?

**Mr Wilson**—The first part of January, between—

**Senator ABETZ**—Wait a minute. This is averaging out again, is it?

**Mr Wilson**—No, you asked me the question for the dates up until 21 January.

**Senator ABETZ**—Yes, and that is the average—

**Mr Wilson**—The average speed of answer between 4 January and 21 January ranged from 373 seconds to 622.

**Senator ABETZ**—622. So that is roughly 10, 12—10 minutes, whatever.

**Mr Wilson**—Yes. Now, over that time, the abandoned calls—they were not pretty. They were in the range of 1,300 to 2,600 in a particular day.

**Senator JACINTA COLLINS**—What percentage is that, do you know?

**Senator ABETZ**—2,600 what, seconds? Can somebody—

**Mr Wilson**—No, abandoned calls.

**Senator ABETZ**—Oh, calls abandoned?

**Mr Wilson**—Yes, where you give up.

**Senator ABETZ**—And if you abandon the call, does that show up as a waiting period before the call is answered? Answer: no. What is the bet?

**Mr Wilson**—The answer is I do not know.

**Senator ABETZ**—What is the bet? Take that on notice, and that would then show that you have got a very nice set of statistics for public display, but they do not show if somebody has been waiting for 30 minutes or longer and then gives up in disgust and hangs up. But you say, ‘Oh, calls are answered within seven minutes.’ That sounds great because it does not take into account the calls where people give up in disgust.

**CHAIR**—But just coming back to the—



**Senator ABETZ**—So take that on notice for us, because I think—

**CHAIR**—The proposition—

**Senator ABETZ**—that will give us a lot better insight. I just want to clarify—

**Senator Arbib**—Senator, I think you are actually wrong on that. I think you are wrong on that, but we are happy to check.

**Mr Wilson**—We will check.

**Senator ABETZ**—Wait a minute. Why do you think I am wrong on that, Minister?

**Senator Arbib**—Just from having some experience in that sector that call drop-outs and waiting times are included. That is the experience I have personally had, but we will check for you and we will get you the answer.

**Senator ABETZ**—If you could come back just on that basic issue as soon as possible, I would be very interested.

**CHAIR**—Just to clarify, Mr Wilson: I think the proposition that was being put to you in respect to the question that we have got the written answer to was that people actually stayed on the line for 20 or 30 minutes before they got an answer—so we are not talking about dropping off anyway—and your evidence is that that is not true, that cannot be right.

**Mr Wilson**—We will check. Certainly the information I have, which was obtained in the past couple of days, would indicate that that is not correct, but certainly I will check. We are very concerned to make sure that we give correct advice.

**Senator ABETZ**—Chances are the clock runs out and then starts counting again.

**CHAIR**—Chances are maybe people are exaggerating to you via email, Senator Abetz.

**Senator ABETZ**—Can I ask then, where in award—and let us deal with this in generalities—

**Senator JACINTA COLLINS**—Sorry, Senator Abetz.

**Senator ABETZ**—Yes, of course.

**Senator JACINTA COLLINS**—There is a further aspect of the earlier question I was asking. Some telephone systems have an abandonment element to them where, if people wait when they become too busy, they just get dropped out and they have to start again. Is that a component of your system or not? Does the system abandon any calls?

**Mr Wilson**—It does. What I did want to get to is that we, because of the call volumes, have what we call a call block system. Since 19 January, we have introduced a call blocking strategy to assist in managing high call demand. The call block activates when we hit a threshold of maximum waiting times exceeding 10 minutes. Since that time, 19 January, 9,445 calls received the call block message. That message is—

**Senator JACINTA COLLINS**—There is a message? They do not just get dropped off?

**Mr Wilson**—It does. I am just searching for what it says, which I do not seem to have. It effectively says, 'We are experiencing high demand at the moment and we are not able to take your call. Would you please call back at a later time.' Personally, I am not satisfied with that

and I have asked that we change that service so that we have more advanced systems to deal with it. We are searching for a solution which we can introduce by the start of March.

**Senator JACINTA COLLINS**—That message comes in early in the piece, not after someone has waited for 10 minutes, does it?

**Mr Wilson**—It is relatively early in the piece. My own experience is that it is after a couple of minutes. I am not precisely sure when it kicks in, but somehow the service establishes that the call wait time is more than 10 minutes and then a guillotine comes down.

**Senator JACINTA COLLINS**—The likelihood that a call wait is going to be more than 10 minutes.

**Senator ABETZ**—Can you please take on notice how it works and operates without going through all the technicalities now?

**Mr Wilson**—Sure.

**Senator ABETZ**—Thank you, Senator Collins, for that question. In general terms, the modern award has started on 1 January. I am an employer. I read through it and I say, ‘Right. I have to do all these things by my employee,’ and I do so. Then a variation comes in which, let us say, says that the employee is in fact entitled to just a little bit less pay. Am I able to recover the pay, if I am the employer, from the employee?

**Mr Wilson**—First of all, the pay arrangements under the modern awards, with the exception of six, do not commence until 1 July. In respect to the specific question of whether money paid pursuant to an award can be recovered, I would need to take that on notice.

**Senator ABETZ**—All right, can you take that on notice. What about if I am an employee and the employer has paid me under the new modern award as of 1 January, but then there is a variation which says I should be paid more. Will the employer have to provide me with back pay for that period?

**Mr Wilson**—Again, I will take that on notice. It clearly would depend on the commencement date of the variation, but I will take that on notice.

**Senator ABETZ**—Yes, of course, but in the event that the variation were then back-dated to commence on 1 January for both scenarios.

**Mr Wilson**—Right.

**Senator ABETZ**—That would be very helpful. Thank you.

**Senator CASH**—Mr Wilson, in terms of the enforceable undertakings that your office is able to enter into, can that enforceable undertaking involve the payment of a sum of money to rectify—

**Mr Wilson**—It can. The policy we have is that, unless I decide otherwise, the undertaking must be published. There is only one undertaking that we have not published. Certainly it is envisaged within those undertakings that, for example, an underpayment would be made good. That is normally the expectation. From recollection, there is also one on the website that refers to a company whose name escapes me, but part of the undertaking was that they make a contribution to the employment law centre in your state. So, certainly those things can be envisaged.

**Senator CASH**—Would your office receive any money by way of an enforceable undertaking?

**Mr Wilson**—As a matter of policy, no.

**Senator CASH**—Have there been circumstances in which an enforceable undertaking has involved the payment of money to your office?

**Ms Webster**—I am sorry, Senator. May I have the question again?

**Senator CASH**—In terms of an enforceable undertaking, has there ever been a circumstance whereby, as part of that enforceable undertaking, payment has been made to the Fair Work Ombudsman's office?

**Ms Webster**—No, we have not, Senator.

**Senator CASH**—Thank you very much. In terms of your public reporting arrangements, where can I find them? Is that on your website?

**Mr Wilson**—They are. We can also provide you with a copy of our annual report. Beyond that, at the last Senate hearing I think we tabled a quarterly or monthly report, and certainly we are prepared to provide those as well.

**Senator CASH**—Thank you. And could I just ask you to elaborate on how enforcement and prosecution activity and consequences are recorded and reported?

**Mr Wilson**—They are detailed in the reports that I will provide to you. We generally look at a number of things, which includes numbers of duty holders that we have established a breach against, underpayments recovered, and then the number of employees who have been paid those underpayments. But certainly—

**Senator CASH**—It will be provided in the information?

**Mr Wilson**—It will be provided, yes.

**Senator CASH**—Thank you very much, Chair. That concludes my questioning. I believe Senator Fisher may have some.

**CHAIR**—Senator Fisher, do you have some questions?

**Senator FISHER**—Thank you, Chair, but ahead of others?

**CHAIR**—I am steering the ship and you have got the call now if you want it.

**Senator FISHER**—Thank you.

**CHAIR**—If you do not, do not take it.

**Senator FISHER**—Thank you for taking the tiller my way. Mr Wilson, I gather from your answers to Senator Abetz and from the document with which you provided him, that when you are attempting to guide employers as to the laws that apply in their workplaces, you first of all guide them to work out which modern award applies. I think Senator Abetz has taken us to the point where that is, in my view, not always easy for an employer to work out. Let us presume that an employer has decided that a particular award applies to them in their workplace. I gather from the letter that was tabled earlier, when Senator Abetz was asking you questions, that the next step at this stage is to have a look at whether or not there are transitional provisions in that award and the extent to which they apply to see what should be

happening, say, as of today, for an employer in a particular industry covered by a particular award. Is that right?

**Mr Wilson**—That is correct. The calls that we get to the contact centre are usually pretty precise—either an employee or an employer asking, ‘What should this shop assistant be paid today?’ or the variant on that, which we are now getting a lot of, is, ‘What should they be paid from July?’ So the advice we give pertains to whatever that particular question is. Obviously, in a transitional arrangement it is transitioning, but it may well be that we need to say, ‘You need to take a look at the wages that the person receives from the first pay period in July, and then you need to determine whether that is higher or lower than the new modern award rate, and then apply the transitional provisions.’

**Senator FISHER**—All right. So when you are assisting an employer, do you provide that sort of advice in specific terms? For example, if you had an employer call you from the cleaning services industry, would the person at the other end of the phone—the help person—be having regard to the particular provisions of the modernised Cleaning Services Award 2010 in providing that advice?

**Mr Wilson**—They would. In a black-and-white area where there is not spirited debate about either the incoming award or the new modern award—and there are clearly some areas where the industrial parties continue to have those debates—the advice would be quite precise. But sometimes—certainly, over the telephone—it is not exactly possible to say whether or not you are exactly under this award or that award, depending on whatever else is going on in the business.

**Senator FISHER**—Chair, seek to table what I believe is a copy of the current provisions of the Cleaning Services Award 2010, as published on Fair Work Australia’s website, dated 3 April 2009. May I table that?

**CHAIR**—You can if you want to. You are just tabling public documents. They are publicly available. I do not know why you burden the Senate with tabling it.

**Senator FISHER**—I have been very carbon conscious, so the secretariat has happily obliged. Rather than photocopying the entire 67 page document—which, of course, is very easy to understand, not—the secretariat has copied only some five or six pages of it for the benefit of the witnesses, because I propose to ask Mr Wilson about it.

**CHAIR**—Thank you for that thoughtful consideration, and I am pleased you have done so. But I do not think you need to actually formally table it, in that sense. If you are making the copy available to the witnesses, that is good. Thank you, Senator Fisher.

**Senator FISHER**—Could I have Mr Wilson provided with a copy as soon as possible—that would assist.

**CHAIR**—Yes, there is a pecking order, Senator Fisher, and I am at the top.

**Senator FISHER**—I am one to observe Senate niceties, Chair.

**Mr Wilson**—Senator, if I can ask to the table Ms Ann Smith, who is head of our knowledge management area?

**Senator FISHER**—Knowledge management? Thank you very much, Ms Smith. Ms Smith, are you equipped to assist employers' attempt to understand their obligations under a particular award, or is your team equipped to do so?

**Ms Smith**—Yes, our role is to assist employers and employees in understanding their obligations under the modern award.

**Senator FISHER**—Thank you. Do you have a copy of the document I have tabled?

**Ms Smith**—Yes, I do.

**Senator FISHER**—The front page of it is the cover page, then there is the contents page, and the copy that you have skips through the guts of the provisions to the transitional provision. So the third page of what you have is actually page 42 of the modernised and simpler, supposedly, cleaning services award. You also have page 43, which is the beginning of the actual schedule relating to transitional arrangements. It attempts to set out the classification of workers covered, state by state, territory by territory, in this particular award and the accompanying pay rates over a period of time for the transitional period of four years. The final page you have is page 67, the last of the document. I have skipped the pages in between. They are available, if you wish.

If the Fair Work Ombudsman decided that a particular employer seeking guidance was subject to this Cleaning Services Award 2010, and as of today that employer were attempting to ascertain what rates of pay it should be paying its workers in order to comply with the award—both today and then to plan for the next iteration, 1 July, of the transitional provisions—and therefore was asking you some questions, can I take you to what I referred to clause B1.1 of schedule B, the transitional provisions, at the top of page 42. That says:

The following transitional arrangements apply to an employer which, immediately prior to 1 January 2010

- (a) was obliged;
- (b) but for the operation of an agreement-based transitional instrument would have been obliged; or
- (c) if it had been an employer in the industry or of the occupations covered by this award would have been obliged by a transitional minimum wage instrument and/or an award-based transitional instrument to pay a minimum wage lower than that in this award for any classification of employee.

What would you be saying to the employer calling your help line for guidance what that clause means?

**Mr Wilson**—I think we will take that on notice. We would have scripts which relate to particular awards and particular clauses. Given that you are asking a fairly specific question, I would prefer to take that on notice and come back to you.

**Senator FISHER**—What would you be saying to the employer who then says, 'I would like to know today because I have been contacted by state-based officers from your office to come and'—

**CHAIR**—Sorry, I do not think Mr Wilson was indicating that they would take on notice the answer to the employer; I think it is the answer to your question.

**Senator FISHER**—Well, may I ask that question, Chair?

**CHAIR**—If you are asking the question that has been taken on notice, no, but if it is a different question—

**Senator FISHER**—No, I have another question. May I proceed with that, and then you might rule whether it is in or out or otherwise.

**CHAIR**—All right, then.

**Senator FISHER**—If the employer concerned were to say, for whatever reason, Mr Wilson or Ms Smith, ‘I would like to know today whether that means these transitional provisions apply to me, and if so, how? What do I do in respect of my night shift worker cleaner?’ what would you say to that employer? Would you provide him an answer then and there, as to what this clause means?

**Ms Smith**—We would do a number of things. We would identify who the employer is, what state they are in, what their previous instrument was, and what their current modern award instrument is. There is a whole range of information that we require of people to be able to give an exact answer to that particular individual. Based on that information, the staff in the context centre or through the knowledge services team would identify what in the award applies to them, where they sit within it, and on the basis of that, be able to provide an answer.

**Senator FISHER**—So how long would that process take?

**Ms Smith**—The short answer is it depends. Some awards, as you are well aware, commenced on 1 January. We are working our way through what all the awards are and what their implications are. Some questions—

**Senator FISHER**—Does that mean you are still working out to whom they apply—

**Ms Smith**—No.

**Senator FISHER**—even though they started operation on 1 January? Because that would be understandable. Ms Smith, I totally sympathise. I cannot understand what that clause says. What does that mean you will be saying—

**CHAIR**—It could mean a number of things.

**Senator FISHER**—to the employer concerned, as of today?

**Senator Arbib**—Hang on, Senator Fisher, you are asking two—

**Senator FISHER**—Oh, Minister!

**Senator Arbib**—You are asking two questions. In terms of the questions, about what they would say and the detail of what they would say, Mr Wilson has already said he will take on notice. The second question was in relation to urgency. You are asking about if the matter was urgent. That is the second part of the question. The first part of the question is on notice.

**Senator FISHER**—Ms Smith, can you continue, please?

**Ms Smith**—I am afraid the answer is still it depends on the information provided. Sometimes information requested is quite straightforward. The contact centre can answer in their calls, as they do now. If they are not sure, or if they still require some clarification, then that is escalated through to my team, who are the escalation crew. They will analyse what is in

there. That might be a matter of a couple of days or it might be a matter of two weeks. We might need to discuss it with legal. We need to see the individual circumstance to be able to give an answer to that. We certainly work as fast as we can because we are very conscious that—for instance, the cleaning award has its own individual phasing arrangements that did commence on 1 January, so we are very aware that that industry, in particular, has an urgent need right now to have clear responses from the Fair Work Ombudsman and that is what we work to provide.

**Senator FISHER**—So you are working to provide it, but at this stage you are not able to provide clear responses to that industry? Is that what you are saying?

**Senator Arbib**—That is not what she said, Senator.

**Senator FISHER**—Ms Smith, you said you were working towards that. What did you mean by that?

**Ms Smith**—I said it would depend on the question. Some we can simply provide an answer straightforwardly today for them. Some things may not be as clear and require us to look further into the award and be able to then provide an answer.

**Senator FISHER**—Is it possible that for some employers in the cleaning services sector today you would not be able to tell them their obligation in terms of payment to a particular employee because you are still working towards an answer?

**Mr Wilson**—Senator, that is a matter of detail about the particular award and we would need to take that on notice as well. If I can amplify it a little bit further. The contact centre has escalation processes within it when the question that the caller is asking is beyond the capability of the officer or the databases that they have available to them. So there is an escalation service within their group and also within Ms Smith's group. Over and above that, we have very active liaison with the major industrial relations parties, including the ACTU, ACCI and the Australian Industry Group. We also have very active liaison with other industry and union bodies. The purpose of that is to deal with those circumstances where there is, either on our part or on the part of others, some stated uncertainty about the application of particular clauses. Those processes are designed to try and sort through exactly what the agreed interpretation of particular clauses might be. As soon as we get those agreements or clarifications, we then feed that back through our contact centre, obviously, to improve the speed with which we can answer things.

**Senator FISHER**—Thank you. I sympathise with the workplace community and, in particular, the cleaning services sector who will be attempting to work out their obligations that applied 1 January this year, yet they are still struggling to get explanation as to what those obligations mean. Thank you, I do appreciate that your organisation is doing the best that it can to assist workplaces to that end, so thank you for those answers. In respect of the—

**CHAIR**—I am sure whether that is what I heard. Is that what you have said, that you are not providing answers?

**Mr Wilson**—No, we said—

**Ms Smith**—We are providing.

**CHAIR**—I did not think that is what the evidence was, Senator Fisher at all.

**Senator FISHER**—I heard Ms Smith say that they are working towards being able to provide certain information to the cleaning services sector.

**Ms Smith**—If I may clarify what I said perhaps it might assist? When I used the term ‘working towards’ I was relating to an individual query that may come to us that may not be answered on that day on that call. Working towards it means we might be able to give an answer in a couple of days or it might be a couple of weeks. I was particularly using the term in relation to any specific query that comes in, in relation to a query from the cleaners or any industry, to be honest.

**Senator Arbib**—Senator, can I just make it clear how much red tape has been reduced. We have gone from 4,000 overlapping outmoded state and federal awards down to 122. There are 197,000 pages of regulation which has been reduced down to 5,753, which is a 97 per cent cut. Take the transport award; three new road transport awards replaced 74 old awards. In terms of simplicity I think the new system has come a long way from the old system.

**Senator FISHER**—We are looking at the new system, Minister, for an employer in the cleaning services sector trying to sort through just the transitional provisions. This is what the business has to go through.

**Senator Arbib**—Senator, we have gone from 4,000 awards down to 122.

**Senator FISHER**—You can say whatever you like about the past.

**Senator Arbib**—I think that is a much simpler system. Again, this is something that business groups agree with wholeheartedly and congratulate the government on.

**Senator FISHER**—Thanks, Minister.

**Senator Arbib**—You wanted to talk about simplicity. I wanted to make sure it was on the record.

**Senator FISHER**—Mr Wilson, the Fair Work education campaign announced 8 January 2010, to which Senator Abetz referred earlier. What proportion of the \$30 million announced by the Deputy Prime Minister goes to your organisation?

**Mr Wilson**—The announcements by the Deputy Prime Minister, I know, included an amount of \$2.7 million, which was to be allocated to new assistance for small business industry advisers. I forget the exact term, but it is something about nature. I do not have the announcement in front of me. Certainly the intention was that there be \$2.7 million to assist small business. In terms of the breakdown—

**Senator FISHER**—I am looking at something, sorry, in an announcement that says a further \$3.7 million allocated to fund almost 50,000 education visits by you. Is that what you are talking about?

**Mr Wilson**—I am afraid I do not have the benefit of that document in front of me, but the 50,000 visits is a program which was announced in January, and the intention there is that that be visits principally by the former state inspectorates to organisations that are new to the federal system.

**Senator FISHER**—And the \$2.7 million initiatives for small business include targeted information activities, et cetera.



**Mr Wilson**—That is correct.

**Senator FISHER**—What proportion of the Fair Work Ombudsman's workload at the moment is engaged in education and guidance as opposed to enforcement?

**Mr Wilson**—That is a matter of spirited debate within the organisation, because it depends on how you term those terms. There are those who would say that everything we do is directed towards educating people about their workplace rights and obligations. Beneath that realistically you can roughly split the organisation into two. There are activities we do which are very much directed towards helping people understand their rights and obligations through the contact centre, the website and the like. Then there are the activities directed through the inspectorate and the litigation practice to achieve outcomes in courts, which are very much about compliance.

**Senator FISHER**—And?

**Mr Wilson**—Sorry, what was the second part of the question?

**Senator FISHER**—Perhaps take me to some of the end of the spirited debate.

**Mr Wilson**—Okay.

**Senator FISHER**—Can you give me percentages?

**Mr Wilson**—Okay, roughly in my definition 50/50. In other people's definition they would say 100 per cent is education. The way that different people come at it, of course, is your view about what is an educated practice. But in a direct sense of assisting individual employers and employees about their rights and obligations the one that I am most comfortable with is saying that all of the contact centre services, all of our website services, are very much in that category.

**CHAIR**—I think we should rely on your definition, Mr Wilson, as the head of the organisation.

**Senator FISHER**—I am happy with that. Then according to your definition have the percentages shifted since 1 January 2010? When did the Fair Work Ombudsman, as part of Fair Work Australia, commenced operation?

**Mr Wilson**—In July.

**Senator FISHER**—Who was the predecessor to the Fair Work Ombudsman?

**Mr Wilson**—There were two organisations: the Workplace Authority and the Workplace Ombudsman. They were roughly equal size in July.

**Senator FISHER**—In respect of the work done previously by the Workplace Ombudsman, has there been a shift in the streams of activity described according to your definition in the transition from the end of the Workplace Ombudsman in June last year to the Fair Work Ombudsman on 1 July this year, and then again in January this year?

**Mr Wilson**—I think the answer is yes. The fact of the first six months of the financial year has been that we have been gearing up our processes and our capacity to make sure that as much information as we can is available to people about what is about to occur. A couple of measures that I can refer to include the release of best practice guides over the course of September and October and the release of some multimedia guides, particularly to small

business and youth workers in late 2009. Those services were very much a large focus of the new organisation.

At the same time, around that period of late 2009, there have been considerably more resources made available to us as a result of the services to be offered through the former state inspectorates. We now have a very large resource available to us, not only to assist with the compliance activities but to also assist with targeted compliance and also with the transitional educational visits. That, I think, is most certainly a new initiative. Overall, I think the mix has changed.

**Senator FISHER**—Thank you very much.

**Senator JACINTA COLLINS**—Mr Wilson, whilst you are now talking about the changes in the overall mix, I want to go back to the questions earlier about providing advice on issues such as award coverage and obligations under awards. In the long term, do you expect that to become far simpler with the new system?

**Mr Wilson**—I think it will. At the moment, the kinds of questions we are getting are very much, ‘What will be happening to me?’ whether as an employer or an employee. Then, the subsidiary questions relate to the transitional arrangements. There will be a period of time in which they move through the system. It is open to debate how long that will be, but, whether it is this year or next, we expect the questions to be a bit simpler.

**Senator JACINTA COLLINS**—The advice you would have been giving businesses in the past would have involved more complex questions, at least from your end, I assume, about thing such as, ‘Are you a company? Are you on a transitional award, a federal award, a state award?’ The new system simplifies a lot of that, does it not?

**Mr Wilson**—It will, in the fullness of time. Those questions currently still need to be asked because those questions go the incoming instrument that the person may well be on, and that, then, is germane to making a determination about the transitional arrangements.

**Senator JACINTA COLLINS**—Are you discovering, in the process of advising businesses seeking to clarify their ongoing obligations, that indeed the complexity of past arrangements means that employers are often not meeting their previous obligations?

**Mr Wilson**—That probably is a feature of the work we do through the inspectorate, but, almost by definition, the work of the inspectorate is seeing those circumstances where something not right has occurred or something wrong has occurred. But certainly, yes, we do see that very commonly.

**Senator JACINTA COLLINS**—I am not so much asking about the right and wrong but rather the sense that the complexity in the past for some employers has led to a situation where, only on seeking to clarify their ongoing arrangements, they have discovered that they were in fact not compliant in the past.

**Mr Wilson**—That could be the case. I do not think we have strong evidence of that.

**Senator JACINTA COLLINS**—You do not have a sense of that?

**Mr Wilson**—No.

**Senator JACINTA COLLINS**—No.

**Mr Wilson**—No, not particularly.

**Senator JACINTA COLLINS**—Okay. But your sense is that, as we move through this transition, the employment arrangements and the award coverage issues for employers will be much simpler?

**Mr Wilson**—Certainly that will be occurring. We are not precisely sure how long that will continue, but we expect that it will be certainly simpler.

**Senator JACINTA COLLINS**—Thank you.

**Senator ABETZ**—Mr Wilson, during our discussions you referred from time to time to ‘scripts’.

**Mr Wilson**—Yes.

**Senator ABETZ**—From which people who are manning the info line would read. Is that correct?

**Mr Wilson**—Yes, it is.

**Senator ABETZ**—Yes. Can I ask: would it be possible for the committee to be provided with a copy of all those scripts for all the various awards?

**Mr Wilson**—It would; however, I think not, if I can answer it that way.. It is a database.

**Senator ABETZ**—Sorry?

**Mr Wilson**—It is a database with—who knows—tens of thousands of pages on it. When I refer to a ‘script’ the operator would put some words into a search engine, which would then come back with a number of different alternatives. They would select one of those alternatives, which would have some advice available to them.

**Senator ABETZ**—For old-fashioned people like me that think there may have been, let us say, 12 or 13 pages with an index in front of them, that is not the way it happens. They put words into a search engine.

**Mr Wilson**—Yes.

**Senator ABETZ**—And then a script is—what is the term?—manufactured or provided for them on the basis of the word search.

**CHAIR**—Generated.

**Senator ABETZ**—Generated. Thank you.

**Mr Wilson**—Generated. Maybe if I can ask Ms Smith to talk about how her team operates and how it generates this database, that will give you a perspective.

**Ms Smith**—Indeed.

**Senator ABETZ**—Are you a bit like me? You do not know, Mr Wilson?

**Ms Smith**—I think Mr Wilson does know—

**Senator ABETZ**—He does. Good.

**Ms Smith**—But it is my area of responsibility to produce the scripts. It might be worth clarifying what the term ‘script’ means. I have to say, when I first came in to this as well, I felt a script was—

**Senator ABETZ**—I thought we were going to a chemist.

**Ms Smith**—It can mean many things.

**Senator Arbib**—That sense of humour.

**Ms Smith**—A script was very directive: you say this, and you say this, and you say this. It is not the case. We use the term ‘script’ in a very loose way. My team would produce, in a week, anywhere between five and 20 scripts, if you like. What we do is identify common issues, common themes, new information, legislative changes, changes to awards, changes to conditions. It might in relation to high-profile things happening through the media or parliament.

What we do is we provide a set of information that might be one page long to four pages long, and we will do it in a question and answer format. As Mr Wilson identified, the staff put into our system that they are looking for information on the cleaning industry, and so what will come up with that is the modern award. They can find the related awards. They can find a range of pieces of information that we have prepared for them and, from that, they are able to better answer the client’s question.

**Senator ABETZ**—All right. As to the pieces of information that you have prepared, not the actual legislation, let us say on the cleaners’ award, how many would there be for that?

**Ms Smith**—I could not tell you specifically, I am afraid.

**Senator ABETZ**—Yes, but, what, a dozen?

**Ms Smith**—There could be 50; there could be 10. I am sorry, it is highly variable, and we actually have—

**Senator ABETZ**—In that case, could I ask you: how many are there? Are there 122 or 123?

**Ms Smith**—122.

**Senator ABETZ**—Let us not go through all 122, but can you provide us with the scripts that have been generated for, let us say, the Cleaning Services Award, if that is its correct name—just for that one, so we have got the idea of what is being generated for these people working on the info line. I can understand it would be a huge task for the 122 awards, but I do not think it would be too much of a task for one single award so that we can get the flavour.

**Mr Wilson**—Senator, in principle, we are happy to assist, but maybe we can check and see exactly how many there are and how difficult the task is. Certainly, in principle, we do not have a problem.

**Senator ABETZ**—Right. But there must be a set number, as we speak, of scripts that have been prepared ready for these info line workers. So we have got a certain sum of scripts. Just dump them, download them, whatever the term is, and put them on a bit on a bit of paper for us and bring them to the committee, please.

**Mr Wilson**—We will check and, if it is possible, we will provide them.

**Senator ABETZ**—Thank you very much.

**Senator JACINTA COLLINS**—Mr Wilson, alternatively, would it be possible for a senator to come and look at the operation of the system? I have done it in the health services advice area; I have seen similar systems to what I presume you are operating. But it might be useful for a senator to observe an operator going through the process—‘I am ringing from a supermarket in South Australia; I want to know what my entitlements are’—and how your scripting system works.

**Mr Wilson**—Subject to both internal and external privacy issues, we do not have a problem with doing that. We are more than happy to show, with confidence, the work that we do.

**Senator ABETZ**—Would the Deputy Prime Minister trust an opposition senator to observe?

**Senator Arbib**—It depends who it is!

**Senator ABETZ**—I assume the opposition would need ministerial approval to attend something such as that.

**CHAIR**—The committee may make it a little works outing for us one day.

**Senator ABETZ**—Just as long as you prepare the picnic. I understand we are having lunch now. Is that right?

**Senator FISHER**—Meal break. Smoko.

**CHAIR**—Senator Cameron has a question.

**Senator CAMERON**—Thank you. Meal breaks and smokos were not as common under Work Choices as they are now. Mr Wilson, do you have a memorandum of understanding with the ABCC?

**Mr Wilson**—There is an exchange of letters, not a memorandum of understanding.

**Senator CAMERON**—Are those on the public record?

**Mr Wilson**—We have tabled them previously, and we are happy to do so again.

**Senator CAMERON**—How many inquiries have you made in relation to tax evasion in the building and construction industry?

**Mr Wilson**—I would need to take that on notice.

**Senator CAMERON**—Have you done any?

**Mr Wilson**—I cannot answer that question, I am afraid. It is an awfully specific question that I am not equipped to respond to, but certainly I am happy to check and provide you with the answer.

**Senator CAMERON**—None of your officers can give me an idea whether you have done any analysis on tax evasion?

**Senator ABETZ**—Wouldn't you flick it straight to the ATO?

**Mr Wilson**—I will check. However, Mr Loizides, who is the head of our inspectorate, tells me that when we have allegations put to us of tax evasion, we would automatically refer that to the Australian Taxation Office. But I will check for you.

**Senator CAMERON**—Can you advise me then how many allegations have been referred?

**Mr Wilson**—We will check again.

**Senator CAMERON**—Could the ABCC handle that issue by referring and not rely on the exchange of letters?

**Mr Wilson**—The way the exchange of letters works is that, in short terms, things which relate to money matters would generally be dealt with by us and our predecessor organisations, and matters which raise systemic compliance issues would be dealt with the ABCC. It may well be that, if we had allegations that, for example, a plasterer was paying cash in hand, that may never be referred to the ABCC and we would just deal with it ourselves. I will check whether we can supply that information to you and how many instances there have been.

**Senator CAMERON**—How much work does the building and construction industry generate that would come under the ambit of this exchange of letters?

**Mr Wilson**—I need to answer that in two ways, one of which is that under the formal exchange of letters there have been 16 matters referred from the ABCC to the Fair Work Ombudsman and its two predecessor organisations and, vice versa, we have referred—

**Senator CAMERON**—What was the time frame for that 16?

**Mr Wilson**—That was between 2006 and 2010. As I said, I need to answer that in two ways. There is then other work which we do in relation to the building industry. I do not have aggregated data, I am afraid, but between March 2006 and June 2009 we received a total of 4,942 matters in the building and construction industry. From July 2009 to the end of 2009 we received a further 660 matters—so, in total, 5½ thousand or so matters. I do not have it with me, but we do have aggregated data of the underpayments and other matters that relate to those recoveries, and I am happy to provide those as well.

**Senator CAMERON**—Thank you.

**CHAIR**—Thank you, Mr Wilson, and your officers.

**Mr Wilson**—Thank you.

**Proceedings suspended from 12.25 pm to 1.27 pm**

**Fair Work Australia**

**CHAIR**—I welcome to the table Fair Work Australia and Justice Geoffrey Giudice, Tim Lee and other officers. Would you like to make any opening remarks to the committee before we commence with questions?

**Justice Giudice**—No, thank you, Senator.

**CHAIR**—We will commence with questions and I understand that Senator Ronaldson is seeking the call.

**Senator RONALDSON**—Minister, yesterday Mr Killesteyn from the Australian Electoral Commission tabled a document in the AEC Senate estimates hearings regarding the Health Services Union matter involving your esteemed, or not so esteemed, colleague Craig Thomson the New South Wales MP for the seat of Dobell. Mr Killesteyn said that the AEC was awaiting the results of the inquiry by Fair Work Australia before contemplating whether any further action may be required. Minister, I also draw your attention to the article by Mark Davis in the *Sydney Morning Herald* of 23 October last year that referred to this matter and the action of the Health Services Union. I will quote from it, and I am happy to provide you with a copy of it if you have not seen it, which would very much surprise me:

The union's national executive earlier this year commissioned an audit report from the law firm Slater & Gordon and accountants BDO Kendall into allegations Mr Thomson's union credit card was used to obtain cash advances from ATMs totalling more than \$100,000 from 2002 until 2007.

The audit also examined separate spending by the union's national office on Mr Thompson's election campaign in Dobell.

... ..

The union's national executive referred the audit report to the industrial registrar in June. Since then Labor's new Fair Work Australia has taken over the registrar's responsibilities for regulating unions and employer associations. Fair Work Australia is believed to be conducting a formal inquiry into the findings of the audit report.

I therefore ask: Are you conducting an inquiry in line with the matters raised by Mr Killesteyn from the AEC yesterday and referred to by Mr Davis? What is the state and stage of those inquiries?

**Mr Nassios**—It is my responsibility as a delegate of the General Manager to conduct inquiries into certain aspects relating to registered organisations, and I am the person who is conducting an inquiry into the HSU national office and the HSU Victoria No. 1 branch.

**Senator RONALDSON**—I take it that this was referred to the Industrial Registrar in June last year. Did you have responsibility in that capacity in June when it was transferred?

**Mr Nassios**—Yes, I did indeed.

**Senator RONALDSON**—So you have been conducting your inquiries since June last year?

**Mr Nassios**—We commenced in January last year.

**Senator RONALDSON**—January last year?

**Mr Nassios**—Correct.

**Senator RONALDSON**—Thirteen months ago?

**Mr Nassios**—Correct.

**Senator RONALDSON**—I stand to be corrected, but I am not convinced that the AEC had been conducting an inquiry for as long as that. They seemed to have moved in and conducted an inquiry and they have some interim results. They are clearly waiting for you, Mr Nassios, to finalise your inquiry. When can we expect a report into this extremely serious matter?

**Mr Nassios**—If I am allowed to start from the beginning—

**Senator RONALDSON**—I do not think we have time to go through 13 months. Can you just answer the question for me? You have been conducting this inquiry now for 13 months. When can we—and the AEC more importantly—expect an outcome of your inquiry so that they can continue potentially to pursue their inquiries?

**Mr Nassios**—It is important that I give at least a brief background. As I have indicated, the inquiries that I am conducting relate to two entities of the Health Services Union—the national office and the Victoria No. 1 branch. They are related to issues in respect of their financial returns. To the extent that the AEC is awaiting the outcome of my inquiry, my inquiry is not related in any way to the AEC inquiry; I am dealing with different issues. As I said, to the extent they are waiting for it, I am not really going to be able to assist them.

**Senator RONALDSON**—I am not entirely convinced about that, with the greatest respect. I understand that you are investigating an audit undertaken by the union; is that correct?

**Mr Nassios**—As I have indicated, the initial inquiry was in respect of the Victoria No. 1 branch. Certain allegations were made in relation to their financial returns. Our inquiry commenced as a result of those allegations that appeared in an article in, I think, the *Herald Sun* in November 2007. In the course of that inquiry we received information that suggested that we should also undertake an inquiry into the national office. As I said, that happened in approximately February or March last year.

**Senator RONALDSON**—Have you been provided with an audit report from Slater and Gordon and accountants BDO Kendall?

**Mr Nassios**—An audit report?

**Senator RONALDSON**—Yes.

**Mr Nassios**—In terms of the national office?

**Senator RONALDSON**—Yes.

**Mr Nassios**—No.

**Senator RONALDSON**—You have not?

**Mr Nassios**—No.

**Senator RONALDSON**—You have not been provided with that?

**Mr Nassios**—There has been no report that the Health Services Union national office is required to lodge with us; we have not received any for the last two years.

**Senator Arbib**—Obviously there is an investigation underway. I think we have to be very careful about the questions that are asked of the officials because we do not want to compromise their investigations and these are also matters of a private nature.

**Senator RONALDSON**—Mr Nassios, were you aware that there had been this inquiry by Slater and Gordon and BDO Kendall?

**Mr Nassios**—Yes.

**Senator RONALDSON**—But you have decided not to refer to that audit report. Have you been provided way copy of it?

**Mr Nassios**—I would prefer not to answer that question, if I could. Can I—



**Senator RONALDSON**—I am sure that you would prefer not to answer that question.

**Mr Nassios**—Senator—

**Senator RONALDSON**—Can you please—

**Senator JACINTA COLLINS**—Give the witness a chance to elaborate, Senator. I raise a point of order, Chair.

**CHAIR**—Just a moment. Senator Ronaldson, are you—

**Senator RONALDSON**—There is going to have to be some claim of public interest immunity.

**CHAIR**—I was going to ask whether you wanted to push that, because you seem to accept that. If you accept it, we will then move on. If you want Mr Nassios to justify why he would prefer not to answer that, we will go there.

**Senator RONALDSON**—Yes. Is there a claim of public interest immunity in relation to this?

**Mr Nassios**—In terms of the inquiry, I would be pushing that. But I would prefer, if I may, just to give you a bit of background.

**CHAIR**—I think that is appropriate. You did make that offer and that offer was rejected, but I think we are now going into the details. I think it would help committee if you actually took us through the process and then we can get onto some more questions.

**Mr Nassios**—Every organisation that is registered under the Fair Work Act is required on a yearly basis to provide us with financial statements which are audited. In terms of the HSUA national office, we have not received those statements. There are no audited statements to try to answer your question; they do not exist.

**Senator RONALDSON**—That is their official audited statement. But you have a copy, I take it, of the Slater and Gordon and BDO Kendall independent audit commissioned by the union's national executive. Is that right?

**Mr Nassios**—I would now, in terms of inquiry, prefer not to answer that question.

**Senator RONALDSON**—With the greatest of respect, you know what your brief is and I know what your brief is. How can you possibly conduct your brief properly without reference to that document? It beggars belief that you have not. It beggars belief that it will not form an important part of the outcome of your inquiry. With the greatest respect to you, I ask you again: do you have a copy of that document and is it forming part of your investigation?

**CHAIR**—Mr Nassios, you have said you would prefer not to answer that question. I suspect it is because you believe that that will impact upon your current investigation, but you need to actually give us a reason why you prefer not answer that.

**Mr Nassios**—I am very conscious of the requirements in terms of claiming such privilege.

**CHAIR**—Yes.

**Mr Nassios**—The Fair Work Act is structured in a way that requires me as a delegate to inquire as to whether there are reasonable grounds for me to actually proceed to an investigation. I am actually not at the moment investigating, and it may be that there will be

no investigation. I am inquiring. As part of those inquiries, there are aspects of those inquiries that I think would prejudice, if we do proceed to an investigation in which prosecution action could take place. I think they could impact on those prosecutions.

**CHAIR**—I believe those are acceptable grounds for the refusal to answer questions in this case.

**Senator RONALDSON**—Mr Chair, I respect what you are saying. I could seek a private meeting to insist on this answer. I do not think there is one person listening in today who does not think that Mr Nassios does not have a copy of that report. Can I just ask you one more question. Do you deny receiving a copy of the Slater and Gordon and BDO Kendall document?

**Senator Arbib**—That is the same question. Mr Nassios has responded. If Senator Ronaldson is not happy with that answer, it is the best answer he is going to get.

**Senator RONALDSON**—I think we have probably layered the pancake in relation what to people will quite rightly take out of this. Mr Nassios, you have now had this matter for 13 months and you are telling us you still actually have not decided, so it is an investigation into whether you are doing to investigate the matter. Is that what you are telling committee?

**Mr Nassios**—The act requires me to inquire as to whether there are reasonable grounds for an investigation. I am at that stage, the inquiry stage, of that process.

**Senator RONALDSON**—So the pre-inquiry inquiry. When do you think you might come to a decision in relation to that?

**Mr Nassios**—I would certainly expect that would be in the next few months.

**Senator RONALDSON**—The next few months?

**Mr Nassios**—Yes.

**Senator RONALDSON**—Why would it be taking you so long to conduct a pre-inquiry?

**Mr Nassios**—The possible outcome if I proceed to an investigation is that I may find that certain civil penalty offences have been committed. Those civil penalty offences are subject to pecuniary penalty units. So to that extent it is important that I ensure that I do what is the required thing under the Fair Work (Registered Organisations) Act.

**Senator RONALDSON**—Given that the Australian Electoral Commission, which most certainly guides our activities in here, I can assure you, Mr Nassios, have now indicated—I will quote from the document, and I am happy to give you a copy of this but I am sure someone will have found one for you by now—

**CHAIR**—Maybe you can hand it up. I think it would be beneficial for the committee to have a copy of the document if you are referring to it.

**Senator RONALDSON**—It is only one line.

**CHAIR**—What is the document?

**Senator RONALDSON**—It is a statement provided yesterday by Mr Ed Killesteyn from the Australian Electoral Commission. It is a statement in relation to inquiries they had conducted in relation to the activities of the Health Services Union and to allegations that

there had been substantial financial support provided to the member for Dobell prior to the last election and, indeed, related to allegations of undisclosed expenditure that was used to facilitate the election of Mr Thomson to the national parliament.

**Senator Arbib**—Chair, on that basis, can we ask that the document be copied and distributed so that we can get the context of it? If you are going to quote one line, then I think the officials—

**Senator RONALDSON**—It is only one line.

**Senator Arbib**—That is fine, but I think the officials need the document so they have the context in which the line is being used.

**CHAIR**—Yes, because you have given it your own description.

**Senator Arbib**—Not that we do not trust you on this, Senator, but we would actually like to see the document.

**Senator RONALDSON**—I understand. The interesting part is that there is only one line that relates to this matter, so it is not even a context thing.

**Senator Arbib**—Nevertheless, it would be good if we could get the document.

**Senator RONALDSON**—Indeed. I will read out the one sentence that relates to this:

The AEC await the results of the inquiry by Fair Work Australia before contemplating whether any further action may be required.

On the back of that, Mr Nassios—and I am very mindful of the time—are you prepared now to give this committee an undertaking to use your very best endeavours to make this decision at the earliest opportunity, given that it is some 13 months, given that the Australian Electoral Commission still has a very keen interest potentially in this matter? Can I have an undertaking from you that, given there will be a federal election this year, there will be nothing that is done by Fair Work Australia which may stop this matter being dealt with expeditiously before the calling of a federal election?

**Mr Nassios**—Senator, it has always been my intention to do this as quickly as possible. Again, it is important that I give some background here. This is an inquiry that is not only related to the HSUA national office; it is also related to the Victoria No. 1 Branch. Those two entities have the same auditor, so the inquiries that have been undertaken have been undertaken jointly because the same auditor is involved. Yes, in practical terms, it has been an inquiry that has gone on for 13 months. But it is an inquiry that has gone on in relation to two different entities of the Health Services Union.

**Senator RONALDSON**—I am sure that Fair Work Australia would not want an allegation that the consideration of these matters was being deferred so that the results of the inquiry came after a federal election, particularly when it does potentially involve a government member of parliament. I am sure you would want to avoid the potential for any such allegation.

**Mr Nassios**—I totally agree.

**CHAIR**—We have been handed the document. Just so we are clear on what it is, Senator, you say this document is a statement from the AEC. It is not identified who made the statement.

**Senator RONALDSON**—Mr Ed Killesteyn.

**CHAIR**—And this is his document?

**Senator RONALDSON**—That is right. He is the man who oversees you and me, Mr Chair.

**CHAIR**—I do not think he oversees me.

**Senator RONALDSON**—Yes, he does; I can assure you of that.

**Senator Arbib**—I would like to make a point having seen the AEC document. I draw the attention of the committee to two sections. First, the AEC statement says:

The only probative evidence of a breach of the act that the AEC has at this time is that the HSU national office returns were lodged too late, not that their content are misleading or incorrect in a material particular.

It also states:

The AEC has concluded that while there is a breach of the Electoral Act for late lodgement there is no public interest at stake that would see the AEC take any further action in relation to late lodgements of the returns.

I also put on record that Mr Thomson did provide a personal explanation this morning and he did refute the allegations that were made by Senator Ronaldson yesterday in the estimates hearings.

**Senator RONALDSON**—If I may respond very quickly. I invite the committee to reflect on what was rushed over very quickly by the minister—that is, the words ‘at this time’, which, of course, is where Mr Nassios comes in. I invite you, Minister, to read the transcript of *Hansard* tomorrow, where you will find that a brief has been prepared for the Director of Public Prosecutions. I invite the honourable member for Dobell to not believe what has probably come out of the PMO in relation to the questions I asked yesterday, but actually to have a look, himself. And while you are here, can you also go to the Prime Minister and ask him whether he finds it acceptable that the Australian Labor Party is on the brink of preselecting in the seat of Townsville a man who was named in the Shepherdson inquiry for potential electoral rorts and, indeed, whether it is appropriate for the Australian Labor Party—

**CHAIR**—I think we are moving outside of the—

**Senator RONALDSON**—to keep supporting member for Dobell in light of these very serious allegations.

**CHAIR**—Senator Ronaldson, I do not think you need to proceed any further with that.

**Senator Arbib**—Nice slander!

**Senator ABETZ**—That is an inappropriate question, because if that question were asked they would have to ask that about Mike Kaiser’s appointment as well.

**Senator RONALDSON**—That is very true. Thank you for your indulgence, chair.

**CHAIR**—There is always an amount of political grandstanding that goes on at these events. I ask people to cooperate and not do so. We will try to proceed now.

**Senator FISHER**—Thank you, officers of Fair Work Australia, for your attendance before the committee today. Some of you have been appearing for a long time. Mr Nassios is a bit of a serial offender in terms of appearing at estimates hearings—

**Senator Arbib**—Serial offender!

**Senator FISHER**—and for others of you it is a relatively new experience. Thank you. Your collective attendance today is really important to the work of the committee and we will find it very helpful. Of course, it is important not only to the work of the committee but also to the parliament more generally as we drill down into the operations of the Public Service in terms of its implementation of the will of the government of the day. In the case of Fair Work Australia, of course, your work and that of the national workplace relations tribunal touches the lives of everyday Australians. So it is very good to have you all here and thank you for your presence. Hello, in particular, to your honour President Giudice, and we look forward to having you help us along the way.

**CHAIR**—Order! Can we try to get to some questions?

**Senator FISHER**—It is very timely to have you all here. Fair Work Australia has been in operation for some months. Your honour, these are new days for us. Can you talk to us about your role in managing Fair Work Australia and managing it efficiently as the act provides? Can you talk us through how you are implementing your responsibilities under the act? Can you give us a bit of a snapshot, if you like? What is a day in the life of the president when you are not attending estimates hearings?

**CHAIR**—I think you really should be a little bit more specific or concise rather than ask what a day in the life of the president involves.

**Senator Arbib**—I thought it was a good question.

**Mr Giudice**—I am prepared to try to give some sort of overview.

**Senator FISHER**—Thank you.

**Mr Giudice**—I am not sure it will exactly be a day in the life, but I can give some indication that might be of some assistance. The first thing to appreciate is that obviously I cannot supervise and attend to every matter myself. So what is important is that we have systems and procedures that appear to be the most effective we can make them. This is not an easy question. Functions of the national industrial tribunal, and the way in which it exercises them, have been politically controversial since before there was even a tribunal.

**Senator FISHER**—Indeed.

**Mr Giudice**—We all know there is a sort of public excitement about the way in which the national tribunal deals with matters, but that is really just background. I think I can divide the way in which we try to organise the work, into a couple of areas. The first of those is what you might call industry matters. They are disputes, other applications, agreements, applications in relation to protected action ballots and applications in relation to industrial action which may or may not be authorised under the act.

All of those matters are dealt with on a panel system. We divide all of the industries into four industry panels and we have a panel head for each of those. A number of members of Fair Work Australia—I will probably use the word ‘commission’ too often, but that is just habit—are allocated to each of these industry panels.

Every matter that comes in—whether it is filed physically, by email or by some other means, such as fax or something—is allocated by the service teams to the industry panel head. That panel head will allocate the matters on the basis of, hopefully, familiarity with the industry. If it is in Perth, you might not have too many options because we do not have too many members there. Until recently in Adelaide we had only one option. In Sydney and Melbourne we have a number of options. The panel head will then try to allocate that matter to somebody who is familiar with the industry. That is a system which we have looked at fairly recently to see whether it still had utility. The major parties seem to think it is still useful to have that.

That enables, firstly, the panel head to exercise judgment about the allocation and, secondly, the member concerned to exercise judgment in the timing of listing that particular matter. In some cases, the act requires that matters be dealt with expeditiously. In some cases it requires that they be dealt with in a nominated time frame. Those have to be taken into account. So there is an individual workload management issue for the individual members. That is, if I can call it this, the ‘industry work’. One might regard that as traditional industrial work.

**Senator FISHER**—Bread and butter, perhaps?

**Mr Giudice**—Perhaps, although in terms of the volume of matters, that is not as great as it once was. Termination of employment applications, which form a distinguishable group, are dealt with by a separate panel, which is administered by another panel head—another senior member. They are allocated in a far more rigid, fixed way with members of Fair Work Australia throughout the country taking roughly an even share, depending on other considerations. The idea is to spread that work fairly evenly. At the moment it is not thought important that it be done on the same basis as industry panel work.

An important issue in relation to the termination of employment cases is that when I was considering, prior to 1 July, how we would deal with what we expected would probably be an increase in the number of applications—that is because the conditions for making an application have altered under the Fair Work Act—we looked at how we could deal with them more effectively. The decision was made to engage a number of reasonably senior public servants who would conduct a conciliation process and try to sort out the matters that were going to be settled and not go on—and do that at an early stage to save everybody concerned the cost of the proceedings and also to conserve our own resources in terms of the work of the members. But, of course, the members still have to deal with matters which do not settle.

That is a general overview of how the system operates. I do not think it operates on an autocratic basis. Each member of Fair Work Australia has their own conditions of appointment. They are responsible. They take an oath or an affirmation to carry out their functions impartially and faithfully. They have the protections of judges of the High Court in relation to their own proceedings and each of them has a responsibility to carry out those

functions in accordance with the act. So, in the performance of their functions, they are obviously mindful of the objects of the act and the particular provisions they are dealing with.

They cannot be in any way influenced by me or by anyone else in the way that they carry out their functions. Anyone who tries to interfere with them is guilty of an offence under the legislation, and there are quite significant penalties. That does not mean there cannot be normal criticism of decisions; we expect that, particularly in this area. People, regardless of their background and so on, will nevertheless take positions for whatever reason in relation to decisions.

Having said that, I think it is a matter for the individual member to carry out their responsibilities in accordance with the statute as they see them. If there are difficulties that arise in that respect, there is an internal appeal system, which I am responsible for organising. We do that mainly through a roster of full benches. We try to set those in advance so that people can set aside time in their diary, and when an appeal comes in it can be dealt with reasonably promptly rather than starting to look for a date when the appeal comes in. That is a normal procedure for courts and tribunals.

In that way, when an appeal comes in, it is simply allocated almost as a matter of routine, but sometimes not—sometimes it is an urgent matter and sometimes there might be another appeal dealing with the same issue. It might therefore be necessary to put the two together to save expense. That is roughly how the appeal system works.

**Senator FISHER**—Thank you. That gives us a very good context, but it is really helpful to have that. I hope that today is in your mind the establishment of a practice to continue appearing before committees of this ilk when estimates are regularly held.

**CHAIR**—Senator, have you got a question?

**Senator FISHER**—Yes, Chair.

**CHAIR**—Why don't we get to questions?

**Senator FISHER**—Your Honour, I am hopeful of that. I see your presence here today as part of your intention to do that.

**Senator CAMERON**—That is not what you said last time. It was nothing like that. It was not as nice as that. It was nothing like that.

**CHAIR**—Senator Fisher, can we get to questions, please?

**Senator FISHER**—Your Honour, you earlier indicated that you do not manage every bit of the day-to-day exigencies—they are my words. I was provided with a copy of the organisation chart in the preceding estimates. Do you manage the members of the commission from day to day; is that part of what you do in being responsible for managing Fair Work Australia?

**Mr Giudice**—I think it would be fair to say that there are really two parts of the organisation. This may be an oversimplification, but there is the tribunal function, with specified powers and functions in the act, that must be carried out by members. In carrying out those functions, no-one can interfere with that process and no-one should interfere with it. My role is really limited to allocations in the system that we have established. There are obviously interactions with members in the normal course. For example, we have a

professional development committee. We have meetings where we might discuss particular issues of internal significance and we might talk about developments in the law. But basically members manage their own files.

**Senator FISHER**—How would you put in layperson speak that you ensure that you carry out your responsibility for ensuring that Fair Work Australia performs its functions and exercises its powers in a manner that is efficient and adequately serves the needs of employers and employees across Australia? How would you say you do that, for example, in terms of managing members of the commission to the extent that you do?

**Mr Giudice**—The obligation you are referring to is put on every member of Fair Work Australia. It is not an autocracy in which I direct people in the manner in which they carry out their functions. If you look at the act, you will see that that responsibility is on every member. That is an important point.

**Senator FISHER**—You are not saying, are you, that every member has the responsibility to ensure that Fair Work Australia performs its functions et cetera as provided for under section 581 of the act?

**Mr Giudice**—No, I am not. I have a particular responsibility.

**Senator FISHER**—Thank you.

**Mr Giudice**—I am not denying that for one moment. What I have tried to explain to you is that the way in which it is done is basically by the systems and procedures which we adopted. I have tried to explain how that works. Of course, Fair Work Australia has been operating only since July. For 12 years before that I was president of the Industrial Relations Commission.

**Senator FISHER**—Indeed.

**Mr Giudice**—Forgive me if I blur that distinction a little bit. The approach that I have taken to the question of efficiency, if I can put it that way, in the past has been threefold. There are three elements that I think are indispensable elements of efficiency. I do not think you can really rank these. One is time: how long does it take to deal with matters? On that question we have historically developed some measures, which used to be published in the annual report of the Industrial Relations Commission. We will develop measures for Fair Work Australia as well. It is fairly early days at this stage.

But you can sensibly look at things like how long it takes between the lodgement and a matter being listed. You can sensibly look at how long it takes between lodgement of an unfair termination matter and, for example, the conciliation coming on.

**Senator FISHER**—What are the other two measures, Your Honour? You said there were three?

**Mr Giudice**—I am not sure I used the term ‘measure’.

**Senator FISHER**—You may not have—the other two things.

**Mr Giudice**—One is the quality of the process. It has to be a fair process. Members of Fair Work Australia, like members of the commission and like judges, are required to act judicially. They are not judges, but they are required to act judicially. That means the process has to be a fair one. Everybody who has a potential interest must have an opportunity to be



heard. That element of efficiency is really monitored through the appeal system and through challenges, because each member is master of their own proceeding.

**Senator FISHER**—And the third, Your Honour?

**Mr Giudice**—The third is quality of outcomes. You can do things very quickly and come up with a very bad result. I am now talking historically about this. While I have tried to introduce consciousness of time, I do not want to overemphasise it; it is just one measure of the effective operation of a tribunal.

**Senator FISHER**—Your Honour, if I may, regarding consciousness of time, I have colleagues who are also very happy to have you here and who have questions. I am quite comfortable with your blurring the distinction between your previous role and the success of Fair Work Australia, because I suspect that many of the questions we have to ask will also, of necessity, blur the distinction. I look forward to learning from you in estimates along the way. I have a colleague who I think would like to take over. Thank you.

**CHAIR**—Have you finished?

**Senator FISHER**—I have more questions, but at the moment I have colleagues who wish to ask questions.

**CHAIR**—We will come back to you later.

**Senator FISHER**—Indeed, time permitting. But I do not wish to outstay my welcome.

**CHAIR**—I would not want you to be deprived of this opportunity!

**Senator ABETZ**—Thank you to the officials from Fair Work Australia for getting into the nuts and bolts issues that you need to deal with. I turn to the area of selecting superannuation products. What relevant experience do you, Your Honour, or any other members of Fair Work Australia have to make determinations as to what superannuation funds ought be nominated in any particular award?

**Mr Giudice**—I find that question difficult to answer, but let me try to answer it.

**Senator ABETZ**—Sorry, I did not hear you. It is my unruly coalition colleagues around me!

**Mr Giudice**—What I said was—

**CHAIR**—Order!

**Senator ABETZ**—Now it is because of Labor colleagues that I cannot hear.

**Mr Giudice**—Perhaps if I could try to answer the question. The decisions that Fair Work Australia makes are made to the best of our ability according to the statutory requirements that are set out in the act and the material put and submissions made by the parties, and we give reasons for those decisions. I am in some difficulty if you want me to canvass or in any way go to those reasons, because I feel it is rather a difficult situation. You would be aware—

**Senator ABETZ**—As I understand it from the recent appointments—and I might have questions about recent appointments later on—there is at least some experience or expertise in the area of workplace relations. That is fine. They assist in determining whether awards ought be made, varied et cetera. But in relation to the particular component of superannuation,

which nowadays is becoming more and more important, modern awards often select only one superannuation fund. I want to get a grip on how do you—I mean ‘you’ plural, not you personally necessarily—come to a determination as to which fund should be the nominated fund in a modern award?

**Mr Giudice**—There are published decisions of the full bench on that issue, and I would refer you to those. I would not want to canvass the reasons for those decisions.

**Senator ABETZ**—Are the reasons set out? I do not want to get into the area of how you necessarily came to that decision, other than that which is written in those decisions.

**Mr Giudice**—Yes.

**Senator ABETZ**—Do the Fair Work Australia commissioners then exercise their minds as to whether a particular fund would be superior to another particular fund and seek expert evidence in relation to that?

**Mr Giudice**—All I can say about it is that the reasons for the approach that has been taken to superannuation, and in particular the question of default funds, are set out in published decisions. I have been a participant in those decisions but I am one of a number of members of the full bench. I think it would put me in an invidious position to require me to canvass those reasons.

**Senator ABETZ**—But is there any process that is actually undertaken? As I understand it, a minister at one stage made a promise that selection criteria would be published in relation to the appointment of superannuation funds to modern awards—namely, one Senator Sherry. Are you aware of any of those selection criteria having been forwarded by the government?

**Mr Giudice**—I would have to look at all of the submissions, but I do not remember any such—

**Senator ABETZ**—Do you know why you don’t? It is because they have never been forwarded to you, so that is not your fault.

**CHAIR**—That is not what the Justice said. I would prefer that you did not actually give—

**Senator ABETZ**—Wait a minute.

**CHAIR**—the Justice reasons why he does or does not know something. I think that is for him to tell you.

**Senator ABETZ**—Those selection criteria have either been forwarded or not been forwarded. It is not a matter of opinion; it is a matter of fact. It has either occurred or not occurred. If the minister at the table is saying I am wrong and the selection criteria have been forwarded, I withdraw my question and the suggestion I made to His Honour.

**Senator Arbib**—Why don’t I try and find out that information for you now you have referred it to me—

**Senator ABETZ**—All right, thank you.

**Senator Arbib**—I will try to get back to you by the end of the session.

**Senator ABETZ**—Excellent. Thank you very much.

**Mr Giudice**—I do not want to prolong this if you are satisfied with what has happened, but every matter which is taken into account by full benches in the modernisation exercise appears on the public record. I do not know whether you are familiar with the system, and there may be other questions about modern awards and I may have to go into this in more detail, but, basically, all of the submissions in relation to the contents of awards are public—they are put on our website. So I cannot give an answer as to what is there.

**Senator ABETZ**—Yes, but the problem is that when one goes through the website and looks at the submissions, with great respect, there is no submission that is an independent analysis of all the potential superannuation funds—as to which one charges lower fees, which one has better returns et cetera—and then, on the balance of all the evidence in relation to all these super funds, says, ‘We determine that fund A is superior to fund C.’ In fact, a number of elements of the superannuation sector have come to me saying that those that have been selected as the single superannuation fund are quite inferior to other products on the market. Without taking it too far, they say that on final retirement balances, for example, some would be short-changing workers by between \$17,000 and \$31,000. Indeed, there is a particular criticism of the Transport Workers Union super fund, where members will be short-changed by about \$40,000 in their retirement savings.

**Senator Arbib**—It is a highly competitive area.

**Senator ABETZ**—A highly competitive area! Why don’t you allow the workers to choose?

**Senator Arbib**—Of course a superannuation fund that missed out will say that one of their competitors’ products is inferior.

**Senator ABETZ**—That is exactly the point I was going to make. I accept that all that I have just put on the record are assertions. But if I were a worker, let us say in the transport sector—

**Senator JACINTA COLLINS**—I can see you driving a truck.

**Senator ABETZ**—subject to this modern award, I would want to know that the commissioners at Fair Work Australia undertook due diligence on my behalf to ensure that the single select super fund was the very, very best for my retirement interests. When there is an assertion such as this, that I am going to be \$40,000 worse off—and I do not know whether that is true or not, as a worker subjected to that award—how am I able to be satisfied unless Fair Work Australia can say to the workers of Australia that due diligence has been undertaken, a detailed comparison has been undertaken of all the super funds and, after that due diligence and due consideration, they believe that the Transport Workers Union fund is exactly the one to suit those workers? That does not happen in practice.

**Senator Arbib**—What about the old default funds?

**Senator ABETZ**—Sorry?

**Senator Arbib**—There used to be the old default provisions, so it is not very different from what has happened in the past. If you are just making the point that these workers may be missing out—

**Senator ABETZ**—Big time.

**Senator Arbib**—default has been there in terms of these industries for years and years—and under the previous government, I might add.

**CHAIR**—Superannuation is an interesting discussion, as are the default funds. I am not sure that the Justice can take it further.

**Senator ABETZ**—It is a very, very important component.

**CHAIR**—If there are more questions—

**Senator ABETZ**—of the future of Australian working families, especially in retirement. With an ageing population—which Kevin Rudd seems to have stumbled across in recent times but which we knew about with two *Intergenerational reports*—providing superannuation certainty for workers is very important, and enabling them to access the very best possible product is also vital. Therefore, I think it is an important matter, with great respect to the chair.

**CHAIR**—Remember the—

**Senator Arbib**—We also agree.

**CHAIR**—Do you wish to respond to that, Minister, given there were a number of political statements included?

**Senator Arbib**—No.

**Senator ABETZ**—I was challenged—

**CHAIR**—I am inviting the minister to respond. You have made some political statements—

**Senator ABETZ**—as to why superannuation has been raised. I think I have made the point that it is relevant. Can we get on with the questions?

**Senator Arbib**—I think the answer is—

**CHAIR**—It is the proposed superannuation of Australian workers, so let us not get too carried away about this.

**Senator ABETZ**—What is the responsibility of Fair Work Australia to ensure that those funds selected under awards provide meaningful disclosure to employers and, indeed, employees?

**CHAIR**—Can I clarify whether you are asking about default funds.

**Senator ABETZ**—Yes, the ones in the award.

**CHAIR**—As default funds?

**Senator ABETZ**—Yes.

**CHAIR**—Because I do not believe that the awards actually pick a superannuation fund for individuals; it is only if they fail to pick one themselves.

**Senator ABETZ**—Yes, that is right.

**CHAIR**—So you are talking about default funds; is that right?

**Senator ABETZ**—That is right. Are there any other funds in modern awards?

**Senator Arbib**—I think the answer has been—

**Senator ABETZ**—No, I am asking Fair Work Australia. Are there any funds in modern awards other than default funds?

**Mr Giudice**—Again, I do not want to be too precise about what these clauses contain, because it might be a matter that comes before us for argument, but I can try to be general about it. The superannuation clauses provide for contributions to be made to the fund of choice, as they must, and then they nominate one or more default funds. The process for settling what the default funds should be in particular modern awards is set out in the history of the proceedings. It is dealt with in at least two and possibly seven or eight separate decisions of the full bench dealing, firstly, with the making of awards and, secondly, with some applications to vary awards by particular funds who said, ‘We should have been included as a default fund.’ That is all set out in decisions of Fair Work Australia.

**Senator ABETZ**—Just to be clear, are the only funds actually named in these modern awards the default funds?

**Mr Giudice**—That is so, yes.

**Senator ABETZ**—Yes. I am not sure what the chair’s confusion was when I was asking about the superannuation funds in modern awards.

**CHAIR**—You were suggesting that the commission has picked for every working person.

**Senator ABETZ**—There are only default funds.

**CHAIR**—You were suggesting—

**Senator ABETZ**—If you do not understand the topic, Chair, do not seek to intervene.

**CHAIR**—You were suggesting that somehow the modern awards choose a superannuation fund for every worker in Australia. That is not the case.

**Senator ABETZ**—The *Hansard* will show you are incorrect in relation to what you claim I asserted.

**CHAIR**—You were not even clear you were talking about default funds for most of your contribution!

**Senator ABETZ**—What? There are only default funds in the modern awards. That why it was so bleeding obvious.

**CHAIR**—I am glad you now know that.

**Senator ABETZ**—It is nice to know that you have learnt something out of this committee today, Chair! Ask your own questions if you need clarification on those matters.

**CHAIR**—Coming from the party that opposed superannuation for Australian workers, that is a bit rich.

**Senator ABETZ**—I am more than happy for you to interrupt me to get that information! Does the commission conduct an independent appraisal of the investment performance of particular funds?

**Mr Giudice**—I can only repeat that we deal with matters on the basis of the submissions and argument before us and we apply those to the relevant provisions of the act in coming to a decision.

**Senator ABETZ**—Who is able to make a submission to you in relation to the modern award system? If I am super fund A, can I seek the right to intervene in a modern award that is being made, saying, ‘Have I got a product for, Your Honour; I think you ought be choosing this one for the workers’?

**Mr Giudice**—There have been many such submissions during the process, which went from the middle of 2008 until the end of 2009.

**Senator ABETZ**—And they have the right to intervene and to be heard in the proceedings?

**Mr Giudice**—That process did not involve formal parties.

**Senator ABETZ**—No, it was written.

**Mr Giudice**—But it did not involve parties either. The commission was given the responsibility to manage the process, and I think we took the view that we would hear from anybody who had an interest or read what they had to say.

**Senator ABETZ**—Fair Work Australia has done a major job in trying to reduce the number of awards in Australia. Was there any magic in the figure 122; why not 125 or 100? Was it a case of how many you could jam into the one award before you decided to start creating another one? How did you go about it—within reason; I do not want to take up too much time.

**Mr Giudice**—I am afraid it does really invite a description of how the whole process worked.

**Senator ABETZ**—In that case I will withdraw the question because we simply do not have the time for that opportunity. What awards are music therapists, pastoral carers and social workers employed under?

**Mr Giudice**—I could not give you an answer to that.

**Senator ABETZ**—You know what? They are all under the same award.

**Mr Giudice**—Yes.

**Senator ABETZ**—Along with dental therapists and nuclear medicine technologists. I am sure there is a huge common interest there between dental therapists, youth workers, music therapists and pastoral carers! I am sure there is an overlap; a lot of dental practices undoubtedly have a side business running youth workers!

**Senator JACINTA COLLINS**—I think you will find that social workers are under a different award.

**Senator ABETZ**—There is a lot of confusion, but undoubtedly you made your best endeavours. Were any submissions made to you by the government in relation to these modern awards as to their social and economic impacts on Australian consumers?

**Mr Giudice**—I just cannot answer that question—

**Senator ABETZ**—Right.

**Mr Giudice**—We had thousands of submissions.

**Senator ABETZ**—All right. Can you take that on notice?

**Mr Giudice**—Yes.

**Senator ABETZ**—Could you also please take on notice that process you were going to take us through, but time constraints made me withdraw the question. If I may, I will ask the question again, but invite you to take it on notice.

**Senator Arbib**—Which question?

**Senator ABETZ**—It is already on the *Hansard* record, but I withdrew it because of time constraints. If you could answer that on notice I would be much obliged.

I have been told by a dentist that the government wants dentists to open their surgeries for longer hours et cetera to provide the community with a service. There is a shortage of dentists. He can charge only so much per hour, especially given the rebates from private health insurance companies. They do not pay more—or Medicare does not pay more—if the service is provided on a Saturday. However, this dentist now has to pay 50 per cent more for his support staff. That means that when this dentist works on a Saturday he actually earns less than when he works nine to five on a Monday. He says: ‘My work-life balance is such. Why should I be working for less income on a Saturday than I do on a Monday? Therefore, I will no longer be opening my surgery on a Saturday to assist patients.’ Were those sorts of considerations factored into your decision making? I use that as one example, but there would be a multiplicity that I could throw up.

**Mr Giudice**—I cannot recite the requirements in the act and in the minister’s request. But I can assure you that they covered such matters, perhaps not described in exactly those terms. We were obliged in the process to take into account, and we did, issues of labour costs, effects on employment, issues about incomes and so on. But I cannot respond as to specifics.

**Senator ABETZ**—All right. You say those things were taken into account, but it appears not so for dentists and undoubtedly a whole lot of others.

**Senator JACINTA COLLINS**—That is your opinion.

**Senator ABETZ**—That is not my opinion. I think I have just outlined a factual circumstance to you that a dentist—

**Senator JACINTA COLLINS**—It is not on your shame file.

**Senator ABETZ**—A dentist is working for less on a Saturdays because his income is constrained, but the support staff he needs to employ have to be paid more, so it stands that reason his take-home pay will be less.

**CHAIR**—What is his take-home pay?

**Senator ABETZ**—He makes the economic decision. How are we getting on with Matthew Spencer and the hardware store in western Victoria? The Prime Minister told us on 3AW that Julia’s office—I assumed he was referring to Fair Work Australia—

**Mr Giudice**—Why would you make that assumption?

**Senator ABETZ**—Sorry?

**Mr Giudice**—Why would you make the assumption that Fair Work Australia was referred to in that comment?

**Senator ABETZ**—I will get the transcript for you, because that is exactly how the Prime Minister said it. If my staff are listening, hopefully they will get the transcript. It was said that Julia's office, Fair Work Australia, will be involved.

**Senator Arbib**—I have been advised on that one, so maybe I can provide you with some information.

**Senator ABETZ**—Good. What is happening with Matthew Spencer?

**Senator Arbib**—Is this about the Terang hardware business?

**Senator ABETZ**—That is the one.

**Senator Arbib**—The Deputy Prime Minister's department contacted Mr Duynhoven at the Terang and District Co-op on Friday, 5 February after the issue was raised by the employers in the newspaper to discuss the issue. The department and the Fair Work Ombudsman will be following up with Mr Duynhoven this week to work through potential ways forward. That is where the matter is up to.

**Senator ABETZ**—Has contact been made by Fair Work Australia with—

**Senator Arbib**—I think I have answered that. It is the department and the Fair Work Ombudsman.

**Senator ABETZ**—The ombudsman?

**Senator Arbib**—The department and the Fair Work Ombudsman will be following up with Mr Duynhoven this week to work through a potential way forward.

**Senator ABETZ**—Is there such a thing as the Office of Fair Work?

**Senator Arbib**—I am explaining—

**Senator ABETZ**—I am asking whether there is such a thing as the Office of Fair Work in this portfolio?

**Senator Arbib**—I know what you are trying—

**Senator ABETZ**—Is there such a thing?

**Senator Arbib**—I think I have answered the question.

**Senator ABETZ**—Does it or doesn't it exist? Is the terminology wrong? Is there such a thing as the Office of Fair Work?

**Senator Arbib**—Chair, can we have a real question, please?

**Senator ABETZ**—No, is there? When somebody refers publicly to the Office of Fair Work, I want to know what they might be referring to.

**Senator Arbib**—We have officials from Fair Work Australia and obviously Mr Giudice here. Their time is very valuable and they have an extremely busy schedule. To get questions like that to make a political point is absolutely ridiculous.



**Senator ABETZ**—What?

**Senator Arbib**—Can we move on and get a real question while the officials are here? Otherwise can we allow them to go back to their jobs, please?

**Senator ABETZ**—Do you know what, Minister? Some of our time is valuable as well. I know yours might not be, but some of ours is as well. That is why a straight answer—

**Senator Arbib**—Ask a real question, not a humorous joke question!

**Senator ABETZ**—You are the minister responsible for this portfolio.

**Senator Arbib**—I am not responsible for the portfolio; I am acting for the Minister for Workplace Relations. Ask a real question!

**CHAIR**—Order! If Senator Abetz wants to pursue this because he believes it is an important question, perhaps we can ask Mr Lee to give us an overview of whole Fair Work structure. I thought we did that rather extensively at the last Senate estimates. We have the time, let us do it again.

**Senator ABETZ**—All I am asking is for a name. It may well be that the name is wrong. We know that there is an organisation called ‘Fair Work Australia’ and we know there is such a thing as the Fair Work Ombudsman. There is no controversy there. Is there such a thing as the Fair Work Office?

**Senator Arbib**—Chair, can we please move on?

**Senator ABETZ**—You do not know. How embarrassing! We will move on because if you do not know the answer I will not get one.

**Senator Arbib**—I know exactly what you are up to: you are trying to make a political point, not about me but other statements.

**Senator ABETZ**—Tell me the political point I am about to make: that your Prime Minister did not know what he was talking about.

**Senator Arbib**—We have officials here, please move on.

**CHAIR**—Let’s move on. I am sure Fair Work does have an office. I am sure of it.

**Senator ABETZ**—I refer to Mr Clarke, the trade club veteran, who according to the *Daily Telegraph* says he is going to be paid a lot less under the modern award. Then he is reassured that he will not be worse off because Julia Gillard, the Deputy Prime Minister, told him so.

**Senator CAMERON**—It is a lot better than WorkChoices. You were the WorkChoices warrior and still are! You want to go back there, don’t you?

**Senator ABETZ**—Chair, are you going to take control of your own Labor senators or not?

**CHAIR**—Well—

**Senator ABETZ**—You were talking about wasting time before. It would be nice if it were applied both ways.

**CHAIR**—My difficulty is that I need cooperation from all of the senators present if I am going to keep some control. It is not appropriate for you to be selective when it suits you and I

do not get your cooperation at other times. You have raised that and I ask Senator Cameron to cease interjecting. Senator Abetz, you have the call.

**Senator ABETZ**—Thank you. Mr Clarke, like any other worker who is going to be paid less, can apply for a take-home pay order. Is that right?

**Mr Giudice**—The legislation provides for that, yes.

**Senator ABETZ**—And Fair Work Australia would deal with that?

**Mr Giudice**—Yes.

**Senator ABETZ**—If you go to the Fair Work Australia website and type in ‘take-home pay order’ and get the search engine going, the result is zero. The response is ‘no pages found match your search criteria’. For what it is worth, I have a copy of that as it displays on to the website. There is nothing that sets out exactly what has to happen when making the claim. If you keep on, there is a little heading ‘How do I apply for a take home pay order’. Do you know that it tells me? I can ring a 1300 number. Why can I not apply for a take-home pay order online? Why is that facility not available to me? If I am sitting at home and I think that I am being duded by the new modern award, as so many workers are, why do I have to hit a hotline? Why can I not apply for it on screen?

**CHAIR**—You do not have to accept the assertion and implication in that question when you are answering it.

**Mr Giudice**—I am just getting some advice on that. Can we have a look at that?

**Senator ABETZ**—Take it on notice.

**Mr Giudice**—It ought to be something that is available. The question I have is whether there are any technical reasons why we would not have done it in this case. There should be, and I understand there is, information about take-home pay orders on the website. It may be that we could look at that and give you a response on that as well.

**Senator ABETZ**—When ‘take-home pay order’ was typed in the search engine did not provide much. But there is something on the website which says who can apply, what I can do et cetera—

**Mr Giudice**—Yes.

**Senator ABETZ**—which is dedicated to that. You go through it all. The last question is ‘How do I apply?’ The answer is ‘For further information, call the hotline’.

**Mr Giudice**—Yes.

**Senator ABETZ**—It would seem to me that if someone wants to make an application they should be able to enter their details. It seems that for workers such as Mr Clarke, getting to the closest Fair Work office could be quite a journey or he would have to mail it. It seems to me that if you were concerned to ensure wage justice for all those workers you would make it as easy as possible. Please take that on notice.

**Mr Giudice**—Certainly.

**Senator Arbib**—I have it here. There is on the front page a link to how to do it.

**Senator ABETZ**—On which page?

**Senator Arbib**—On the front page of Fair Work Australia.

**Mr Lee**—My information is that there is a guide on the FWA

**Senator ABETZ**—Is that on the Ombudsman website?

**Mr Lee**—No, the FWA site.

**Senator Arbib**—This is Fair Work Australia, not the Fair Work Ombudsman.

**Mr Lee**—There is a question, ‘How do I apply?’ It does provide a link to a copy of the form.

**Senator ABETZ**—A link to a copy of the form?

**Mr Lee**—That is correct.

**Senator ABETZ**—If you can then tell us how to go through that on notice, if you tell us that it is there, I will bow to that and accept that.

**Mr Giudice**—We will respond.

**Senator ABETZ**—Is there a filing fee associated with that?

**Mr Giudice**—No.

**Senator Arbib**—It sounds like you were looking at the wrong site. You were looking at the Fair Work Ombudsman site. That is what it sounds like. There are 59 results when you type in the same words.

**Senator ABETZ**—What, ‘take-home pay order’?

**Senator Arbib**—Yes, there are 59 results. Maybe you were on the wrong site.

**Senator ABETZ**—It could well be. But I think it highlights that there is confusion from time to time. Are you telling me you can do it electronically?

**Senator Arbib**—That is what it looks like to me.

**Senator ABETZ**—I will put it on notice and you can let us know.

**Mr Lee**—Yes.

**Senator ABETZ**—Does Fair Work Australia run its own separate hotline as opposed to Fair Work Ombudsman?

**Mr Giudice**—Yes.

**Senator ABETZ**—How many calls did you get as of 1 January and what is your waiting time in answering calls?

**Mr Giudice**—Mr Hower might be able to help.

**Mr Hower**—We have been averaging 600 to 650 calls a day. Our clients do not go on to hold—they either get through to an operator or go to message bank and leave a message and we get back to them as soon as we can.

**Senator ABETZ**—So there is no waiting time. That is clever. It overcomes the embarrassment the Ombudsman’s office had earlier. How many calls were you receiving in the first fortnight of January? If you have that information, good. If not, you can take it on notice.

**Mr Hower**—It is running at roughly 600 to 650 calls a day.

**Senator ABETZ**—Yes, but I am assuming that the chances are that in the first couple of weeks of January the load may have been a lot higher. How many calls switched to the message bank? Are you confident that every call that could not be answered immediately did go to message bank and did not simply drop out of the system?

**Mr Hower**—I would have to take that on notice.

**Senator ABETZ**—That is fine. How many applications for variation have been lodged or how many are in the process of being deal with by Fair Work Australia?

**Mr Giudice**—We may have the precise figure.

**Mr Hower**—The figure for modern award variations?

**Senator ABETZ**—Yes. I was told that as at 21 December, 145 applications have been lodged and out of those 62 were in relation to the total 122 modern awards made by the commission. What is the current status?

**Mr Hower**—There were 208 applications lodged by 31 December.

**Senator ABETZ**—Was it too late to lodge after that?

**Mr Hower**—No, clients can continue to lodge applications. Since 31 December there have been nine applications.

**Senator ABETZ**—By what date does the commission need to determine these variations—is it 31 March?

**Mr Giudice**—I think it is 31 March.

**Senator ABETZ**—How is the workload going? Do you believe you will be able to achieve that?

**Mr Giudice**—I think we have processed 150 of them and issued decisions in relation to 150. So I am very hopeful that we will do the balance by the end of March.

**Senator ABETZ**—Are we able to obtain a transcript of the message that is given to people when ring the Fair Work Australia Helpline? Does it say something to the effect that your call will be confidential?

**Mr Giudice**—We will have to take that on notice.

**Senator ABETZ**—It may be that this relates to the Ombudsman's line. I understand that the Fair Work Australia line says the content is confidential but later on the message it says that information gathered may be passed on to state and territory authorities.

**Mr Nassios**—That would not be our message.

**Senator ABETZ**—That is not your message?

**Mr Nassios**—No.

**Senator ABETZ**—Thank you for that. Tell me if I am asking the wrong people this question: under the new laws, pattern bargaining is not outlawed, although industrial action in pursuit of it is. Can I ask you whether that statement is correct, or should I be going to outcome 5?

**Mr Giudice**—They are provisions of the act that I might have to hear argument about.

**Senator JACINTA COLLINS**—What is the source of your statement?

**Senator ABETZ**—The source of the statement is Ross Fitzgerald in the *Weekend Australian* of 16-17 January 2010, page 7 of the Inquirer section—in the fourth column across.

**Senator Arbib**—As you said, that is probably a question better for the department.

**Senator ABETZ**—I accept that. Is it the case that unless somebody gives their name they will not be provided with information?

**Mr Nassios**—On the helpline?

**Senator ABETZ**—Yes.

**Mr Nassios**—There should be no reason that would be case.

**Senator ABETZ**—No?

**Mr Nassios**—No.

**Senator ABETZ**—Is Fair Work Australia able to commission its own research for the purposes of coming to decisions?

**Mr Giudice**—There is specific provision for research in relation to the minimum wage review.

**Senator ABETZ**—Is that the only area? You can take the question on notice if need be.

**Mr Giudice**—There may be a general reference to it, but I think that is the only specific provision.

**Senator ABETZ**—If you do have that possibility, I would then ask in what areas you have sought such research, who commissioned it, who did you commission and what costs were involved. Will those reports be released publicly?

**Mr Giudice**—In relation to the minimum wage review, to which there is specific reference in the act, research has been commissioned. That has been done by the general manager and it has been in relation to the next minimum wage review. The program provides for a tender process and all research will be published by a certain date. I do not have that date with me. But on that date all of the people interested in making submissions to the minimum wage review will have that available. So it will be a matter for public scrutiny.

**Senator ABETZ**—You can take on notice any other area and also who you have commissioned to do those reports that are then going to be made public and how much those reports costs.

**Mr Giudice**—Yes.

**Senator ABETZ**—Of course, I might be interested in whether you are able to commission independent research on superannuation. I ask that question in general terms to see whether that is a possibility.

**Mr Lee**—We do have an overview of the information that the president was alluding to in terms of the research undertaken for the minimum wage, but we are happy to take that on notice and to provide the detail.

**Senator ABETZ**—I will quickly backtrack. How many applications have there been for take-home pay orders thus far? Take that on notice if you do not have it handy.

**Mr Nassios**—As at 31 January, there has been only one application.

**Senator ABETZ**—Was that lodged online?

**Mr Nassios**—That I would have to check.

**Senator ABETZ**—It might be an indication, if none have been lodged online, that it is not that easy to get to.

**Senator Arbib**—I found it pretty easy.

**Senator ABETZ**—Senator Arbib, after life in politics, you might like to set yourself up as an agent to assist those who want take-home pay orders.

**Senator Arbib**—It is not hard; I just typed in the web address and up it came.

**Senator ABETZ**—How many applications for a workplace determination re good faith bargaining have been filed? If it is going to take some time, I am more than happy to put the question on notice.

**Mr Lee**—We have it here.

**Senator ABETZ**—How many of those have been determined?

**Mr Nassios**—Which one was that?

**Senator ABETZ**—Work determinations re good faith bargaining. I will read these questions into the *Hansard* and you can take them on notice if you are going to have difficulties. I am concerned about the time constraints. How many applications have been made for multiemployer bargaining stream for the low paid? How many compulsory conferences have been held under this stream? How many good faith bargaining orders have there been? How many applications have been lodged for dispute resolution? How many right-of-entry permits have been issued? Do you have that figure handy?

**Mr Nassios**—I am the only person at the moment who can issue them, but I do not have that information with me. But I can easily find that.

**Senator ABETZ**—Do you have writer's cramp from signing them all?

**Mr Nassios**—I do indeed. But my signature is very simple and very readily forged.

**Senator ABETZ**—Really?

**Mr Nassios**—Ignore the joke about the forgery, but it is a very simple signature.

**Senator ABETZ**—If you can tell us how many permits have been issued we will be able to establish how many are floating around in the community compared to the number you have signed.

**Mr Nassios**—Do you have a particular period in mind?

**Senator ABETZ**—Yes, since 1 July 2009. When did the right-of-entry laws change? Was it 1 July 2009?

**Mr Nassios**—The right-of-entry laws have pretty much remained the same in terms of the bulk of it.

**Senator ABETZ**—I do not want to get into a dispute with you.

**Mr Nassios**—It was 1 July.

**Senator ABETZ**—Ms Gillard said they would not change; some of assert that they have changed. We will leave that debate to the side. But in relation to the new Fair Work regime—I will be as neutral as I possibly can be—it came into operation on 1 July 2009.

**Mr Nassios**—In terms of lodgement, I have a figure.

**Senator ABETZ**—All right then—lodgement.

**Mr Nassios**—Lodgements are 927.

**Senator ABETZ**—How many of those have you signed off on?

**Mr Nassios**—I will check.

**Senator ABETZ**—If you refuse any, do you have to give written reasons?

**Mr Nassios**—Yes. However, the refusals are generally not published. They tend to go into a letter that goes back to the organisation.

**Senator ABETZ**—How many have you refused?

**Mr Nassios**—That might be a bit more difficult. We often seek further information. It may very well be viewed as a refusal at the initial stages, but we ultimately seem to get the information in the vast majority of cases are the matters are withdrawn. In terms of a formal refusal, I can recall only a handful. One of them was an appeal against one of my refusals. I was overruled on appeal.

**Senator ABETZ**—And is that appeal a published decision?

**Mr Nassios**—Yes.

**Senator ABETZ**—Did you tell us how many you have refused?

**Mr Nassios**—I am trying to say to you that I do not think I am going to come up with an actual figure for that. A matter may be withdrawn or it may be that ultimately we will get the information that we were seeking in terms of determining whether I should or should not grant the permit.

**Senator ABETZ**—But there is a difference, is there not, between an outright refusal and a request for further information to assist you in determining whether it ought be granted or refused?

**Mr Nassios**—That is correct.

**Senator ABETZ**—Right.

**Mr Nassios**—I appreciate that I am muddying the waters here. For example, I have a permit at the moment for which we have not received a response. I will not formally refuse that; it will simply lapse. So I will not record it as a refusal.

**Senator ABETZ**—Can you tell us the number of applications, the numbers granted, the number refused, the numbers that have lapsed and numbers that are still pending a decision? Does that cover the field?

**Mr Nassios**—It certainly covers the field. I will do my best.

**Senator JACINTA COLLINS**—Is there a distinction between withdrawn and lapsed, which you seemed to imply earlier?

**Mr Nassios**—Sooner or later that lapse will probably become a withdrawn if an organisation formally withdrew it. But if they did not formally withdraw it then we would treat it as a lapse.

**Senator ABETZ**—How many unfair dismissal applications have been lodged? When did the new regime start?

**Ms O'Neill**—1 July 2009.

**Senator ABETZ**—Since that date, how many have been lodged?

**Ms O'Neill**—To 31 December 2009, there were 5,208 applications for an unfair dismissal remedy.

**Senator ABETZ**—How many of those have proceeded to hearing and completion? If you do not have that information handy, you can take it on notice. How many of those have been arbitrated or resolved prior to their going to actual hearing? Do you have that number? You can take that on notice as well.

**Ms O'Neill**—I have the number that been resolved by conciliation and it is 2,783.

**Senator ABETZ**—Out of those, how many have resulted in money being paid by the employer to the employee? Can you give us that detail or not?

**Ms O'Neill**—Not readily.

**Senator ABETZ**—You can take it on notice. If it is somehow obtainable from the database, that is fine. If it requires somebody to read through everything, of course, do not do that.

**Senator JACINTA COLLINS**—Can I seek clarification? Do you distinguish between outstanding entitlements as opposed to other compensation?

**Ms O'Neill**—Again, I will take that on notice.

**Senator CASH**—How many conciliators does Fair Work Australia have?

**Ms O'Neill**—There are 24 conciliators across the country.

**Senator CASH**—Are you able to provide us with a state-by-state break-up of those conciliators?

**Ms O'Neill**—There is eight in each office in Sydney and Melbourne; three in Brisbane; two in Western Australia; one in Tasmania; and two in South Australia. The ACT and the Northern Territory do not have a dedicated conciliator—one of the staff at the offices there also conducts conciliations.



**Senator CASH**—Are there any plans to increase the number of conciliators across Australia?

**Ms O'Neill**—Not at this stage.

**Senator CASH**—Do the conciliators have key performance indicators that they need to meet?

**Ms O'Neill**—They are in fact being developed at present.

**Senator CASH**—At a particular point in time, what are their performance indicators?

**Ms O'Neill**—They have none in a formal sense, but there is a range of measures and matters that we look at to assess how the process is travelling, including outcomes and results.

**Senator CASH**—Is one of the measures the number of claims settled at conciliation?

**Ms O'Neill**—No, it is not.

**Senator CASH**—Thank you.

**Senator ABETZ**—I refer back to the unfair dismissals. You provided us with the figure of 5,208 from 1 July 2009 to 31 December 2009, so a six-month period. Can you provide on notice the number of claims for the same period for the past four or five years? I refer back to FWA. Can you tell us how many unlawful termination applications, protected ballot applications, bargaining disputes that have been lodged. However you classify them, can give us a breakdown for those where it is relevant from 1 July 2009 to date, whatever the nearest appropriate date is? I do not think any matters have been started since 1 January.

**Mr Nassios**—Take-home-pay orders, which we have already spoken about, started then.

**Senator ABETZ**—Yes, and from 1 January 2010.

**Senator CASH**—Mr Hower, I refer to the Fair Work information line that Senator Abetz raised. Would it be appropriate for one of the people manning the line to advise an employer to make a payment to an employee—that is, to pay them go-away money—to settle a claim as opposed to having it pursued through your office?

**Mr Hower**—No, they do not provide any advice along those lines.

**Senator CASH**—Are you aware of any such advice being provided on an unofficial basis?

**Mr Hower**—No.

**Senator CASH**—If such advice were being provided and it came to your attention, would there be a penalty involved? Would disciplinary action be taken against the particular person?

**Mr Lee**—If that came to our attention, it would certainly be a matter that we would take up with the employee. However, as Mr Hower made clear, that is not the approach that they should take on the telephone.

**Senator CASH**—Thank you very much.

**Senator CORMANN**—I have a quick question and I am going to ask this question of the department tonight as well. It relates to the apprentice training provisions in modern awards. An issue has been raised with me about attendance at technical schools in the Building and

Construction General On-Site Award 2010. Fees for attending technical colleges or schools now have to be carried by business. It is fair to say that that is a new provision, is it not?

**Mr Giudice**—It is rather difficult for me to answer a specific question like that.

**Senator CORMANN**—The thing is that the department is going to tell me that it is a matter for and you are telling me it is difficult for you to answer. It is an issue of concern, because obviously it is an additional cost and a disincentive for businesses to take on apprentices, which I am sure the minister would be very concerned about because he is very keen on increasing the number of apprentices. Who is the best person, if you are not the one, to explain to me where this is all coming from?

**Mr Giudice**—The process involves looking at all of the premodern award instruments in a hearing. I will not go right through the process, but it involves taking submissions from people about what the modern award should contain in attempting to draw together provisions in five or six different instruments applying in the different states. That means for some employers and some employees some conditions will change in the final result because there will be an outcome in terms of modern award provisions that obviously cannot be uniform for everybody. There will have to be some changes in the process. That is about the best answer I can give. It might be possible that what you say is correct, that compared to the premodern award provision there has been a change.

**Senator CORMANN**—I have not been able to find a business that previously had to pay the cost for apprentices attending technical colleges or schools. People did not pick up on it immediately and it came out in the fine print. There is a level of concern about it.

**Mr Giudice**—All I could say about that is that, if that is the case, there is a procedure for making an application to vary a modern award. Any such application would have to be dealt with in accordance with normal principles that everybody with an interest would have something to say about it. This would give them an opportunity to say something about it and then a decision can be made.

**Senator CORMANN**—Assuming that somebody made a submission to you to the effect of having these costs included as part of the award, do you believe there is a cost impact on small businesses that have not previously faced these costs?

**Mr Giudice**—We consider every submission made to us.

**Senator CORMANN**—But small businesses may have been unaware that this was something that was before you.

**Senator Arbib**—Senator Cormann, can I ask which award you are referring to?

**Senator CORMANN**—I am referring to the Building and Construction General On-Site Award 2010. There is a question on the table and I am happy to assist the minister.

**Senator Arbib**—It was useful to know to which award you were referring.

**Senator CORMANN**—Section 15.6 deals with attendance at technical schools, Minister. I am happy to assist the minister but I have a question on the table.

**Mr Giudice**—All I can say is that the process is as follows. There would be consultation with anybody interested in the modernisation of a group of awards in a particular industry;

that is, federal and state awards. A list of those awards would be published. Anybody who wished to make a submission about how an area should be modernised and reflected in one modern award could do so. The commission, as it was then, put out what was called an exposure draft for further discussion and a further round of submissions on whether the terms of the exposure draft were appropriate. Considering all those submissions, the commission would then make the final award.

**Senator CORMANN**—Talk me through the process. This is the way in which it would have worked. You would have had submissions from somebody who suggested that you include this cost in the Building and Construction General On-Site Award. You would have published a draft submission.

**Mr Giudice**—Yes, a draft.

**Senator CORMANN**—Anybody who was unhappy with this particular aspect should have raised it with you so that you could have considered whether or not it was a good idea.

**Mr Giudice**—Yes, that is right.

**Senator Arbib**—And they still can.

**Senator CORMANN**—And they still can.

**Mr Giudice**—They can make an application to vary the award.

**Senator CORMANN**—In relation to this specific award, would it be do too much of an imposition to ask you what were the time frames? When did you put up your original draft decision and how much time did people have for discussion?

**Mr Giudice**—All those matters are a matter of public record on the website. But if you wished us to confirm those we could do that on notice.

**Senator CORMANN**—Okay. For my benefit during the course of this committee hearing, what would be an indicative time frame? I am not going to pin you down on this specific issue.

**Mr Giudice**—I would rather not give an answer.

**Senator CORMANN**—We do not know whether you will put up the draft award today or in two weeks, four weeks or six weeks?

**Senator JACINTA COLLINS**—It would depend on which round the award was in.

**Senator CORMANN**—So the Building and Construction General On-Site Award 2010 does not ring a bell about which round it was in?

**Mr Hower**—It was in stage 2.

**Senator CORMANN**—Only 126 are left, so it must be easy.

**Mr Hower**—From memory, the exposure draft was published on 23 January.

**Senator CORMANN**—Is that this year?

**Mr Hower**—It was in 2009. The final modern award was made in April.

**Senator CORMANN**—I know that this is a dumb question, but why is it called the Building and Construction General On-Site Award 2010 if you made the decision in 2009?

**Mr Giudice**—Because it operates from 1 January 2010.

**Senator CORMANN**—Fair enough; that was a dumb question.

**Mr Hower**—Senator, I have the timetable in front of me. So 23 January was the date on which we published the exposure draft for building and 6 March was the closing date for written submissions on the exposure draft.

**Senator CORMANN**—If businesses are concerned about this you are saying that they should have raised this with us. Can you shed any light on whether or not anybody has raised this concern with you? You cannot recall?

**Mr Guidance**—No, I am afraid not.

**Senator CORMANN**—The submissions that are made to you are not public, are they?

**Mr Giudice**—Yes.

**Mr Giudice**—Yes, they are public.

**Senator CORMANN**—Thank you.

**Senator ABETZ**—I wish to ask two questions. Do you agree, Your Honour, that some employees will be worse off as a result of award modernisation?

**Mr Giudice**—That is an issue that involves value judgments.

**Senator CORMANN**—That is not a yes or no answer.

**Mr Giudice**—I do not think I can give a yes or no answer.

**Senator ABETZ**—The distinguished president of the Australian Industrial Relations Commission, who just happens to have a similar name to yours, raised this issue previously. Sure you wear a different hat, but I would have thought that the outcomes and the cameos that have now been exposed—from the David Clarkes to the Matthew Spencers et cetera—reveal that some people are worse off.

**Senator CORMANN**—Some of them were not getting their existing entitlements either.

**Mr Giudice**—Senator, the issue, which has been a matter of submissions, is a matter on which the full bench has made some pronouncements. I do not think I should go back and paraphrase or comment on the statements made by the full bench. The statements that are on the record are the result of the deliberations.

**Senator ABETZ**—Can you guarantee that as a result of all your modern awards—and when I say ‘you’ I do not mean to personalise it; I mean all the modern awards that have emanated from Fair Work Australia—no worker has been disadvantaged by any of them?

**Mr Giudice**—I do not think it is any part of my statutory responsibility to give any such guarantee, even if I could.

**Senator ABETZ**—I am not asking you to give a guarantee. If I asked that in my question I withdraw it. From your observations, having presided as the top official over these 122 modern awards and having fitted together all these things, has it been your observation that some workers will be better off? Are you able to make that determination?

**Mr Giudice**—These matters have been the subject of a decision. There has been debate and submissions about them. I would find it difficult to elaborate or to comment in any way on matters which have been the subject of a decision.

**Senator ABETZ**—From your observations after presiding over all these decisions are you able to tell us whether some employers will be paying more for their labour force as a result of award modernisation, all things being equal within their labour force of course.

**Mr Giudice**—Again, my response is the same. It does not seem appropriate for me to comment on matters that have been the subject of a decision.

**Senator ABETZ**—Do you recall the words of a former distinguished president of the AIRC who made comments about the difficulty of reconciling the promise of no worker being worse off with no employer having to pay more in the award modernisation process, and that there would be difficulties in being able to reconcile?

**Mr Giudice**—Do I recall that?

**Senator ABETZ**—Yes.

**Mr Giudice**—I certainly do, if those are the words used. But I will not paraphrase or summarise—I do not want to verbal you.

**Mr Giudice**—Thank you.

**Senator ABETZ**—I thought you had made some observations.

**Mr Giudice**—All I am saying is that we have had to deal with these issues. We have made decisions about them.

**Senator ABETZ**—I accept that without a doubt. But I have been told, for example, that in the childcare sector in New South Wales, family leave days have been cut each year from 25 to 15.

**Senator Arbib**—Senator Abetz can you go back and read what the full bench said? I think you have misinterpreted or misrepresented that statement.

**Senator ABETZ**—I am not commenting necessarily on the full bench decision. Clearly, His Honour will no longer tread in that territory. He cannot give us an assurance—or he will not—for the reasons that he has outlined. I cannot take it any further than that.

**Mr Giudice**—Thank you, Senator. M Chairman, could I raise one matter?

**CHAIR**—Yes.

**Mr Giudice**—It concerns the nature of this estimates hearing. I am not the head of any agency for budget purposes. I would like that to be recorded. I urge anybody connected with these proceedings to ensure it is clear in the public domain that I am not an agency head.

**Senator ABETZ**—You are responsible for the modern awards but not for the budget?

**Mr Giudice**—I am stating a fact.

**Senator ABETZ**—I accept that.

**CHAIR**—Thank you. If there are no further questions, thank you Justice Giudice, Mr Lee, Mr Nassios and Mr Hower for your attendance before the estimates committee today.

**Proceedings suspended from 3.12 pm to 3.17 pm**

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**Australian Building and Construction Commission**

**CHAIR**—I welcome our next witnesses from the Australian Building and Construction Commission. Mr Lloyd, I again welcome you and your officers. Do you have any opening remarks that you wish to make to the committee before we commence with questions?

**Mr Lloyd**—No, I do not, Senator.

**CHAIR**—We will go straight to questions. I think Senator Abetz is seeking the call.

**Senator ABETZ**—Let us start at the beginning. How many investigations is the ABCC currently undertaking and how many are on foot? Can you break down the figures for states and territories, if that is possible?

**Mr Draffin**—Senator, I have those figures for you. Currently, the ABCC has 59 active investigations and, broken down into states, they are as follows: 25 in Victoria, 21 in New South Wales and 10 in Western Australia. That comes to 59.

**Senator ABETZ**—Sorry, how many?

**Mr Draffin**—Fifty-nine.

**Senator ABETZ**—Did you say 25 in Victoria?

**Mr Draffin**—Sorry, and three in Queensland.

**Senator ABETZ**—Good. At the moment, my home state of Tasmania is free of active investigations, which is good news. Victoria still tops the charts?

**Mr Draffin**—That is correct.

**Senator ABETZ**—Thank you. Of these 59 investigations—if we are agreed on that figure—how many have resulted in the commencement of a prosecution?

**Mr Draffin**—Those 59 matters are still under investigation.

**Senator ABETZ**—How many are current?

**Mr Draffin**—For the month of January, three matters were referred to our legal section for prosecution action, or determination as to whether or not a prosecution should take place.

**Senator ABETZ**—How many of those were against building contractors?

**Mr Draffin**—I do not have that with me.

**Senator ABETZ**—You can take that question on notice. Can you classify those three—contractors, union officials, individuals, or whatever—as that might be helpful to us. For prosecutions involving building contractors—and given that we have only three I will make it more general—what are the most common areas in which the legislation has been breached?

**Mr Dalgleish**—Referring to the cases that we have conducted, we have been involved in 95 of those proceedings. Of those, 35 relate to industrial action, which is 37 per cent; 20 to coercion, which is 21 per cent; 15 to freedom of association, which is 16 per cent; 14 to right of entry, which is 15 per cent; and 10 to strike pay, which is 11 per cent; plus one for discrimination.

**Senator ABETZ**—Thank you for that. Are you able to provide some practical examples of the types of breaches that you have referred to relating to coercion? Is there such a thing as a typical example or not?

**Mr Dagleish**—There are examples in the cases.

**Senator ABETZ**—I suppose that in fairness the cases will speak for themselves.

**Mr Dagleish**—Yes.

**Senator ABETZ**—Allow me to move on. Can you tell us about the case of the ABCC and Nesbit and the CFMEU, which was dealt with by the Federal Court in Brisbane? Can you give us a quick rundown of that?

**Mr Dagleish**—I can. This case, which was before the Federal Court, involved—

**Senator ABETZ**—There was a decision on 23 December.

**Mr Dagleish**—On 23 December, the Federal Court made declarations that the CFMEU and Mr Nesbit, or Tim Nesbit, an organiser from the CFMEU, contravened section 44 of the BCII Act by intending to coerce a subcontractor to enter into a new workplace agreement with the CFMEU.

**Senator ABETZ**—And how did he provide that coercion?

**Mr Dagleish**—The threat was made to a director of the company that the company would be banned from any building site in Australia and that an audit would be performed, which would result in the company having to spend between \$50,000 and \$150,000 on improvements.

**Senator ABETZ**—What sort of audit?

**Mr Dagleish**—The type of audit was not specified, but it would be an audit—

**Senator ABETZ**—On health and safety issues?

**Mr Dagleish**—conducted by the CFMEU.

**Senator ABETZ**—Yes.

**Mr Dagleish**—It went before His Honour Mr Justice Dowsett, who ordered penalties of \$44,000 on the CFMEU and \$9,000 in respect of Mr Nesbit.

**Senator ABETZ**—Did the court observe that the conduct was quite extreme and completely unacceptable?

**Mr Dagleish**—That is so.

**Senator ABETZ**—The case highlighted the vulnerability of small subcontractors to standover tactics. Is that still an unfortunate feature of the building and construction scene in Australia today? I suppose that it is a little rhetorical, given that there was a finding only 23 December 2009 that such conduct did occur.

**Mr Dagleish**—As I have described in respect of the cases that we have conducted, I think roughly 20 per cent involved coercion.

**Senator ABETZ**—And the penalties that were applied were quite substantial. If the amendments that are currently before the parliament were to be passed, would the conduct complained of here still be illegal. Is that right?

**Mr Dagleish**—It is a bit difficult because there is no direct equivalent in the Fair Work Act of section 44 of the BCII Act.

**Senator ABETZ**—So you are saying that this sort of coercion against a small contractor—and these small contractors are very vulnerable to this sort of behaviour—would leave those small contractors unprotected in the event that the amendment bill were to be passed, or are you talking about the current Fair Work Act?

**Mr Dagleish**—I am talking about the current Fair Work Act.

**Senator ABETZ**—Sorry, Mr Dagleish, I think we are at cross-purposes. This is what I am trying to get a handle on: if the amendments as drafted that are currently before the Senate relating to the Australian Building and Construction Commission were carried, would the matters contained in this decision still be applicable? In other words, would it still be an offence?

**Mr Dagleish**—I do not want to be overly technical. The contravention of a civil penalty provision is not a criminal offence.

**Senator ABETZ**—Right.

**Mr Dagleish**—But there is no direct equivalent of section 44. The bill would have the effect of removing section 44 from the BCII Act, which would throw you back on the Fair Work Act.

**Senator ABETZ**—Right, and that is why you were talking about the Fair Work Act.

**Mr Dagleish**—Because that would be all that would be left.

**Senator ABETZ**—Because that would be the consequence of this amendment bill?

**Mr Dagleish**—Correct.

**Senator ABETZ**—Thank you very much for clarifying that. Under the amendment bill, would the sorts of penalties that the court meted out be able to be applied?

**Mr Dagleish**—No, because the maximum penalty that His Honour Mr Justice Dowsett was dealing with in respect of the organisation was \$110,000. So he was able to award a penalty of \$40,000 out of \$110,000. Whereas, if there were a similar provision under the Fair Work Act, the maximum penalty would be \$33,000.

**Senator ABETZ**—Thank you for that. Not only would the civil penalty be removed; but it would leave these vulnerable small subcontractors quite exposed. Is the number of prosecutions that you have underway the figure of 59 that we had?

**Mr Dagleish**—No, those are the investigations. We have 34 current proceedings either before the courts or the FWA.

**Senator ABETZ**—How does that rate in relation to previous periods of your operation? Is that a higher number of prosecutions or a lower number?



**Mr Dalglish**—It is probably slightly higher. If you were drawing a long bow you would think that somewhere between 28 and 30 would be the average. But 34 is slightly ahead of average.

**Senator ABETZ**—So there are more prosecutions at the moment and more prosecutions in Victoria and Western Australia?

**Mr Dalglish**—Yes.

**Senator ABETZ**—Mr Lloyd, if there were a hotspot in industrial relations, you would have the independence to move the resources of the commission to focus on a particular area or on a particular event, is that right?

**Mr Lloyd**—Yes.

**Senator ABETZ**—Could the minister tell you that you could or could not do that?

**Mr Lloyd**—No. It is the commissioner's call. It is my call as to how I dispose of the resources.

**Senator ABETZ**—So you are the commissioner and it is your call?

**Mr Lloyd**—Yes.

**Senator ABETZ**—Whilst the minister might be able to give you gratuitous advice, courtesy of the air waves or whatever as to how you might want to conduct yourself, she could not direct the resources of the commission to a particular area?

**Mr Lloyd**—No. She can give a general direction about how I go about discharging the functions, but she cannot give a specific direction about the allocation of resources.

**Senator ABETZ**—Ms Gillard has said that, under the amendments, she would be clothed with that authority. Is it your understanding that that is what the amendment bill would allow?

**Mr Lloyd**—That is my understanding of the latest amendment, yes.

**Senator ABETZ**—I do not want you to be too precious about this, but to a certain extent, at least, that means that your independence in determining what issues ought to be given priority can be overridden by the minister?

**Mr Lloyd**—It changes my responsibilities, but I would not want to go further than that.

**Senator ABETZ**—Would you have the same independence as you currently have?

**Mr Lloyd**—If the minister chose to exercise that direction, obviously I would have less discretion than I do now, yes.

**Senator ABETZ**—So you would have less discretion. I refer you to the proposed amendments and to what Ms Gillard said in her press statement. She said that she could direct you to move your resources to a particular hotspot—let's say in the north of Western Australia. Most people would think, 'That's a good idea, just in case Mr Lloyd was not up to the task of making that decision himself and he needed the benefit of the minister to tell him that a hotspot needed attention.' Is it also possible under this amendment for you, having determined that there was a hotspot in the north of Western Australia to which resources ought to be directed, to be countermanded by the minister and told that you should not be doing this and you should redeploy your resources to other areas? In other words, is this ministerial

power in fact a two-edged sword that can force you to undertake an investigation and also force you to not undertake an investigation?

**Mr Lloyd**—Under the current legislation the minister cannot give any directions about undertaking a particular investigation. My understanding of the amendment is that it would not enable the minister to give a direction about a particular investigation. It is about her capacity to direct how resources are utilised or disposed of; it is not about a particular investigation.

**Senator ABETZ**—So the talk about being able to send more resources to deal with issues such as Woodside Pluto et cetera would not necessarily be possible? Or are we at cross-purposes?

**Mr Lloyd**—I think we are at cross-purposes. The legislation does not enable the minister to give a direction about a particular investigation. Your question, as I understood it, was getting towards that proposition. At the moment, the minister may give directions about the manner in which the commissioner must exercise or perform the powers or functions under the act. Section 11(2) in the current act states:

The Minister must not give a direction ... about a particular case.

**Senator ABETZ**—But it would allow the minister to direct the watchdog—sorry, that is how you were described by the minister—on its allocation of resources.

**Mr Lloyd**—Yes.

**Senator ABETZ**—The minister, therefore, could not interfere in a particular investigation but could so direct your management of resources as to basically tie your hands behind your back so that you could not necessarily pursue a particular investigation to the extent that you would have done had you been able to exercise independent judgment.

**Mr Lloyd**—I would not want to go that far. The commissioner still retains a fair degree of discretion. Sometimes investigations require limited face-to-face meetings in a particular location. I also think that when powers like this exist often they are not used frequently. But time will tell.

**Senator ABETZ**—I will move on. There are all these names that I have to get my head around. I am sure that Senator Cash knows all about it. What would happen at the Woodside Pluto project if the Building and Construction Industry Improvement Amendment (Transition to Fair Work) Bill 2009 was passed?

**Mr Lloyd**—I must say that with Woodside Pluto there were strikes in both December and January. We are investigating both matters.

**Senator CAMERON**—Are you going to do a Nostradamus? Are you going to predict what the government's legislation will do?

**CHAIR**—Senator Cameron, we will not interrupt the witnesses while they are in the middle of giving evidence.

**Senator ABETZ**—Ms Gillard has said what would happen if her amendments were passed. Is she acting as a female version of Nostradamus?

**CHAIR**—But Minister Gillard is a politician and you are asking this witness to go a fair way towards a speculation.

**Senator CAMERON**—This is a bit of *deja vu*, you know.

**CHAIR**—Anyway, the question has been asked, Mr Lloyd.

**Mr Lloyd**—As I was saying, there were two strikes and we are investigating those matters. That involved having some of our investigators on location in the Pilbara taking statements and observing matters. I expect that with the new legislation the same process would ensue.

**Mr Dalglish**—There is one aspect where there would be a difference. Last Friday, before His Honour Mr Justice McKerracher, an application was made to extend the interlocutory injunction under section 49 of the BCII Act. Section 49(3) enables an interlocutory injunction to be ordered. That is one of the provisions that would be removed under the bill.

**Senator ABETZ**—Thank you for that. Are you able to provide us with statistics as to how many working days have been lost in the construction sector? How does that compare to the average days lost in other sectors?

**Mr Lloyd**—We do not have the figures with us now, but we can do that.

**Senator ABETZ**—All right; that on notice. Would you also give us a comparison for the last eight quarters?

**Mr Lloyd**—Yes.

**Senator ABETZ**—Are these figures normally provided in quarters or half-yearly?

**Mr Lloyd**—I think they are provided in quarters. The ABS publishes the data.

**Senator ABETZ**—If they are provided quarterly you could provide them to us as a comparison between the construction sector and the rest for the last eight quarters. That would be very helpful. Has there been an increase in days lost in the last quarter in the building and construction sector in comparison to previous quarters?

**Mr Lloyd**—I cannot recall the last quarter. There was a dramatic reduction in industrial disputation following the creation of the ABCC and it fell to extremely low levels, sometimes 50 or 20 times less than what it was previously. But the last quarter is one that I do not have readily to mind. It has fallen dramatically since 2005 and it has moved along at a much lower level in the period since then—it has bumped up and down a bit. I have a figure here that suggests that in 2009 working days lost per 1,000 employees in construction was 6.1. That had increased from a figure of 2.9 for the same quarter in 2008.

**Senator ABETZ**—Whilst my maths are never good, if we round up 2.9 to three, and 6.1 down to six, that would be an exact doubling of the number of days lost?

**Mr Lloyd**—Yes, that is right.

**Senator ABETZ**—In anybody's language that is a fairly significant increase in industrial action and days lost.

**Mr Lloyd**—In the context of the figures though, in 2000 the number was 109 and in 2003 it was 86. So those figures of three and six are much lower than they used to be.

**Senator ABETZ**—Absolutely. I might say that it is as a result of your good work and the good work of your commission that those figures are so low. Reading some of the comments that were reported in the judgment of the CFMEU and the Nesbit case, some of these people think that they are now back in town and that it is payback time. A few other choice quotes were reported in the judgment. Clearly, it is not only in words but also in action that they are showing this by the number of days lost. Did you have referred to you for comment a letter to the Deputy Prime Minister dated 3 November 2009, from the AiG, Master Builders, AMMA and the Australian Construction Association, dealing with the national code of practice for the construction industry?

**Mr Lloyd**—I do not recall that being referred to me, no.

**Senator ABETZ**—All right. In that case, can you take the question on notice just in case it was referred to you?

**Mr Lloyd**—Yes, just in case.

**Senator ABETZ**—There are stacks of questions that I will need to put on notice. Last time there was a menacing leaflet to which I think you referred, Mr Lloyd?

**Mr Lloyd**—That is right.

**Senator CAMERON**—Did the menacing leaflet have any names in it? Do you remember the Lindsay menacing leaflet?

**Senator CORMANN**—Keep those workers at Woodside working. You make sure that you keep those workers at Woodside working.

**Senator CAMERON**—Do you remember that one?

**Senator ABETZ**—That leaflet in Lindsay was disgusting. I have no trouble at all in condemning it outright. I now invite you to condemn outright the menacing leaflet relating to the ABCC. Come on! Come on!

**CHAIR**—As I have indicated before—

**Senator ABETZ**—Mr Lloyd, the last time that you appeared you were asked to address the—

**CHAIR**—Order! Let me bring the estimates to order. I observed earlier that in the last few minutes in the lead-up to a break we seem to lose it. However, we are now back on track so we will probably get in one more question.

**Senator CAMERON**—For the sake of the record can I indicate that my record relating to bullying, intimidation and violence in the building and construction industry and anywhere else is well known. I do not support it and I will never support it. You know that.

**Senator ABETZ**—I am sure that the AMWU was very active at these building sites.

**CHAIR**—Do you want to ask your question now or will we go to the break? Let everyone take a breath. No doubt we are coming back with these questions.

**Senator ABETZ**—Let us take a break.

**CHAIR**—Let us break until 4 o'clock.

**Senator ABETZ**—In that case I am sorry; I will take the extra minute. I refer again to these menacing leaflets. The last time you appeared you told us about them and you said that they were subject to a police investigation. Do you have an update? Is it still under investigation? If so, that will end the questioning. If not, what was the outcome?

**Mr Lloyd**—They are still under investigation.

**Senator ABETZ**—That makes that bracket very easy. Why don't we go to the break now?

**CHAIR**—There is still a minute left. Senator Cameron was seeking the call earlier.

**Senator CAMERON**—Mr Lloyd, has there been any other adverse commentary since the Federal Court made some adverse comments about the bias and conduct of the ABCC? Has there been any other adverse commentary from any judges about bias similar to the last commentary?

**Mr Lloyd**—To which commentary are you referring, Senator?

**Senator CAMERON**—The commentary where two Federal Court judges raised the issue of bias. I have raised this with you before. Has there been any further commentary about the conduct of the ABCC from Federal Court judges?

**CHAIR**—We might let you consider that during the break.

**Proceedings suspended from 3.45 pm to 4.00 pm**

**CHAIR**—Mr Lloyd you have an answer to a question?

**Mr Lloyd**—I am just trying to recollect the question. I think you asked me—

**Senator CAMERON**—You seemed to be unsure about the cases. Just so that you are absolutely clear let me go to the cases and get you to respond to the issues. The first case where there was judicial criticism was in *Stephen Lovewell v Bradley O'Carroll & Ors* in the Federal Court before Justice Spender. Justice Spender said the following:

The case, as brought and evidenced by the evidence yesterday—

he was discussing your case—

was misconceived, was completely without merit and should not have been brought.

There is room for the view that if the commission was even-handed in discharging its task of ensuring industrial harmony and lawfulness in the building or construction industry proceedings, not necessarily in this court and not necessarily confined to civil industrial law, should have been brought against a company, Underground, and its managing director and possibly another director.

Justice Spender went on to say:

The promotion of industrial harmony and the ensuring of lawfulness of conduct of those engaged in the industry of building construction is extremely important, but as one which requires an even-handed investigation and an even-handed view as to resort to civil or criminal proceedings, and that seems very much to be missing in this case.

Justice Spender went on to conclude:

The commercial arrangements that Underground entered into with its workers is a species of a black economy which, unfortunately, seems to exist in the building industry, and equally, that is to be stamped out if at all possible in the payment to workers in such a way as to avoid the obligations of the income

tax legislation and the superannuation legislation. It is not to be ignored or a blind eye cast when it is engaged in by employers.

I am surprised that you cannot remember that, but that was the first case.

**Mr Lloyd**—I can remember it; I couldn't remember which one you were referring to?

**Senator CAMERON**—The second case was—

**Senator ABETZ**—Chair, on a point of order: I trust that the quoting will be a lot shorter. I understand that you need some quoting but to read huge slabs of judicial decisions seems to be winding down the clock somewhat.

**Senator CAMERON**—Nobody wrote this for me and nobody prepped me on these things. I am just reading them out. The second case was *Duffy v CFMEU* in the Federal Court, VID 687 of 2007. Justice Marshall said:

I listened in the courtroom to the inspector's interview with Mr Dugasse. I consider the interviewer's approach to be biased against the respondent and her tone to be avidly antiunion.

My question to you was: have you had any other adverse judicial comment since these comments have been made?

**Mr Lloyd**—No, we have not.

**Senator CAMERON**—So you have lifted your game?

**Mr Lloyd**—I disagreed with the comments of Justice Spender. At the time—in October 2008—I said at the estimates hearing that I did not share the view, I disagreed with it. Following that we conducted an investigation of the contractor and found that there was no case about independent contractors or sham contracts. The tax matter was referred to the tax office. We wrote also to the Attorney-General and expressed our concern about the comments that were made. We think those comments were referred to the Chief Justice of the Federal Court.

**Senator CAMERON**—When did you do that?

**Mr Lloyd**—I do not have the date with me.

**Senator CAMERON**—Long enough ago for the Chief Justice of the Federal Court to respond to it?

**Mr Lloyd**—There has been no response to us.

**Senator CAMERON**—No response?

**Mr Lloyd**—No.

**Senator CAMERON**—I am not surprised. Are you surprised?

**Senator ABETZ**—In relation to this specific matter, you write to the Attorney-General, it is for the Attorney-General to then write to the Chief Justice--

**Senator CAMERON**—You do not have the call; I have the call. You are not entitled to ask questions.

**CHAIR**—Order! I refer to the general conduct of this committee. When people seek further clarification about a question that one senator has asked, generally cooperation

prevails, I allow that and it is done in good faith. This probably was not Senator Abetz seeking clarification or further information about a particular question. You are welcome to ask that question but will you wait until Senator Cameron is finished and you can then ask your question. Senator Cameron, you have the call.

**Mr Dagleish**—If I could just finish, I wrote to the Attorney-General and that was because His Honour Mr Justice Spender was the Acting Chief Justice at the time. It was some time after that the Attorney-General wrote to the Chief Justice, when His Honour Mr Justice Spender was not the Acting Chief Justice. The complaint was that the allegation of fraud made by His Honour was made without a proper basis, and without giving Underground an opportunity to be heard.

**Senator CAMERON**—But that is what you are alleging.

**Mr Dagleish**—That is right.

**Senator CAMERON**—That is what you are alleging against one of the most senior judges in the land. It is your allegation.

**Mr Dagleish**—There are rules in respect of when fraud can be alleged, both under the bar rules and elsewhere. You need to have a proper basis for doing it. His Honour did not have that basis.

**Senator CAMERON**—That is your judgment; that is not the judge's judgment, is it?

**Mr Dagleish**—Correct.

**Senator CAMERON**—I know who I would rather listen to. Referring to some of the evidence that you have just given, Mr Dagleish, it seems to me that you have engaged in some political commentary.

**Mr Lloyd**—Definitely not, Senator.

**Senator CAMERON**—The last time I came across this sort of political commentary in estimates was quite recently with a public servant called Godwin Grech. It is interesting that we now have Senator Abetz and you raising these issues.

**Senator CORMANN**—I ask for a ruling from the Chair on this line of questioning. Can you make a ruling as to whether that line of questioning is appropriate? I think Senator Cameron is inappropriately reflecting on the witness by drawing those—

**Senator ABETZ**—And the findings of the Privileges Committee, where a majority of Labor senators unanimously cleared me and agreed that I acted in good faith and I did not abuse any of the Senate standing orders.

**Senator CAMERON**—Even Barnaby thought you were foolish. Even Barnaby described you as foolish.

**CHAIR**—I have listened carefully to see whether Senator Cameron has yet made any reflection. He has drawn a link and we will see what he says about it.

**Senator CORMANN**—I thought I pre-emptively raised—

**CHAIR**—Just a moment. I just made the ruling and I hope you are satisfied with it. I simply ask Senator Cameron to consider the rules of the Senate and the Senate's committees in asking the question. We will see how we go.

**Senator CAMERON**—I am cognisant of that. I do not think I have transgressed any of those rules. Given the political commentary that we have just had, have you—

**Mr Dagleish**—What political commentary?

**Senator CAMERON**—Have you coached Senator Abetz on any of the questions that you have put forward?

**Mr Dagleish**—No.

**Senator CAMERON**—You have not?

**Mr Dagleish**—No.

**Senator CAMERON**—Have you had any discussions with any officers of the ABCC? Have you had any discussions with opposition senators or MPs, leading up to these estimates?

**Mr Dagleish**—No.

**Mr Lloyd**—No.

**Senator CAMERON**—Can you be absolutely confident about that?

**Mr Dagleish**—Yes.

**Senator CAMERON**—No coaching of Senator Abetz?

**Mr Dagleish**—No.

**Senator CAMERON**—You have had no discussions with any senator at all?

**Senator CORMANN**—I think the witness has answered that question, Senator Cameron.

**Senator CAMERON**—Okay. Let me move now to another issue. In a recent speech to the Senate, Senator Back used the Econtech report as the basis of his speech and allegedly referred to the terrific job that the ABCC has done. I just had another look at that report. You know I have been interested in Econtech and you conceded that there were mistakes in the Econtech report.

**Senator CAMERON**—Okay. Let me move now to another issue. In a recent speech to the Senate, Senator Back used the Econtech report as the basis of his speech and allegedly referred to how terrific a job, allegedly, the ABCC has done. I just had another look at that report. You know I have been interested in Econtech and you have conceded that there were mistakes in the Econtech report. I want to go in particular to the claim that GDP would rise by 1.5 per cent as a result of the activities of the ABCC. Given that the whole stimulus package that the government has implemented has meant an added 1.9 per cent to GDP, are you seriously arguing that the activities of the ABCC are close to the economic stimulus that the government's stimulus package gave to the economy in the global financial crisis? Are you seriously saying that that is a 1½ per cent lift to GDP?

**Mr Lloyd**—Senator, the two Econtech reports and the KPMG Econtech report for the MBA all came to that conclusion through their economic modelling.



**Senator CAMERON**—You would be aware of how modelling operates. If it is garbage in, it is garbage out, isn't it?

**Senator ABETZ**—You would be aware of that on climate change!

**Senator CAMERON**—Do you accept that?

**Mr Lloyd**—The Econtech modelling is rigorous, it stands up and it is used by the industry.

**Senator CAMERON**—It is rigorous and it stands up? Okay. Let us analyse that. Let us see how rigorous it is and how it stands up. You are aware that Econtech claimed that an engineering analysis was done by Mr Ken Phillips? In its report, Mr Ken Phillips conducted an engineering report on the EastLink project.

**Mr Lloyd**—That was a study in which they looked at in the Econtech study.

**Senator CAMERON**—Why would they describe it as an economic report?

**Mr Lloyd**—I do not know; you would have to ask them.

**Senator CAMERON**—An engineering report?

**Senator ABETZ**—Ask them.

**Senator CAMERON**—Did you check that with them or ask why they described it as an economic report?

**Mr Lloyd**—No. I gave them the terms of reference to conduct the study, and they were at liberty to conduct the study as they saw fit, as any economic—

**Senator CAMERON**—To just do what they liked?

**Senator ABETZ**—Mr Lloyd did not write the report.

**Senator CAMERON**—Do you stand by that 1½ per cent of GDP?

**Mr Lloyd**—Yes. As I said, the three reports have each reported that that is the estimate from the modelling.

**Senator CAMERON**—Forget the reports. Is there any evidence, other than these reports, that the GDP has increased 1½ per cent because of the activities of the ABCC?

**Mr Lloyd**—It is the most thorough investigation on the impact of the ABCC that has been undertaken, and on three occasions they have come up with the same results.

**Senator CAMERON**—Yes, because the same figures were fed in. Do you have any idea what Mr Ken Phillips's qualifications are?

**Mr Lloyd**—You have asked me this question before, Senator.

**Senator CAMERON**—Have you had a chance to look?

**Mr Lloyd**—No. I do not know what his qualifications are. I think I have answered this previously.

**Senator CAMERON**—So, even though Mr Ken Phillips is responsible for a major part of the economic figuring that goes into that report, you have not looked at his qualifications? You do not know whether he is capable of making that proper assessment, do you?

**Mr Lloyd**—That is Econtech's judgment. As I said, they were given the terms of reference. That was one element of their report, and they had regard to it.

**Senator CAMERON**—So you are saying it is all Econtech's fault?

**Mr Lloyd**—I am not saying that.

**Senator CAMERON**—It has nothing to do with you? You use these figures and coalition senators have used these figures, even though the underpinning analysis is completely wrong and incapable of being met?

**Mr Lloyd**—I gave Econtech the terms of reference to conduct a report on the impact of the ABCC on productivity as part of our objectives to contribute to productivity improvement in the industry. Econtech, which is a reputable firm, went ahead and did the study. It is not for me to follow every inch of the study. I was satisfied with the rigour of the study.

**Senator CAMERON**—You were satisfied? What did you do to satisfy yourself about the rigour of the study?

**Mr Lloyd**—I thoroughly read the report, looked at it and examined it. In choosing Econtech we obviously had regard to their reputation, which was fine. It was very strong.

**Senator CAMERON**—Let us have a look at this rigour. You rigorously read the report, and one of the major aspects of the report was this so-called study, which is like a little pamphlet. I have looked at it and it is a pamphlet by Ken Phillips of the IPA. It argues that there is a \$295 million advantage in using the ABCC on EastLink. Is that the figure, as you understand it?

**Mr Lloyd**—I understand—I do not have the exact figure in front of me—that it concluded there was a significant difference, yes.

**Senator CAMERON**—Tell me how that \$295 million came about.

**Mr Lloyd**—I do not have the study with me.

**Senator CAMERON**—You do not know, do you?

**Mr Lloyd**—His thesis was that with the changed regulation, with the presence of the ABCC compared to pre-ABCC times, there were tighter agreements on the project.

**Senator CAMERON**—Tighter agreements?

**Mr Lloyd**—tighter agreements, as I understand it—and also that with the changes in the conduct of the industry, with less industrial disputation throughout the industry, the project was done more efficiently and more cheaply.

**Senator CAMERON**—I have not seen the description 'tighter agreements' in the Ken Phillips analysis.

**Mr Lloyd**—As I said, I do not have the study in front of me. That is my understanding of it. It is some time since I looked at that particular study.

**Senator CAMERON**—So you are saying now that Ken Phillips did not say 'tighter agreements'?

**Mr Lloyd**—Senator, I said to you that I was just giving you a summary of what I thought was in the Ken Phillips study, what it looked at and what it found.

**Senator CAMERON**—But you said you looked at it rigorously.

**Mr Lloyd**—I did—back in 2007. But I cannot snap it out at estimates in 2010.

**Senator CAMERON**—But it is still being used. Senator Back used it in a speech.

**Senator BACK**—And I intend to quote from it again in a few minutes, Senator Cameron.

**Senator ABETZ**—How is Mr Lloyd responsible for that, Chair? Can we get back to the estimates?

**Senator CAMERON**—Let me go to some of Ken Phillips's approach. Feeding \$295 million into your model makes a difference to the outcome. There was a theoretical advantage, wasn't there? You read it rigorously; you would understand that it was a theoretical gain that was fed into it, wasn't it?

**Mr Lloyd**—As I understand the modelling, I do not think that the Ken Phillips study formed a major part of that. Other elements of the modelling or the factors were fed in. However, I would have to check on that point.

**Senator CAMERON**—That is not what Econtech said. They quote it. They lay it out as the third part of the element of the analysis and they quote Ken Phillips specifically.

**Mr Lloyd**—Yes, but they quote—

**Senator CAMERON**—I thought you had read it rigorously?

**Mr Lloyd**—They quote Ken Phillips in the report. The question I would have to revisit is the extent to which that was represented in the modelling.

**Senator CAMERON**—If I put it to you that it formed part of the analysis and the modelling, you could not tell me that that was not the case today, could you, even though you have read it rigorously?

**Mr Lloyd**—I have answered that question before.

**Senator CASH**—Twice.

**Senator CAMERON**—It is going to keep coming back until I get some answers on this. Let me come to the Ken Phillips report. He says that the ABCC involvement would reduce construction costs by 11.8 per cent. Given that you have read this report rigorously, can you tell me how your involvement would have reduced the cost by 11.8 per cent?

**Mr Lloyd**—What we have been told regularly by industry is that, when major contractors bid for a project, they consult their actuaries et cetera and they have to make an estimate of industrial relations risk. It has been repeated on many occasions that that element of risk, before the ABCC, was in the region of 10 to 20 per cent. We are now told that that has dropped to two per cent.

**Senator CAMERON**—But that is not in the Econtech report. That is a new element that you have raised; that is not in the Econtech report.

**Mr Lloyd**—But I think it reflects what the Econtech—

**Senator CAMERON**—I am talking about the Econtech report.

**Mr Lloyd**—It reflects what—

**Senator CAMERON**—I am not talking about what discussions you have had with someone, with some other bodgie figure getting run up. I am interested in dealing with the bodgie figures in the Econtech report before you give me more bodgie figures. Let us stick to the Econtech report. You have read it rigorously. Tell me how Ken Phillips came up with \$295 million.

**Senator ABETZ**—Ask Ken Phillips.

**Mr Lloyd**—I read that report in 2007. I cannot give you the exact figure now, in 2010. Sorry, I cannot do that.

**Senator CAMERON**—You can't do that? Let me refresh your memory on what Ken Phillips said you need to do to gain this \$295 million that is fed in. First, he said that, theoretically, in order to gain this \$295 million, you have to work 365 days a year. Is it a goal of the ABCC that workers work 365 days a year?

**Senator ABETZ**—And especially can you tell us your view about a leap year?

**Senator CAMERON**—Senator Abetz, they give us views on the government's policy, but they will not give us views on an economic analysis that is bodgie.

**Senator ABETZ**—No. This is legislation that he would have to administer.

**Senator CAMERON**—I think you need to answer these questions.

**Senator ABETZ**—This is legislation that he would have to administer.

**Senator CAMERON**—Is that correct? Would workers have to work for 365 days a year? I am referring to the analysis. You said that you read the report rigorously.

**Mr Lloyd**—I said that I read the report—

**Senator ABETZ**—Three years ago.

**Senator CAMERON**—In the report Ken Phillips said that you would make this \$295 million advantage if you worked 365 days a year. Can you remember that?

**Mr Lloyd**—No, I cannot.

**Senator CAMERON**—Can you go back and have a look at that? Maybe next time we will talk about it again. He also said that you would make a saving if the 10 public holidays were gone. In that figure of \$295 million there are no public holidays for workers. Is it the view of the ABCC that there should be no public holidays for workers?

**Mr Lloyd**—No.

**Senator CAMERON**—Can you have a look at that and come back and tell me next time about how this figure works out if workers get public holidays and their statutory entitlements. Union picnic day had to go. Can you remember that—after you read it rigorously?

**Mr Lloyd**—No.

**Senator CAMERON**—The Christmas closedown of nine days had to go under the Ken Phillips's analysis. Can you remember that?

**Mr Lloyd**—No.

**Senator CAMERON**—You cannot? The 26 rostered days off on the site, which is an industry-wide proposition, had to go. Can you remember that?

**Mr Lloyd**—No.

**Senator CAMERON**—Can you remember the figure that was pulled out of thin air by Mr Phillips relating to non-working union delegates?

**Mr Lloyd**—No.

**Senator CAMERON**—Were there non-working union delegates on the EastLink?

**Mr Lloyd**—I do not know.

**Senator CAMERON**—Mr Phillips claims that by not having non-working union delegates you would save \$58.5 million—

**Senator ABETZ**—Point of order.

**Senator CAMERON**—You do not want to go there, do you?

**Senator ABETZ**—I am more than happy to go there. Can all these questions be put on notice? The witness has already indicated that he read the document but three years ago. His memory has faded and he is now saying that he cannot recall. We are now going through every sentence in Ken Phillips's report or subreport. I think it was an input into the Econtech report, so it is not even the report itself but an input into it. It is unfair to expect the commissioner to do so as he is still grappling with the likes of Kevin Reynolds and Joe McDonald in Western Australia, and with people distributing leaflets and spitting in his face. He might have other issues to deal with.

**CHAIR**—Senator Abetz, to begin with I thought you were taking a serious point of order.

**Senator ABETZ**—It is.

**CHAIR**—You should not have gone on to your political rhetoric, because you really undermined—

**Senator ABETZ**—Thank you for your gratuitous advice.

**CHAIR**—You obviously need the advice.

**Senator CAMERON**—I have nearly finished on this point.

**CHAIR**—There is no point of order. Continue, Senator Cameron.

**Senator CAMERON**—When you have a look at all these issues, could you give me a view as to why the figure of \$9.2 million was added for industrial action that did not happen? It was plucked out of the air. A figure of \$43.3 million, on the Ken Phillips analysis, was in there for occupational health and safety stoppages that never occurred. Given that you looked at this report rigorously, if you had looked at it rigorously I am sure that these things would have jumped out as needing some kind of explanation when you talked to the people that you engaged to give you a report. Maybe they did. Maybe, because it was three years ago, you forgot about questioning them on all these things.

I will be asking you these questions at the next estimates and I want you to take all these issues on notice. I will still pursue with you the nonsense of your economic report, which is clearly what it is. I want now to talk about coercive powers. Since 1 September 2009 has the

ABCC issued any notices pursuant to section 52 of the act? If so, to whom, and for what reason?

**Mr Lloyd**—We will probably be able to tell you whether we have issued any, but I am not sure whether we could tell you for what reason.

**Senator ABETZ**—I assume it was part of the ongoing investigations?

**Mr Lloyd**—That is right. We might infringe our disclosure requirements.

**Senator CAMERON**—Sorry, were you engaging with Senator Abetz or were you talking to me?

**Mr Lloyd**—We could perhaps get you a number. Although we do not have the exact date I would be unable to tell you what was the reason because it would be an infringement of our disclosure obligations under the act.

**Senator CAMERON**—So you can get me those numbers and take that question on notice if you like. Since 1 September 2009 has any person attended before the ABCC commissioner or produced any documents to the ABCC commissioner pursuant to a notice issued pursuant to section 52 of the BCII Act prior to 1 September 2009?

**Mr Lloyd**—Sorry? That is a long question.

**Senator CAMERON**—Let us take it a step at a time. Since 1 September 2009 has any person attended before the ABCC commissioner or produced any documents to the commissioner?

**Mr Lloyd**—We have obviously conducted a hearing since 1 September 2009. I do not have the exact number. We have conducted examinations since then.

**Senator CAMERON**—Can you give me those numbers?

**Mr Lloyd**—We can give you the numbers, but I will have to take that question on notice.

**Senator CAMERON**—I am happy if you take that on notice. I come to the appointment of ABCC inspectors. Since 1 September 2009 have any ABCC inspectors resigned from their positions with the ABCC?

**Mr Lloyd**—I would think that there would have been, yes. With the normal turnover people would be going.

**Senator CAMERON**—Can you give me the numbers?

**Mr Lloyd**—We can give you the numbers, yes.

**Senator CAMERON**—Can you give me any reason why people would be resigning?

**Mr Lloyd**—It would normally be to take on another job, if they have applied for another job elsewhere.

**Senator CAMERON**—I am not asking you what it would normally be. Do you do an exit interview?

**Mr Lloyd**—Yes.

**Senator CAMERON**—Can you provide me with details as to why people are resigning?

**Mr Lloyd**—We can provide you with upgraded data, yes.

**Senator CAMERON**—I am not asking for names and for what reason they resigned.

**Mr Lloyd**—No.

**Senator CAMERON**—I would just like to know what is happening in terms of turnover of ABCC inspectors.

**Mr Lloyd**—Yes.

**Senator CAMERON**—Since 1 September 2009 have you appointed any Australian building and construction inspectors pursuant to section 57?

**Mr Lloyd**—Have there been any new employees? There would have been since then, yes.

**Senator CAMERON**—Can you give me details of how many and tell me what their background was prior to their appointment?

**Mr Lloyd**—We will take that question on notice.

**Senator ABETZ**—Take that question on notice and consider the privacy issues.

**Senator CAMERON**—I am not asking for any names. I am entitled to know about the background of ABCC inspectors. It is not a privacy issue. I have never heard people's backgrounds being referred to before as a privacy issue. I am asking for people's backgrounds; I am not asking for specific names.

**Mr Lloyd**—No.

**Senator ABETZ**—What sort of background? Do you want to know their family history, how many marriages they have had, or their work relations?

**Senator CAMERON**—I am not asking you the question.

**Senator ABETZ**—Surely there has to be some definition to these questions.

**Senator CAMERON**—Their employment background will do me. Is that okay? I think I asked you earlier about ABCC inspectors. How many ABCC inspectors are currently appointed?

**Mr Lloyd**—We have the total number but we do not have the breakdown.

**Senator CAMERON**—Can you take that question on notice?

**Mr Lloyd**—Yes.

**Senator CAMERON**—Can you also, on notice, provide me with details of the employment backgrounds of these inspectors? Where did they come from? I do not want names; I just want generality. For example, 15 from the Federal Police, five from ASIO, or whatever it is. That is the type of information that I am looking for, okay?

**Senator CORMANN**—The CFMEU?

**Senator ABETZ**—That'd be putting the fox in charge of the hen house!

**Senator CAMERON**—Let us go back to the adverse comments from the judiciary. Even though you claim it was not justified and you kicked up a fuss about it, what training have you done and professional development has been undertaken for ABCC inspectors?

**Mr Lloyd**—Our inspectors have regular training. They have induction training but also training as they go along through their time at the ABCC.

**Mr Draffin**—Senator, they are also qualified to a certificate IV level in government investigations. That is a requirement that we have for all our inspectors.

**Senator CAMERON**—How about treating people with respect and dignity?

**Mr Lloyd**—That is inherent in the job—

**Senator CAMERON**—It is inherent in the job. That is good.

**Mr Lloyd**—of being a government inspector.

**Senator CAMERON**—So can you then provide me details of that inherent requirement and what training and professional development is done in relation to that inherent requirement of treating people with respect and dignity?

**Mr Lloyd**—It is part of the code of conduct.

**Senator CAMERON**—How many times have ABCC inspectors exercised powers to enter premises pursuant to section 59 of the act?

**Mr Lloyd**—I will take it on notice. I do not have that at my disposal.

**Senator CAMERON**—Could you also indicate to me the premises or sites where these powers have been exercised?

**Mr Lloyd**—We have to be careful, though, on the disclosure requirements—it might cut across that. But to the extent that we can provide advice we will.

**Senator CAMERON**—Okay. Could you also indicate at whose initiative or request and on whose notification the powers have been exercised?

**Mr Lloyd**—Sorry, how do you mean?

**Senator CAMERON**—You have exercised the powers.

**Mr Lloyd**—Yes.

**Senator CAMERON**—That must have been initiated by, say, a worker saying, ‘I’ve got a problem,’ or an employer saying, ‘I’ve got a problem.’ Can you delineate that for me?

**Mr Lloyd**—I will attempt to, yes.

**Senator CAMERON**—During the same period have any inspectors exercised powers under section 59(5)?

**Mr Lloyd**—I will take it on notice.

**Senator CAMERON**—Again, if they have, at which premises or sites? Has any person failed to comply with any requirements of an ABCC inspector exercising his or her powers under section 59(5)?

**Mr Lloyd**—I beg your pardon, Senator, I was getting some instructions from Mr Draffin and I did not hear your last question.

**Senator CAMERON**—Okay, that is fine. I will go back, because it is all connected. I asked about inspectors exercising their powers under section 59(5). I am now asking about



which premises or sites and I am asking if persons have failed to comply with an ABCC inspector exercising his or her powers. Could you give me details on that?

**Mr Lloyd**—Yes.

**Senator CAMERON**—Since 1 September 2009, has the ABC Commissioner made any applications for injunctions against alleged unlawful industrial action?

**Mr Lloyd**—I do not think we have. We have intervened in injunction cases, but whether we have actually made—

**Mr Dalglish**—We have intervened in cases where—

**Senator CAMERON**—No, I am not asking for interventions. I am asking for applications for injunctions.

**CHAIR**—While Mr Dalglish is looking for that, can I indicate that I would like to move on soon, so I was hoping you might come to a conclusion with your questions as soon as you can.

**Senator CAMERON**—Yes. If you want to take that on notice I am happy with that. I asked some questions on notice in October 2009. Question No. EW640\_10 dealt with visiting the Pentridge site in Coburg following the death of a worker. The answer to that question was that the ABCC contacted a CFMEU organiser on the day after the accident, following complaints from the contractors, and that you had not investigated the matter. Has the ABCC taken any action or conducted any investigation since October 2009 in relation to the complaint from the contractors on the Pentridge site? If so, what was the outcome of the investigation?

**Mr Lloyd**—We have not conducted an investigation into that matter, as we advised you, and there has been no change since then.

**Senator CAMERON**—No change since the last—

**Mr Lloyd**—No.

**Senator CAMERON**—Okay. I will deal quickly with the issue of sham contracting. In your last appearance you indicated that you had audited contractors for sham arrangements: 19 contractors in Queensland and 39 contractors in New South Wales. Do you know how many independent contractors are employed in the building and construction industry?

**Mr Lloyd**—We gave you an answer, I think, on notice last time on that.

**Senator CAMERON**—Can you tell me again?

**Mr Lloyd**—It was a big number—300,000, I think.

**Senator CAMERON**—319,000.

**Mr Lloyd**—Of that order.

**Senator CAMERON**—319,000—right?

**Mr Lloyd**—Yes.

**Senator CAMERON**—So your audit covered 19 in Queensland and 39 in New South Wales. Do you think that was a reasonable base to make any legitimate conclusions? Does

that meet the standards for audits that would be set by professional bodies in terms of being a reasonable base on which to make conclusions? Does it meet the technical provisions of a proper audit or analysis?

**Mr Lloyd**—In the first question you went to a lot about audit.

**Senator CAMERON**—You have done the audit.

**Mr Lloyd**—Yes.

**Senator CAMERON**—I am asking you: does an audit of 19 in Queensland and 39 in New South Wales provide a proper basis to make any conclusions? Is that consistent with best practice in terms of conducting an audit? Does it meet the technical requirements of getting conclusive outcomes? These are the issues I am raising with you.

**Mr Lloyd**—The audit selection of the numbers was not just out of some huge figure. We had regard to industry information and trends that we were aware of as to what were the likely trades where you could encounter sham contracting. In selecting the people we approached, the tradespeople, we had regard to that and we selected six, I think, in New South Wales. The audit of course required interviews, which went for up to an hour, or of that order, so the extent to which we could cover a lot of people was limited by the fact that we wanted to have a thorough audit which involved an interview and examination of quite a few records.

**Senator CAMERON**—Did you get professional advice about doing the one-hour audit, in terms of that being something that you could make conclusive determinations about, or is this just what you did internally?

**Mr Lloyd**—We had staff who are experienced in conducting these types of audits.

**Senator CAMERON**—Can you provide me details of how many staff you have who have experience in doing audits and what the qualifications of those staff are in conducting audits? Can you also take on board what I have said to you and look at whether these audits meet proper standards on which to make conclusive judgments about the audits you have undertaken?

**Mr Lloyd**—Yes.

**Senator CAMERON**—I want to move on quickly because I am nearly finished. So, out of that, you have basically discovered no sham arrangements?

**Mr Lloyd**—Out of the New South Wales audit, which we have reported on, that was the outcome.

**Senator CAMERON**—So there were no sham arrangements in those. Does that mean that there is no sham contracting in the industry?

**Mr Lloyd**—No.

**Senator CAMERON**—Are you aware of a broadcast on ABC TV's *7.30 Report* on 22 September 2009 in which very strong suggestions were made, and not refuted by anyone involved, that sham contracting is rife in the construction industry? Are any of your officers aware of that? Are you aware of that?

**Mr Lloyd**—I am aware of reports of that nature. That specific item you mentioned, on whatever date, I do not know.

**Senator CAMERON**—You have responsibility for the building and construction industry, and specifically in the area of sham contracting.

**Mr Lloyd**—Yes.

**Senator CAMERON**—The ABC TV's *7.30 Report* does a major report on that, and you are not aware of it?

**Mr Lloyd**—I cannot recall the particular date and the program. What I can say is that we do respond to media coverage of allegations of sham contracting. We have initiated investigations both in New South Wales and in the ACT in response to coverage in the media of sham contracting allegations.

**Senator CAMERON**—Can you advise me, or take on notice, of what steps were taken by the ABCC, following the ABC TV's *7.30 Report* of 22 September 2009, to investigate the strong allegations of sham contracting in the industry? I would like to know what you did about that, and where that is up to, if there are any ongoing inquiries. How many sham contracting referrals have you made to the Fair Work Ombudsman or his predecessor?

**Mr Lloyd**—I have that number here somewhere, I think. There were five formal referrals to the workplace ombudsman.

**Senator CAMERON**—Five out of 300,000.

**Mr Lloyd**—That is in relation to sham contracting.

**Senator CAMERON**—Yes. I am okay to put all those questions on notice.

**Mr Lloyd**—Thanks.

**CHAIR**—Senator Back?

**Senator BACK**—Thank you, Chair. I do appreciate that opportunity. I have had an opportunity to look at some of the background to the material that Senator Cameron has asked about. I will be very interested in the responses, because the comments he has made are not consistent with what I have in front of me. The one question I have to ask is unrelated. Mr Lloyd, in answer to a question from Senator Abetz you advised that the minister does not give, and cannot give under the legislation, direction on the allocation of resources to the commissioner. Is that correct?

**Mr Lloyd**—Yes.

**Senator BACK**—I understood you to say that under the amendments, should they be passed by the Senate, the minister would then be in a position to give direction to the commissioner on the allocation of resources.

**Mr Lloyd**—That is as I understand the amendment.

**Senator BACK**—Thank you. In that event, is there provision in the proposed amendments that in your annual report or in any other form of reporting the commissioner would be obliged to advise either the number and/or the details of any ministerial direction given to the commissioner on the allocation of resources?

**Mr Lloyd**—I would have to take that on notice, Senator. Other directions the minister gives have to be reported. I would think it is possibly the same with this one, but I am not certain of that. I do not have the amendment in front of me, so I would have to check on that.

**Senator BACK**—Thank you. I would be most interested, because it seems that, should that amendment be accepted, it would involve ministerial interference in the day-to-day activities of the commission. Thank you, Chair. That was the only question I had.

**CHAIR**—Senator Abetz?

**Senator ABETZ**—Thank you. Mr Lloyd, would you agree that the building industry in Victoria has a history of bullying, corruption and standover tactics?

**Mr Lloyd**—Elements of it do, yes.

**Senator ABETZ**—Is it true that more than half of all investigations by the ABCC relate to incidents in Victoria?

**Mr Lloyd**—That has been a consistent feature of our work, yes—50 per cent.

**Senator ABETZ**—There you go: for once, the *Age* newspaper is correct. I was quoting from the *Age* in relation to both those matters. You indicated to us earlier the coercion provisions that would be removed if the amendments were to be passed. Could you categorise coercion as a form of bullying?

**Mr Lloyd**—Yes. Sometimes, I would say, it can be worse than bullying.

**Senator ABETZ**—Right. Are you aware of the Productivity Commission's draft report that says bullying in Australian workplaces has cost the Australian economy about \$15 billion or, to be exact, \$14.8 billion per annum?

**Mr Lloyd**—I saw reports on that report, yes.

**Senator ABETZ**—That is a fairly sizeable cost to the Australian economy. Have you read the report?

**Mr Lloyd**—No, I have not read it.

**Senator ABETZ**—Or a summary of it?

**Mr Lloyd**—I have read newspaper reports on it. I have not read anything further than that.

**Senator ABETZ**—Because the report says, according to a quote in the *Australian* on 28 January:

... bullying and harassment were not given the same attention by inspectors as physical dangers. "This adds to uncertainty for businesses ...

But one of the things that the ABCC has in its armoury is that it can deal with this scourge of bullying, at least in the construction sector, which overall costs Australia about \$15 billion per annum.

**Mr Lloyd**—Yes. If there is coercion, intimidation or threatening conduct and it contravenes our legislation, yes, we can investigate it and, if necessary, prosecute.

**Senator ABETZ**—Minister, in the face of this report about the cost of bullying in the Australian workplace, is it still the government's intention to remove the capacity of the ABCC to deal with bullying and coercion on building and construction sites?

**Senator Arbib**—Senator, I will need to check that for you, but can I just say that, in terms of bullying in the workplace, under the new model OH&S laws there will be a strengthening. They will be dealt with in the same way as they are under the current Victorian OH&S laws.

**Senator ABETZ**—But not, as currently, under the ABCC.

**Senator Arbib**—I said I would get that information.

**Senator ABETZ**—Thank you, Chair.

**CHAIR**—Are there any other questions for the ABCC? Thank you, Mr Lloyd, and your ABCC officers, for appearing before estimates again. We will now move to our next set of witnesses, which will be Safe Work Australia.

[4.48 pm]

#### Safe Work Australia

**CHAIR**—I welcome, from Safe Work Australia, Mr Hoy and his accompanying officers. Do you have any opening remarks you wish to make to the committee?

**Mr Hoy**—Thank you, Chair. This is the first time Safe Work Australia has appeared as a separate agency in the portfolio additional estimates statements and before this committee. Prior to this, we were part of the department. Page 57 of the additional estimates statements outlines at a high level our functions and objectives.

**Senator ABETZ**—At a what level?

**Mr Hoy**—At a high level.

**Senator ABETZ**—Oh, at a high level.

**Mr Hoy**—Yes. Our functions are specified in the Safe Work Australia Act, which was enacted last year. We came into operation on 1 November 2009. Prior to that, we were part of the department. As the statement indicates, we do not have any new measures, but it shows the variations resulting from the transfer of functions and resources from the department. We are also jointly funded by the Commonwealth, states and territories. The Commonwealth provides 50 per cent and the states and territories provide the other 50 per cent. These figures are shown in the statements. That is all I need to say, thank you.

**CHAIR**—Then you can tell us 50 per cent of what is going, you see. Is that right?

**Mr Hoy**—I hope I can tell you 100 per cent.

**CHAIR**—All right, that will be good, Mr Hoy. Even though your agency is new to the estimates, I know you are not.

**Mr Hoy**—No, I am not.

**CHAIR**—So we will move to questions. Senator Abetz?

**Senator ABETZ**—Does this change mean pay rises?

**Mr Hoy**—No.

**Senator ABETZ**—No. I withdraw that question. More seriously, can I ask whether Safe Work Australia has been asked to investigate or look into the tragic deaths that have occurred as a result of roof insulations in Queensland and the aluminium foil insulation death that has been reported in recent times?

**Mr Hoy**—No, Senator. We are national policy body. Responsibility for OH&S is a state, territory and Commonwealth responsibility. Any involvement in inspections would be done by the relevant state or territory.

**Senator ABETZ**—Have you proffered any advice to the government in relation to rolling out schemes such as pink batts and other insulation measures that, in the haste to roll them out, they should also ensure that people are properly trained, et cetera, to ensure that these tragic events do not occur?

**Mr Hoy**—No, we have not been asked for advice. The states and territories and also the Commonwealth have codes relating to electrical installation. As part of the development of the model regulations, which we have commenced, we will be looking at what sort of national codes we might have that might pick up those matters.

**Senator ABETZ**—When do you think the national code will be finished?

**Mr Hoy**—We are involved in developing regulations and codes of practice and guidance material to have that in place by the end of December 2011. The objective is that the model legislation and the supporting regulations, codes and guidance material will all be enacted and commenced from 1 January 2012.

**Senator ABETZ**—Thank you for that.

**Senator BILYK**—Have safety standards already been raised? Have we already raised safety standards?

**Mr Hoy**—In respect of electrical installation, my advice is there is no national standard. There are some codes and guidance material in some of the jurisdictions, but not at the national level.

**Senator BILYK**—Thank you.

**Senator ABETZ**—You are involved in the development of this code, I imagine?

**Mr Hoy**—We are involved in leading the development of all the regulations, codes and guidance material and this is one area.

**Senator ABETZ**—Can I ask you whether bullying in the workplace is another area?

**Mr Hoy**—Bullying will be dealt with under the model legislation in a way similar to breaches of the primary duty of care. Generally it will provide for a similar approach to that under which the particular incident was dealt with in Victoria.

**Senator ABETZ**—With your experience, you would not take exception to the findings of the draft report of the Productivity Commission as to the cost of bullying in the Australian workplace?

**Mr Hoy**—I saw the extract out of the report, which appeared in the *Age* editorial today, unattributed. That is a fair statement of what the Productivity Commission said. I have read that. I cannot express a view as to how they arrived at that particular cost or that estimate.

**Senator ABETZ**—But the figure does not surprise.

**Mr Hoy**—No, it does not surprise me.

**Senator ABETZ**—Thank you for that. Possibly this is a question related to outcome 5, and that is in relation to the Kirk case and the High Court's determination. Has that assisted you in the determination of occupational health and safety standards to knock on the head, once and for all, the ridiculous regime in New South Wales, which certain people, especially those emanating from New South Wales, were trying to foist—I withdraw the word foist—have as part of the national scheme?

**Mr Hoy**—Senator, prior to the decision in the Kirk case, workplace relations ministers unanimously agreed in December 2009 on the model legislation, and it did not include a provision relating to the reverse onus of proof.

**Senator ABETZ**—And that included the New South Wales minister?

**Mr Hoy**—That is correct.

**Senator ABETZ**—But the New South Wales minister has not changed the legislation in New South Wales to give effect to that.

**Mr Hoy**—No jurisdiction has yet because, while the model legislation has been agreed in principle, we are currently in the process of making some technical and drafting amendments to make sure it is consistent. Between now and the end of 2011, all jurisdictions need to enact the legislation.

**Senator ABETZ**—Thank you. There are potential consequences of the High Court's decision because one would assume that people have paid out penalties, et cetera, under the New South Wales regime, and certain people may now be wanting a reconsideration and reopening of their cases and a remittance of moneys that they unfairly or inappropriately paid, according to the High Court decision. Minister, can you give a guarantee that any moneys that were paid to trade unions in New South Wales, which might need to be repaid, will not be funded from Commonwealth taxpayer coffers?

**Senator Arbib**—I do not have a brief on that, Senator Abetz.

**Senator ABETZ**—Will you take that on notice.

**Senator Arbib**—I would expect that it is a matter for New South Wales.

**Senator ABETZ**—Clearly it is a case for New South Wales but, given the close relationship that certain people from New South Wales have with the Prime Minister, I want an assurance from this government that they will not fund any repayments that might be required to persons from the trade union movement, who have been the beneficiaries of those funds as a result of that inappropriate framework which currently exists in New South Wales and which, I assume, clearly is a policy.

**Senator Arbib**—Senator, I do not think this is relevant to the Commonwealth. This is a matter for the New South Wales government. It has nothing to do with us.

**Senator ABETZ**—Yes, but every now and then state governments make a call on federal governments to get them out of a financial bind. I want an assurance that any suggestion such as that I have just made will not be countenanced by this government.

**Senator Arbib**—I think I have made the point. This is a matter that has nothing to do with the federal government. This is in the New South Wales jurisdiction.

**Senator ABETZ**—As a result, you can rule out categorically the Commonwealth making any contribution to assisting trade unions in the event they have to make repayments?

**Senator Arbib**—It is a hypothetical question, Senator. As I have said, this has no relevance to the Commonwealth. It is a matter for New South Wales.

**Senator ABETZ**—If it has no relevance, the answer surely is ‘no’ because it cannot come up in any circumstance.

**CHAIR**—You have asked the question a number of times.

**Senator ABETZ**—It is a real live issue.

**CHAIR**—You have the answer.

**Senator Arbib**—Senator, that is the best answer I can give you. It is a matter for the New South Wales government.

**Senator ABETZ**—I agree that that is the best answer you can give. I just do not think it reflects well on you that you have admitted that, that is all.

**Senator Arbib**—I am trying to assist you, Senator, but it has nothing to do with the Commonwealth.

**Senator ABETZ**—You are not ruling it out.

**Senator Arbib**—It has nothing to do with us.

**Senator ABETZ**—Until they ask. That is it.

**CHAIR**—Thank you, Mr Hoy. It has been a brief appearance. We will see you in May. We are now ready to move to the department. Given that is a major logistical change, the committee will suspend for five minutes while people take their seats.

#### **Proceedings suspended from 4.59 pm to 5.04 pm**

#### **Department of Education, Employment and Workplace Relations**

**CHAIR**—I will resume the estimates hearings. We are now with the department in outcome 4. I again welcome Ms Paul to the estimates.

**Ms Paul**—Thank you, Senator.

**CHAIR**—Do you have any opening remarks you would like to make to the committee?

**Ms Paul**—No, thank you, Senator.

**CHAIR**—Thank you. We will go straight to questions. Senator Cormann?

**Senator CORMANN**—I thought I would begin with questions about the Jobs Fund. Just to clarify, given some of the comments made by the minister this morning, the Jobs Fund is part of the jobs and training compact, which is part of Keep Australia Working. That is right?

**Ms Paul**—Yes.

**Senator CORMANN**—But there is no stimulus funding in any of this?



**Ms Paul**—I think perhaps we were talking more about the infrastructure stimulus this morning?

**Senator CORMANN**—No. I am asking about the Jobs Fund, which is part of the jobs and training compact, which is part of Keep Australia Working. There is no funding out of the stimulus package that is channelled into the Jobs Fund?

**Senator Arbib**—My understanding, Senator, is—

**Senator CORMANN**—It is a sincere question.

**Ms Paul**—Yes.

**Senator Arbib**—The Jobs Fund was, if you remember when the Nation Building jobs package was being debated in the Senate—

**Senator CORMANN**—Yes.

**Senator Arbib**—This was part of the agreement with Senator Fielding and the Greens at the time—

**Senator CORMANN**—So it is part of the spending.

**Senator Arbib**—To establish a Jobs Fund—\$650 million.

**Senator CORMANN**—So it is part of the stimulus package, in the broadest possible sense.

**Senator Arbib**—In the broadest possible sense, yes.

**Senator CORMANN**—Not even that broad because it is what was required.

**Senator Arbib**—It was part of the nation building and jobs legislation.

**Senator CORMANN**—Which is what is broadly referred to as the stimulus package.

**Senator Arbib**—Exactly. It is additional to the \$42 billion.

**Ms Paul**—Senator, I think that is probably your point, isn't it, that that \$650 million is additional to the \$42 billion?

**Senator CORMANN**—In effect, the stimulus package is \$42,650,000,000.

**Ms Paul**—You could say that.

**Senator CORMANN**—Essentially.

**Ms Paul**—Sure.

**Senator CORMANN**—Hence, perhaps, a little bit of confusion. Your department administers three compacts: a compact with young Australians, a compact with local communities and a compact with retrenched workers. Can you describe for us what the status of those three job compacts is?

**Ms Paul**—Certainly. I will begin, and my colleagues might pick up the ball. The compact with young Australians has several components, and I think they are all underway. There is the 'earn or learn' component, which is about targeting all young people up to the age of 24 with a guarantee of a training place, and particularly targeting early school leavers with extra

support and encouragements into further education or training to get the equivalent of a year 12 completion.

Another part of the compact for young Australians was the apprenticeship Kick Start initiative, about which the minister spoke this morning. That is particularly targeting school leavers at the end of the 2009 school year, noting the negative effect of a drop in apprenticeship take-up. It is trying to encourage young people to take up apprenticeships, and appears to be doing so. Colleagues may want to talk about some of the other components.

**Senator CORMANN**—If I may interrupt with questions as we go—

**Ms Paul**—Sure.

**Senator CORMANN**—I have a fact sheet from your department. You would know this one, wouldn't you? Does that ring a bell?

**Ms Paul**—Yes.

**Senator CORMANN**—Sorry. I thought you might recognise the colour scheme—Keep Australia Working.

**Ms Paul**—It does.

**Senator CORMANN**—The Australian Government.

**Senator Arbib**—It is very official.

**Ms Paul**—It does.

**Senator CORMANN**—In fact, I am sure it was produced in the department.

**Ms Paul**—It may well have been.

**Senator CORMANN**—Take my word that I have not changed anything.

**Ms Paul**—Even from this distance, it looks familiar.

**Senator CORMANN**—It looks familiar. That is good to hear. It says in this official document that the compact is based upon three core principles: first, anyone under the age of 17 must be in full-time school, training, or work. Is that the case? Are all Australians under the age of 17 in full-time school, training, or work?

**Ms Paul**—That is the aspiration. Some cannot be, of course. If you are a young homeless person or a young person with a mental illness and so on, you will never going to get literally 100 per cent because some people just cannot.

**Senator CORMANN**—Sure.

**Ms Paul**—So one of the important things for implementation was to consider what sort of exemptions like that might be important.

**Senator CORMANN**—Leaving the official exemption aside—and I understand what you are saying—and taking your point that it is an aspirational goal, how close to achieving that aspirational goal are we? Do we have facts and figures around that?

**Ms Paul**—We are gathering facts and figures now. It is still reasonably early days. It only started at the turn of the financial year. So we can get those for you, if you like.

**Senator CORMANN**—It is interesting, because I have been looking around the department's website for some data on this. In Britain it is actually something that is a matter of public debate. In Britain, this category of people are described as NEETs—and you might have heard that term—neither in education, employment or training. It is a figure that has been increasing in Britain. I have been looking for equivalent data in Australia and I cannot find it. Is it something that you are just starting to develop?

**Ms Paul**—Yes, it is. That is right.

**Senator CORMANN**—So at present we do not know?

**Ms Paul**—We are still getting the data together because it has never been collected before.

**Senator CORMANN**—So there could be a problem out there. There might not be a problem, but essentially we do not have a good handle on it.

**Ms Paul**—We had estimates of numbers of young people who were not engaged with education or work. They are the target group, so we can get you those numbers. The databases that we are having to create are the databases that try to count what is happening with that cohort, because this sort of initiative has never existed before.

**Senator CORMANN**—I am very grateful and look forward to getting that information on notice, but what has been happening with the cohort? Can you give us that?

**Ms Paul**—Basically there are two approaches. One is for the up-to-24-year-olds. There is a national partnership agreement with the states and territories that COAG signed up to—the premiers and the Prime Minister—that young people would be guaranteed a place in a TAFE or whatever, if they wanted it, up to that age. We can report on that via the reporting from the national partnership. Then there is the approach that is for early school leavers. That involves Centrelink and Job Services Australia.

**Senator CORMANN**—Ms Paul, I will try to clarify this right up front because we seem to be going at cross purposes, and it happened this morning. I am focusing on what is happening in terms of outcomes, and you are describing activity. I understand that there are a whole range of things happening. I am trying to assess whether what is happening is effective, how far we are meeting performance targets, how far we have properly scoped the problem, and whether the strategies that are being put in place by the government have addressed the problem or whether they make it worse. You describing activity, which I am aware of, does not really assist me in finding an answer to that. What I am looking for is that cohort, as you described it, of young people who are neither in work or—

**Ms Paul**—What is happening to them?

**Senator CORMANN**—Yes, what is happening to them?

**Ms Paul**—I appreciate that. That is what I have said we will find for you. I will see if my colleagues have already got some of that with them. I do understand where you are coming from, I think, Senator.

**Mr Griew**—What may be most useful here with reference to this and your earlier question is that the department has set aside \$3.9 million over two years for a comprehensive evaluation of the jobs and training compact, including those three compacts and including the three elements in relation to young people that you mentioned. That includes evaluation of the

measures with the states, to which the states have committed and are gradually enacting state by state—it requires legislation in some cases—and also our measures through Centrelink and Job Services.

**Senator CORMANN**—I hear what you are saying. Essentially what you are saying is that you are going to evaluate this particular initiative and this particular program. Where I am not very clear is that, by the sound of it, you have not actually scoped the extent of the problem up front. You have not identified the extent of the problem. You have this statement here, ‘Anyone under the age of 17 must be in full-time school, training, or work.’ But we do not actually know how many of them are not, and how many—

**Ms Paul**—No.

**Senator CORMANN**—Do we?

**Ms Paul**—We will be able to give you some numbers. I just do not know if we have got them with us.

**Senator CORMANN**—Does anybody have them?

**Mr Griew**—We can give you fairly comprehensive numbers on the impact for young people of having year 12 or not having year 12 in both the pre-GFC labour market and the labour market during the global recession. Those are convincing, and I can go through them, if you wish.

**Senator CORMANN**—Do you keep time series data as to how many young people under the age of 17 are not in full-time school, training, or work?

**Mr Griew**—The data series I have is actually 15- to 19-year-olds. For example, of the 145,000 non-student unemployed at the end of last year, 75 per cent of males and 70 per cent of females in that cohort had not completed year 12, and ditto for the 20- to 24-year-olds where 55 per cent of males and 42 per cent of females had not completed year 12. In terms of the scoping of our problem, that makes the case convincingly that we need—

**Senator CORMANN**—Do they fall into the category of not employed, not in education, and not in training? I see you nod, Ms Paul, but Hansard cannot pick that up.

**Ms Paul**—We do have numbers on that. I will just see if we have got them here. We will take you through everything we have here, and if there is more that we do not have, we will take it on notice.

**Senator CORMANN**—That is very much appreciated.

**Dr Morehead**—We have figures for 15- to 24-year-olds, which is the common definition of youth that we use and which does apply to the national youth compact. If we talk about the term ‘disengaged’, it means young people who are not in education, employment or training. In Australia, there are around 315,000 of those young people. Some of those disengaged youth may be from families where they are quite well supported financially, but a lot of them are the ones who you would fear would be falling off the rails, so to speak. That is the group to which the compacts apply.

**Senator CORMANN**—Okay. We are getting somewhere here. This is good.

**Dr Morehead**—That is up to age 24.

**Senator CORMANN**—So among 15- to 24-year-olds we have got 315,000 young people who currently are not in either employment, education or training.

**Dr Morehead**—That is correct.

**Senator CORMANN**—Out of how many Australians? Do you know what percentage that is of the total population of young people in that age bracket?

**Dr Morehead**—Yes, I think we do have that here. Hopefully, someone will bring that up in a second.

**Senator CORMANN**—While somebody is finding that, why have you broken down the compact with young Australians into anyone under the age of 17, anyone under the age of 20, and anyone under the age of 25, when the traditional or conventional way of defining young people in that sort of category is collected from 15 to 24? Why have you broken it up the way you have? Is that not going to make it more complicated in terms of the evaluation of your program?

**Mr Griew**—The measures that the secretary was referring to are the measures targeted at the particular vulnerabilities and needs of those different age cohorts. The compact aims at young people up to the age of 24. The first measure is an agreement with the states to keep 17-year-olds in school unless they go and get a job. The second is to require participation in training or further education as a condition of youth allowance for young people without year 12 because that 15- to 19-year-old group, as in the figures I quoted earlier, is particularly vulnerable. Then the up to 24 is an offer from governments to young people to upgrade their existing qualifications if they do not have year 12.

**Senator CORMANN**—I understand all of that, and I think it is great. I am just trying to understand how, with the way you collect the data, you will be able to assess success or otherwise.

**Ms Paul**—We do get some breakdowns of data; we just might not have it with us.

**Senator CORMANN**—You have an update, have you?

**Dr Morehead**—Yes. The total Australian population of youth between 15 and 24 is around 3 million.

**Senator CORMANN**—So it is a bit more than 10 per cent.

**Dr Morehead**—That is correct.

**Senator CORMANN**—On those 315,000 young people between 15 and 24 who are neither in employment, education or training: what is the date for that number that you have given me?

**Dr Morehead**—It is May 2009, and that is the latest data that we have available.

**Senator CORMANN**—Do you have data for May 2008 and May 2007?

**Dr Morehead**—I have May 2008.

**Senator CORMANN**—Can you give us May 2008?

**Dr Morehead**—It was around 250,000 disengaged youth.

**Senator CORMANN**—It was 250,000 disengaged youth. So over the 12 months to May 2009, an additional 65,000 young people in the age bracket of 15 to 24 were neither conducting work, education nor training. That is a fair assessment?

**Dr Morehead**—Yes, because obviously they are very connected to the economic cycle. For example, in 1999, there were 316,000-odd disengaged youth. So it is very, very sensitive to economic cycles.

**CHAIR**—But we need to also look at the total population of that age group too.

**Dr Morehead**—Yes.

**Senator CORMANN**—I was going to get to that. That was going to be my next question. What was the percentage of young people in May 2008? What was the total population of young people in May 2008?

**Dr Morehead**—In May 2008, the percentage is 8.7. I cannot make that calculation right at this minute.

**Senator CORMANN**—That is okay, but it is fair to say that the percentage has gone up, even though there has been some growth in population.

**Dr Morehead**—Yes.

**Senator CORMANN**—You put that down to the economic cycle, and I guess in terms of jobs I grant you that point. But that is not a reason not to be in education or training, is it?

**Mr Griew**—That is the point of the government's policy.

**Ms Paul**—That is right.

**Mr Griew**—During that period between September 2008 and December 2009, there was a loss of 45,400 jobs for young people as a direct result of the global recession. That is the reason for the increase that Dr Morehead referred to. It is a direct correspondence.

**Senator CORMANN**—I am sorry; I was just interrupted.

**Mr Griew**—I was just saying that there is a direct correspondence between the increase in the number of disengaged young people and the loss of jobs in the youth labour market during the global recession over the same period.

**Senator Arbib**—At the same time, that follows historical precedent. Young people are always the most affected and the worst affected when you hit global recessions or you hit downturns.

**Senator CORMANN**—And youth unemployment has gone up and I understand that. But we are talking here specifically about the group of people that are neither in employment, education or training and as far as anyone under the age of 17 is concerned, your compact aspires to an outcome where they are all, leaving exceptions aside, in full-time school, training or work.

**Ms Paul**—That is right.

**Senator CORMANN**—I guess we will be able to track, moving forward, how successful it is.

**Ms Paul**—That is exactly right.

**Senator CORMANN**—But over the 12 months to May 2009, the situation has worsened somewhat and there might be a whole heap of reasons for that.

**Mr Griew**—So in every downturn—and we can give you a graph—you have exactly this spike, which is why we have these measures. But the compact was entered into at the end of April 2009 and is being introduced progressively, starting essentially in July. It does require action at state government level and the rolling out of extra training places. It will be evaluated over the period as we head into recovery.

**Senator CORMANN**—Can you explain to me the difference between ‘will be provided with a training place’ and ‘are guaranteed a training place’? Is there a difference between ‘will be provided’ and ‘are guaranteed’?

**Ms Paul**—Probably not. It depends on the context in which you are reading it.

**Senator CORMANN**—I will explain. The compact is based upon three core principles. We have dealt with under the age of 17, and we have sort of gone through this. Then in relation to young people under the age of 20 and not working—

**Senator Arbib**—Can we get a copy of that so that everyone is—

**Senator CORMANN**—It has a lot of handwritten notes. It is something that was handed to me by—

**Senator Arbib**—I understand that, but at the same time we will try to source a copy so that we are working off the same document you are working off.

**Senator CORMANN**—It is very difficult for me to give you a copy.

**Senator Arbib**—We will try to get a copy of it so we are working off the same material.

**Senator CORMANN**—I am sure somebody would have it—one of those very nice people from the department.

**CHAIR**—Do we need it to be identified? Could you read out the title of the document for us?

**Senator CORMANN**—Its title is, ‘Keep Australia Working Jobs and Training Compact’. I am sure there are not that many of those.

**Senator Arbib**—We will get that document so that we work off the same document as you. Is it possible, Chair, to move to another question so that we will have some time to find the document?

**CHAIR**—That sounds like a good idea, if that is all right, Senator Cormann.

**Senator CORMANN**—That is fine. Let me go to the Jobs Fund funding itself. But we will get back to this, won’t we?

**CHAIR**—Yes.

**Senator CORMANN**—Can you give us an update of where the Jobs Fund funding rounds are at?

**Mr Griew**—While the relevant group manager comes to the table, I can inform you that the first round of the Jobs Fund outcomes were announced prior to the last estimates hearing, and that the second round applications are currently being evaluated.

**Senator CORMANN**—The applications closed on 11 December. When do you expect announcements to be made?

**Mr Griew**—They are currently being evaluated, Senator. I am sure they will be announced expeditiously once the decisions are made.

**Senator CORMANN**—So you do not have a set time frame?

**Mr Griew**—We do not have a set time frame. We are doing it as fast as we can.

**Senator CORMANN**—Okay.

**Senator Arbib**—I do not know about how many this time, but the first round was huge. There were something like 2,500 applications for the Jobs Fund, so you get a pretty big response.

**Senator CORMANN**—Sure. In terms of what has been spent so far, that is, the \$132 million for the 172 Jobs Fund projects that were announced as part of phase one—is that right?

**Ms Kidd**—Yes, that is correct.

**Senator CORMANN**—The remainder of the \$650 million is pending while you are going through the evaluation of the next phase?

**Ms Kidd**—Not quite. The \$650 million is in three different streams. There is around \$400 million of that that is administered by our department; there is \$200 million in the Get Communities Working stream and \$200 million in the local jobs stream. The other components are with other departments.

**Senator CORMANN**—So for the \$400 million that you are looking after, how much of that has been spent?

**Ms Kidd**—Under round one, \$132 million was committed, and since round one there have been some changes. We have refocused the Jobs Fund so that there are now new components, which also are being rolled out as well as a second round of Jobs Fund applications.

**Senator CORMANN**—What sort of changes?

**Ms Kidd**—There are a range of changes as part of the refocusing exercise. For example, for the Apprentice Kickstart initiative, \$100 million was funded out of the Jobs Fund. We have also set up Keep Australia Working expos and financial information seminars, which was \$4.1 million. Funding was assigned to some youth centres as well—\$10 million there—and there was some funding for bushfire projects, of \$16.9 million.

**Senator CORMANN**—That is essentially the breakdown in terms of all of the budget allocation that has been spent so far?

**Ms Kidd**—It is not all necessarily spent, but that is where it is allocated. Of course, the bit I have not mentioned is \$93 million, which is for round two of the Jobs Fund.

**Senator CORMANN**—On notice would you be able to give a breakdown of what is has been spent, on a state-by-state basis as well? Is that difficult?

**Ms Kidd**—No, it is not difficult.



**Senator CORMANN**—That is fantastic. Thank you for that. You have put some performance criteria in place to judge the success of the Jobs Fund. We have discussed some of them. Can you talk us through, high level, what some of the other performance criteria are?

**Ms Kidd**—Certainly with round one of the Jobs Fund, it was about job creation so we were looking at projects that created jobs but in areas of disadvantage. There was a range of elements we were targeting under round one. It was jobs in particular, but also training opportunities, infrastructure that had a community impact, and social enterprise. They were the types of things we were funding. In terms of monitoring and evaluation, we would be looking at whether they actually achieved what they set out to achieve.

**Senator CORMANN**—Have you monitored or evaluated, or is that still happening?

**Mr Griew**—I have some outcome figures which you may be interested in. In the local jobs stream, the outcomes committed by the successful applicants included 1,838 jobs, 435 apprenticeships and traineeships, and 786 work experience opportunities. Outcomes to date are 307 jobs, 38 apprenticeships and 26 work experience opportunities.

**Senator CORMANN**—How many jobs?

**Mr Griew**—Three hundred and seven. In the Get Communities Working stream, 4,220 jobs, 1,438 apprenticeships and traineeships, and 2,888 work experience opportunities, and we have 319 jobs so far.

**Senator CORMANN**—So there is still a fair way to go, it is fair to say. It is early days?

**Mr Griew**—It is getting under way, yes. Most projects are now commenced. It is a program that is ramping up.

**Senator CORMANN**—Do you conduct all that assessment, evaluation and monitoring within the department, or do you use consultants for that? How does that work?

**Mr Griew**—The evaluation of the whole jobs and training compact will be conducted in a specialist evaluation area.

**Senator CORMANN**—Of the department?

**Mr Griew**—In the department. They will contract particular components, as is most efficient to conduct the work.

**Senator CORMANN**—I am sure you would be aware of allegations that were aired in the *Age* and in the *Sydney Morning Herald* in an article by Jessica Irvine that the jobs funding disproportionately favoured Labor electorates.

**Ms Kidd**—Yes, we are aware of that.

**Senator CORMANN**—What was the department's reaction to those allegations?

**Mr Griew**—We saw that article and checked the allocation of the projects across electorates, and we did not agree with the figures the journalist reported. We assessed the figures ourselves and came out with different figures.

**Senator CORMANN**—The figures that the journalist utilised, so I am told, come from answers provided by the department as questions on notice from the last estimates round. Is that your understanding?

**Ms Paul**—I do not think so, Senator, but I am sure about that and will have to check.

**Ms Kidd**—The journalists did mention that they were unable to track where a number of the projects were located. So I guess it was a sample that they did or a subset.

**Senator CORMANN**—It was not a sample really. According to the journalist—I have the data here which did come from an answer to a question when I was doing estimates. Of \$132 million in one-off grants, \$109 million could be traced to specific locations, which is a fair proportion. It is not just a sample. And 71 per cent of that funding that could be identified by specific location had gone into Labor-held electorates. Did you conduct an internal review as a result of this? When you say you sort of looked through it, was that just a casual look through it, or was it a bit more formal than that?

**Ms Paul**—I think it was just having a look at the data and seeing what we thought. It is probably important to note here that, even if we had agreed with the journalist, which we did not, the process that was gone through inside the department—these were all decisions made by the department, the delegate was a departmental officer—the process of assessing Jobs Fund applications at no stage included a consideration of electorate.

**Senator CORMANN**—I totally take your word for that. I am not casting any aspersions on the department.

**Ms Paul**—And we had the probity report before that.

**Senator CORMANN**—Let me put it to you as somebody who has been around politics for a while, there are different ways of skinning a cat, Ms Paul. It is not just at the decision-making stage that you can channel things a particular way, which is why, of course, I ask this series of questions and we will get to that. I am not casting any aspersions on decision makers in the department. I am just trying to get a good sense of how the process has developed from whoa to go.

**Ms Paul**—And all I am saying is that, in our process—which was fully covered by probity reporting and that sort of thing—it was not a consideration.

**Senator CORMANN**—Sure.

**Ms Paul**—All those 2,500 applications were assessed on their merits against the selection criteria.

**Senator CORMANN**—I take it from what you are saying that you did not conduct a formal review after those allegations were raised.

**Ms Paul**—No.

**Senator CORMANN**—Shaking your head does not get onto *Hansard*. So that is a no?

**Ms Paul**—No.

**Senator CORMANN**—Presumably you would have provided advice to the minister at the time?

**Ms Paul**—No.

**Senator CORMANN**—You did not provide advice to the minister to reassure about that?

**Ms Paul**—On electorates?

**Senator CORMANN**—No, no, sorry. After the allegations were raised, did the department provide advice to the minister to reassure or advise him one way or the other as to the propriety or otherwise of the process?

**Mr Griew**—I saw the article and I asked the relevant area, Ms Kidd's group, to advise me of the distribution, with our access of course to 100 per cent of the cases, and I did then contact the minister's office, not the minister directly, and said that this would be our analysis.

**Ms Paul**—Apropos your question, of course we had already advised the whole probity process, so that was perfectly clear right through. We had an external probity auditor with us in terms of the department's assessment of the 2,500 applications right through. Of course we would advise on what processes we would undertake.

**Senator CORMANN**—Who was the minister when the decisions were made? I know that you say the minister was not involved in the decision making and it was delegated, but who was the minister when the department made the decisions?

**Mr Griew**—Senator, it may be relevant to draw your attention to the very comprehensive answers we provided to the questions on notice we took, including our quite lengthy answer about the process.

**Senator CORMANN**—I am aware of those answers to questions on notice, but I have also asked some questions on notice. If everything is above board, if everything is proper and everything is in accordance with probity, I am bit intrigued as to why some questions were not answered.

**Ms Paul**—I think we have answered all our questions.

**Senator CORMANN**—Well, we will get to that. I am talking about question on notice 2492. I am not sure whether you have a different numbering. This goes to my argument that there are different ways of skinning a cat.

**Ms Paul**—I am sorry, Senator. That does not sound like a QON number to me. It is usually—

**Senator CORMANN**—This is the Senate parliamentary question.

**Ms Paul**—Oh, a parliamentary question, okay.

**Senator CORMANN**—This is not estimates. I am talking about a parliamentary question which I asked on 11 December, the day on which the article in question appeared, and the answer was provided two weeks ago.

**Ms Paul**—What was the answer?

**Senator CORMANN**—The first question I asked was: how did the government advertise those grants? Do you remember that question?

**Senator Arbib**—Senator Cormann, what was the response, just so that we can get our briefing statement.

**Senator CORMANN**—The response to the question of how did the government—

**Senator Arbib**—No, what number is the response.

**Senator CORMANN**—Well, 2492 is the number that I have. I do not know what numbers you have.

**CHAIR**—Just so that everyone is clear, this is a normal question on notice. It is not a question on notice taken through the estimates process. It will have a different numbering system, and this is not a question of the department during estimates. It is a ministerial response. I am keenly looking at our assistants to find out whether we can find that, so that the committee can be aware of it as well.

**Senator CORMANN**—I think you might just have been handed it.

**Ms Paul**—Yes.

**Senator CORMANN**—My questions were asked in the context of there being different ways in which to skin a cat if you want to achieve a particular outcome, which is why I asked how the government advertised those grants under the Jobs Fund. The answer I got was that advertisements were placed in the following national and regional newspapers: the *Sydney Morning Herald*, the *Age*, the *Australian*, the *Canberra Times*, the *Hobart Mercury*, the *West Australian*, the *Brisbane Courier-Mail*, the *Adelaide Advertiser*, the *Northern Territory News*. So far, so good. But then there are the *Burnie Advocate*, the *Launceston Examiner*, the *Illawarra Mercury*, the *Ipswich Advertiser* and the *Albert and Logan News*. Who made the decision to choose those particular regions?

**Ms Paul**—They represent the priority areas. They are some of the 20 priority areas, which we have discussed in these series of calls.

**Senator CORMANN**—You corrected yourself there quite relevantly: they do not represent the priority areas. They represent some of the priority areas. I think you will find that all of those regional newspapers just happen to represent some of the priority areas that are in Labor electorates.

**CHAIR**—It is a bit tough in Tassie not to!

**Ms Paul**—I think actually this was round 1, and I think these are the first seven priority areas. We would have to check.

**Senator CORMANN**—But there are 20 priority areas, I am sure.

**Ms Paul**—Correct, but seven were announced first, and 11 were announced later. I am told that we also advertised in local media for round 2 of Jobs Fund. So I do not think there is too much of a mystery, but I am happy to take it on notice and to check the rationale for you.

**Senator CORMANN**—Before you go on notice, the *Burnie Advocate* has a circulation of 26,172, appears Mondays to Saturdays, and it covers the marginal Labor electorate of Braddon. The *Launceston Examiner* covers the marginal electorate of Bass. The *Illawarra Mercury* covers the electorate of Cunningham, which was held by the Greens for a little while. The *Ipswich Advertiser* covers the electorate of Blair, which was held by a Liberal member of parliament before the last election and which is now held by Mr Shayne Neumann. The free *Albert and Logan News* covers an area south of Brisbane which includes the electorate of Mr Craig Emerson. It seems quite convenient that the prioritisation of announcing priority employment areas is such that you target your advertising on Labor electorates. Why did you not—

**Senator BILYK**—You do not think that regional Tasmanians should be advised of these grants?

**Senator CORMANN**—The Minister for Employment Participation has focused on many an occasion on the challenges in North Queensland, for example, in Cairns and Townsville. The Herbert electorate, which is a Liberal-held electorate, has some significant employment challenges, and it is covered by the *Townsville Bulletin*. Why didn't you advertise in the *Townsville Bulletin*?

**Ms Paul**—We will check this for you, but I think the answer is precisely what I just said, which is that these were advertised in the seven which had been announced first. It may well be that the next round also advertised in Cairns and so on.

**Senator CORMANN**—So how did you prioritise those first? Were the employment priority areas you announced first in a worse employment situation than Cairns, Townsville and some of the others?

**Ms Paul**—Sure.

**Senator CORMANN**—Is that a yes?

**Ms Paul**—They were based on our statistical analysis, and it was based on one per state to try to get a local place-based approach under way. Those seven were quite early—I think in May.

**Senator CORMANN**—What do you mean by one per state? What about the *Kalgoorlie Miner*, the *Albany Advertiser*, the *South Western Times*? You do not have one per state at all. The *Townsville Bulletin* has got a circulation of 73,000, appears daily from Mondays to Fridays, so why did you pick the *Burnie Advocate*, the *Launceston Examiner*, the *Illawarra Mercury*, the *Ipswich Advertiser* and the *Albert and Logan News*? I am not saying that you should not have, but why did you not pick any of the others?

**Ms Paul**—I think it is because, as I have said—and we will check this for you—that these seven are areas in which local media has been employed here do reflect the seven priority areas that were identified first. We will check that for you. I do not think that there is any other particular mystery to it, but I am happy to check.

**Senator CORMANN**—How can Cairns not be part of an employment priority area?

**Ms Paul**—Because it was not one of those first seven.

**Senator CORMANN**—Why?

**Ms Paul**—We will probably have to take that on notice and go back to our analysis, but do not forget that things have changed quite fast in some of these areas over time. The first seven were based on our analysis way back in March-April, and then we kept track. If you like, I can spell that out.

**Senator CORMANN**—I think you will find that Cairns was right up there, right from the word go, and I am sure the minister is well aware of that too.

**Ms Paul**—Sure.

**Senator CORMANN**—It makes me suspicious. I think it is inherently unfair, if you have 20 employment priority areas, to focus just on seven in front of everybody else.

**Ms Paul**—Sure.

**Senator CORMANN**—You are allocating \$132 million of taxpayers' money. Those areas in which you made a special effort to advertise just happen—totally coincidentally!—to be all Labor electorates? How can somebody not smell a rat?

**Ms Paul**—Well, I think perhaps what we can do for you—and we have had some of this discussion here before. We used an analysis involving 70 different variables about what was happening in areas across Australia. That informed the rollout and the announcement of these areas. I am happy, if we have not already provided that on notice, to set out the rationale for you. It is pretty complex, so it is probably easier for us to set it out on notice, I think.

**Senator CORMANN**—Are you going to provide us with a list of the 70 labour market indicators?

**Ms Paul**—I am happy to do so.

**Senator CORMANN**—Okay. Thank you. And you are going to give us an indication of how those 70 labour indicators have tracked between when the program started up until now?

**Ms Paul**—We can try to do that. I do not know; we may have to do a bit of work to do that, but I am happy to try.

**Senator CORMANN**—To be honest, I think it would be good in terms of clearing up.

**Ms Paul**—Sure.

**Senator CORMANN**—Quite frankly, right now I think that this is not smelling too good, not because necessarily of what has happened in the department. Who made the decision? This decision of identifying seven employment priority areas up-front, was that a decision of the department or was that a decision of the minister?

**Ms Paul**—Sure.

**Mr Griew**—We have provided in the questions on notice we took in the last estimates hearing a comprehensive answer on the process for both analysing and deciding on the 20 priority areas. The particular priority area to which you draw attention—Cairns—was changing quite dramatically during the period of consideration. We can provide you with more information on that, if you wish, but I would draw your attention to the answer we provided because it is provided in response.

**Senator CORMANN**—Are you saying it was not in the top seven when you identified the first seven employment priority areas? Are you saying that Cairns would not have qualified to be in the top seven?

**Mr Griew**—During the period when the department did the initial analysis, Cairns was in a much better state than it was by the time the funding analysis.

**Senator CORMANN**—That is not my question. It might have become worse; it might be top of the list now. The question I have is that when you decided to advertise grants under the Jobs Fund totalling \$132 million of taxpayers' money, of the \$200 million that was available, was Cairns in the top seven or not? Things may have become much worse, and I am sure they have.

**Ms Paul**—Sure.

**Senator CORMANN**—But was it in the top seven, or was it outside the top seven.

**Ms Paul**—I am not sure we can remember. That is almost a year ago, so I think it could well have been. I think we are suggesting that that is probably the case, but we will need to take it on notice to check.

**Senator CORMANN**—It goes to the whole issue of probity. You have \$200 million allocated under this fund, and \$132 million has gone, so you have—is there a correction? Have I said something wrong?

**Ms Paul**—It is just that the Jobs Fund does not only target the priority areas, of course. But that is where we started from because of this parliamentary question.

**Senator CORMANN**—Well, an allegation has been raised that 71 per cent of funding was directed to Labor electorates, which is disproportionate compared to the proportion of Labor electorates across Australia. There are some suspicions, because these sorts of things do not happen by accident. You tell us that everything is hunky-dory, but you happen to have prioritised your advertising in regional areas to areas that happen to be all Labor electorates. Now you tell me it is based on these being employment priority areas. I have the list of employment priority areas in front of me and it includes a whole series of other regions, including regions that cover Liberal and National Party seats.

**Ms Paul**—Sure.

**Senator CORMANN**—They have not received any advertising in their regional newspapers. Do you understand where I am coming from now in the context of there being different ways of skinning a cat?

**Ms Paul**—Sure.

**Senator CORMANN**—All your decision making inside the department can be totally proper. If you frontload the system in an appropriate fashion, in a partisan and biased fashion, you will still skew the outcome. It is unfair and it is not appropriate.

**Ms Paul**—We spoke about this a bit last time, too, Senator.

**Senator CORMANN**—I understand that.

**Ms Paul**—We talked about the 70 variables et cetera, and we offered this advice. We talked about the interaction of the variables: for example, it was not just that it was the highest unemployment rate in the country. It was also whether manufacturing was going down et cetera. I actually think that round 2 may well have advertised in those other regions.

**Senator CORMANN**—I am sure it has because, given the publicity that has appeared in the newspaper, I am sure the government reacted to that; hence the refocusing, I suspect. Did the refocusing come after or before this story appeared in the media?

**Mr Griew**—The announcement of the first seven was a commitment from the government to get the program going. The Deputy Prime Minister then commissioned the new minister, Minister Arbib, to examine the strategy. Within a few weeks, the *Keep Australia Working* interim report was done. That was the chance to look at the strategy. In that *Keep Australia Working* interim report, the recommendation was made for the further 11 to be immediately announced, and they were. It was fairly straightforward.

**Senator CORMANN**—In the first phase, the first \$132 million, you get the program going in Labor electorates. In the second round—

**Ms Paul**—No. The \$132 million was the result of an advertisement across the whole country. Projects actually that make up the 172 projects and the \$132 million actually cross—

**Senator CORMANN**—Except that you targeted particular regional and metropolitan newspapers.

**Ms Paul**—You are talking about newspaper advertisements.

**Senator CORMANN**—Yes.

**Ms Paul**—Do not forget that 2,500 different organisations applied, and only 172 were able to be funded. Those 172 are right across Australia with a preponderance, not surprisingly, in areas of high unemployment, economic stress and so on.

**Senator CORMANN**—I started with the newspaper advertising. We are going to work our way down the list. I am aware that this was discussed during the last estimates; I read the transcripts in great detail.

**Ms Paul**—Sure.

**Senator CORMANN**—I asked a question on notice in the Senate, to which I received an answer only recently. I am going through the implications of this because I did ask the minister whether special encouragement had been provided to Australian Labor Party members and senators to promote these grants in their electorates; if so, how; whether special promotional material was provided to ALP members and senators at taxpayers' expense to promote these grants in ALP electorates and, if so, what material was provided, and at what cost to the taxpayer? There was a series of other questions in the same vein.

The answer I received is, 'These questions relate to a period of time in which I was not the relevant portfolio minister.' Quite frankly, that is a cop-out. This is a minister not wanting to answer the question. Did the department write this answer for the minister? Why would he not just say whether or not material had been provided? If it has not been provided, just say no. If it has been, say yes and what. Why would you say something quite arrogant like this?

**CHAIR**—I do not know the process. The only reason I am intervening at this point is because I still want to clarify that these were not questions to the department during estimates, which I understand have all been answered. I do not know what the normal practice is when questions are asked on notice in the chamber about ministers answering their portfolio stuff. I am happy for you to pursue that, but I just want to differentiate chamber processes from the estimates processes.

**Senator CORMANN**—Did the department provide the draft answer for this question that was submitted in the Senate? That is the way it used to happen. I am sure it is still the case.

**Mr Griew**—I am not aware, Senator. We would have to have that clarified.

**Senator CORMANN**—How would the minister and the minister's office know to say that it had been advertised in the Burnie *Advocate* et cetera?

**Mr Griew**—We would have provided input.

**Ms Paul**—We would have provided that.



**Senator CORMANN**—You would have provided a draft answer. The minister's office may or may not have made some adjustments to it, and then it would have gone into the system. Is that not the way the process normally works?

**Ms Paul**—That is right. This is a ministerial answer. If you would like us to take on notice those questions which you feel have not been answered, I am happy to do so.

**Senator CORMANN**—I do not want you to again take it on notice because otherwise we will be just wasting time again. I would like to ask the question—

**Mr Griew**—Can I clarify the answer to an earlier question?

**Senator CORMANN**—Yes.

**Mr Griew**—It seems to be the basis for this string of questions here. The analysis that the department did about the final allocation of the projects under the Jobs Fund round 1 was that 57.5 per cent went to projects in Labor electorates; 20.9 per cent went to projects in Liberal electorates; 10.5 per cent went to projects in Nationals electorates; 2.9 per cent to projects in Independents' electorates; and eight per cent to projects that covered electorates of a variety of political parties. Just in terms of the integrity of the process, our analysis would suggest that that is very close to what you would expect on a distribution across the electorates that make up the—

**Senator CORMANN**—Are you prepared to table that analysis?

**Ms Paul**—I think we would give it on notice. I do not know that we can table what we have here, but I am certainly happy to do that.

**Senator CORMANN**—Can you table it sooner rather than later?

**Ms Paul**—Sure.

**Senator CORMANN**—Okay. Thank you.

**Ms Paul**—It has been said publicly. In terms of why we advertised where we did, I suspect this was the department working out where to advertise. I am quite happy to come back to you as soon as we can with the rationale of why. I am pretty sure it is exactly as I said.

**Senator CORMANN**—But this is my question: was that a decision of the department or was that a decision of the minister? That was the question I asked before.

**Ms Paul**—Yes, in terms of where to advertise. I suspect it was us, but I will come back to you on that.

**Senator CORMANN**—You suspect?

**Ms Paul**—I would have to take it on notice.

**Senator CORMANN**—You are going to check.

**Ms Paul**—Yes.

**Senator CORMANN**—Great. And in terms of prioritising the seven, you are going to get back to us as to whether it was your decision based on objective criteria, or whether it was the minister; and you are going to provide an indication of how all those employment priority areas tracked?

**Ms Paul**—Yes.

**Senator CORMANN**—Against the 70 labour market indicators.

**Ms Paul**—Yes, that is right.

**Senator CORMANN**—And I will have a bottom line total outcome at the bottom which says in or out. We will have like a hit list from one to 20.

**Ms Paul**—Sure.

**Senator CORMANN**—Is that the way it will be?

**Ms Paul**—That is pretty well it, so we are happy to do that. The bottom line is that, from my involvement with this process, I am certainly comfortable both that those priority regions are accurately based on correct data and are the correct regions. I have also assured myself that the process of assessment of those 2,500 applications and the results were done absolutely correctly against the criteria, with all probity, and so on.

**Senator CORMANN**—And you are not intrigued that the regional and metropolitan newspapers in which advertisements were run were all—100 per cent of them; I emphasise ‘100 per cent of them’—covered strategic Labor electorates, and that not of them, not one, was outside of the Labor Party area.

**Ms Paul**—Many of these are national print media. I am not sure that they are dealing—

**Senator CORMANN**—I am putting the national ones aside because they are the obvious ones. Everybody is going to advertise in the *Australian* and the *Sydney Morning Herald*.

**Ms Paul**—Sure, and I have not done—naturally, not surprisingly—an electorate analysis myself on this answer. But my proposition, which I have already agreed to check, is that this reflected the first seven areas.

**Senator CORMANN**—I would be interested to see because I have a list of all the equivalent newspapers in Australia in which you chose not to advertise. There is a whole series of them that fall within your employment participation areas in which you did advertise.

**Ms Paul**—Sure.

**Senator CORMANN**—I am very much looking forward to that particular piece of information.

**Ms Paul**—That is fine.

**Senator CORMANN**—Can you answer for me the question that was not answered in the answers to questions on notice, and that is: whether any special promotional material was provided by the department to the minister’s office for circulation with members of the House of Representatives or senators?

**Ms Paul**—I am not sure we would have that here. It is going back some time, but I am happy to take it on notice. We probably would have to take it on notice.

**Senator CORMANN**—How does the process normally work?

**Ms Paul**—It differs, really, depending on the program.

**Senator CORMANN**—With grants of this nature, there are some ministers who write across the board. I am sure that these things are prepared in the department because a department likes to promote these sorts of things, yes?

**Ms Paul**—I am sorry?

**Senator CORMANN**—You have experienced grants of this nature and the responsible minister has written to all members and senators.

**Ms Paul**—Yes.

**Senator CORMANN**—Usually that is done in a bipartisan fashion, yes?

**Ms Paul**—Yes. But I would like to check this. I just do not know the answer, so I would like to check it.

**Senator CORMANN**—You are not aware whether on this occasion information about those grants was circulated by the minister, who would have been the previous minister, to members and senators?

**Ms Paul**—I am not sure. We would have to check. I am happy to check.

**Mr Griew**—I can point to the letters made for members from all the political parties.

**Senator CORMANN**—This is not what I am asking for. I know exactly where you are going. You are now referring to letters of the members coming in.

**Mr Griew**—No. With respect, I was suggesting that at the last hearing we provided copies of letters that the parliamentary secretary had sent to members of all parties making them aware of—

**Senator CORMANN**—Phase 2?

**Mr Griew**—Of the Keep Australia Working forums and of the existence of the relevant programs.

**Senator CORMANN**—That is not what I am after.

**Mr Griew**—I have also been advised that there were not particular materials provided; that there were materials provided to promote the programs generally, and that was what was provided to offices.

**Senator CORMANN**—Are you saying there was no letter provided by the department to the minister to write to members of parliament specifically about the Jobs Fund grants. Are you now saying that there was not? Before I was told you would take it on notice.

**Senator Arbib**—What do you mean by letters, Senator?

**Senator CORMANN**—Well, it is not an unusual process.

**Senator Arbib**—I am just asking what you actually mean.

**Senator CORMANN**—I am asking whether the department drafted letters specifically relating to the grant. I am not referring to Keep Australia Working, to general policy announcements or package announcements. Was any specific course drafted by the department for the signature of the minister—or a digital signature—promoting the grants, for example the \$132 million of grants in the first phase of the project?

**Senator Arbib**—I am happy for Mr Griew to answer that question, but there was nothing stopping coalition members from going out and advertising. In fact, I received numerous letters, which I have gone through ad nauseam. I received numerous letters from coalition senators and coalition members of parliament.

**Senator CORMANN**—Not numerous, as I have the list.

**Senator Arbib**—They were advocating on behalf of local projects. At the time I referred in the Senate chamber and also in estimates to their hypocrisy for doing that, given that they voted against the jobs fund. I made that point.

**Senator CORMANN**—Minister, I have the list of the people who wrote in. At the moment I am trying to ascertain whether special encouragement was provided by the government to Labor members and senators to promote those grants under those funds. There are different levels at which that can happen.

**Senator Arbib**—And you have asked the department about a letter?

**Ms Paul**—I think we might have an answer for you.

**Senator CORMANN**—Okay, thank you.

**Mr Griew**—I can inform you that the materials we provided were general materials. I had a specific conversation with the parliamentary secretary who was responsible for this project. He wanted us to draft letters that would go to every member advertising the various programs and the Keep Australia Working forums. He was very explicit in that instruction. We tabled those letters last time. The only reason I cannot be more categorical is that I will need a chance to talk to staff in the department about any other materials we provided.

**Senator CORMANN**—Okay. If that is the case why did you not just say so in answer to a question on notice that was put to you on 11 December? Given that there was a level of public concern, and given the fact that some questions had been asked about the propriety with which \$132 million in taxpayers' money was allocated, why did you not go overboard in clearing the air and making sure that there was no doubt about the propriety with which these grants were promoted? Why did you go for a covering line and hide behind the fact that Senator Arbib was not the relevant portfolio minister at the time?

**Ms Paul**—Perhaps with the benefit of hindsight we should have said it to you. I hope that we are clearing it up a bit for you now. I have already offered to take that question on notice and to have a look at it.

**Senator CORMANN**—Answers like this are very unhelpful.

**Ms Paul**—Fair enough.

**Senator Arbib**—Senator, that is not the department's answer; that is my answer. I was not in a position to speak for the former minister. I was not there at the time that the question was asked so I did not answer it. That was my decision. When you referred earlier to public concern you were talking about one newspaper article and a couple of press releases from you.

**Senator CORMANN**—One press release and quite a few discussions in estimates over the past—

**Senator Arbib**—I do not see a wave of public protest out there, apart from your tweets which are regular, and a couple of press releases.

**Senator CORMANN**—And you were defending the ABC—

**Senator Arbib**—Senator, I again make the point that I was not the delegate for the jobs fund. That was done at departmental level. Probity advice has again been provided. The department made that decision.

**Senator CORMANN**—Minister, I did not ask questions of Senator Mark Arbib; I asked questions about what happened in the office of the Minister for Employment Participation. Do you know what? There was one before you filled that role in July 2009.

**Senator Arbib**—That is right.

**Senator CORMANN**—If you were happy to be transparent and accountable, and if you were happy to ensure that there were no bad impressions hanging around the decision making about taxpayers money that are made by your government, you would have provided a proper answer to this question. Instead of providing a glib—

**Senator Arbib**—Senator, we do not think there are. Mr Griew has given you the figures and Ms Paul has told you that we will get you the information. Therefore your questions have all been sorted out.

**Senator CORMANN**—The public record has never been corrected. The proportions that were put out there in the public domain have never been corrected. You never provided an explanation, Minister, when you were on radio all day after the story appeared in two newspapers.

**Senator Arbib**—I did, Senator. I am not sure whether it was you or Senator Abetz who made allegations that I had made decisions relating to jobs fund announcements on the basis of a partisan nature. I responded by saying that I was not the delegate, and these decisions were made independently, which is the truth. I had no role in it; it was done by the department. That clears up the matter.

**Senator CORMANN**—Senator Abetz made the very insightful point that these things do not happen by accident. Mr Griew, you said earlier that you provided advice to the minister. Was that verbal advice or was that written advice?

**Ms Paul**—Which advice are you talking about now?

**Senator CORMANN**—The advice after the story appeared in the newspaper. You said that you had provided advice to the minister.

**Mr Griew**—I provided verbal advice to a member of the minister's staff, not to the minister himself.

**Senator CORMANN**—So you never provided any written advice to the minister relating to this? There has never been any written advice that has gone to the minister to reassure him that everything was fine and proper with this grants program?

**Ms Paul**—Oh yes, there has been a lot of advice on how rigorous the grants assessment process was. The grants assessment process never considered electorate issues; the grants assessment process was done rigorously inside the department against the criteria with a

series of levels of checking, as we do tender and grant processes. The delegate was a departmental officer and the minister was advised of the outcome after the delegate had made his decision. So we did not offer any electorate analysis.

**Senator CORMANN**—The minister might dismiss the extent of this, and I understand that he does that because it is in his interests. You are saying that a story appeared that alleged impropriety—a disproportionate allocation of funding to Labor electorates—and all you did was to make a phone call to the minister and say, ‘Minister, it is all okay.’ That was the extent of the communication between the department and the minister’s office.

**Ms Paul**—We have advised clearly on the rigorousness of the whole process, the probity cover from our external probity adviser, and so on. The question at issue here was simply the numerics of an electorate analysis that appeared in a newspaper. Mr Griew has already told you that we provided advice on those numbers. But much advice has been provided on the robustness of the process.

**Senator CORMANN**—But the full extent of the communication about those numbers between the department and the minister’s office was a phone call?

**Ms Paul**—Sure. That is fine.

**Senator CORMANN**—Were there any internal communications within the department to enable Mr Griew to reach the conclusion that he reached, and which he communicated verbally to the minister?

**Mr Griew**—Sorry, did you say to the minister?

**Senator CORMANN**—No. Was there any internal communication within the department?

**Mr Griew**—I recall phone calls between me and Ms Kidd and one of her staff who was doing the analysis.

**Senator CORMANN**—So it was all verbal?

**Mr Griew**—You have to understand that this was not a major issue for us. There was a newspaper article in which the journalists themselves had said that they could not allocate all the jobs fund. I was just interested to see what the number was. The number came out as we expected it would be, and I rang the minister’s office and had a conversation about that.

**Ms Paul**—It is not a big issue.

**Mr Griew**—It did not seem to us to be a major issue.

**Senator CORMANN**—They could not allocate \$23 million. The thing is that it is a major issue. It is moving forward and you have made some changes since then. I would like to know why refocusing, as you call it—

**Ms Kidd**—Sorry, the refocusing happened several months before this article appeared.

**Ms Paul**—It is not a big issue.

**Senator CORMANN**—Okay. How old is this program? The jobs fund program has been going for only six months. When did you advertise the first place?

**Mr Griew**—The Deputy Prime Minister had commissioned Minister Arbib and Parliamentary Secretary Jason Clare to provide her with the Keep Australia Working report,

which was entitled the 'Keep Australia Working' report, to look at whether any refinements were sensible for the program, given the fast-moving nature of the economic situation. A number of recommendations were made in their report, which led the government to decide to refine their jobs fund program for the second round, which are the changes—

**Senator CORMANN**—Let us just get the sequence clear. I know that you are going to tell me that we have covered this before, but let us just get the sequence clear for the purposes of today. When was the final decision made on the first round under the jobs fund?

**Ms Paul**—While we are finding that, the simple reason why an electorate analysis allegation, claim, or whatever in a newspaper is not such a big deal for us is that we have never made any of our assessments or any of our decisions on that basis, so it has not been part of our decision making at all.

**Senator CORMANN**—You can understand why there would be a level of public concern if the federal government, the Commonwealth, were to allocate taxpayer funding based on which party represented a particular city. If that was the basis for the decision making, you could understand why there would be a level of concern. It is not an unreasonable line of inquiry to reassure ourselves that that is not what is happening.

**Ms Paul**—Correct. And the comfort is that we do not do any of our assessment processes on that basis.

**Senator CORMANN**—Sure, but you are now saying that when the allegation was made you did not give it a proper look because you did not think it was a problem.

**Ms Paul**—Yes, we did look at it and we have given advice.

**CHAIR**—We seem to have done a complete circle in this debate. I am wondering whether, Senator Cormann, there are questions to which you require answers?

**Senator CORMANN**—Yes, there are.

**CHAIR**—From what I have seen, all your questions have either been answered or taken on notice and those are the very questions you just asked again. I do not want to do the whole thing again.

**Senator CORMANN**—We are not doing the whole thing again. I can understand why you want to shut it down, Mr Chairman.

**CHAIR**—Why do you think I want to shut it down?

**Senator CORMANN**—Presumably you do not want us to continue to pursue these issues.

**CHAIR**—No, what I want to do is try to move through and get through the estimates process. What I do not want to do is have people go around in circles and ask the same questions that were asked an hour ago. That is all I am trying to do.

**Senator CORMANN**—That might be your perception.

**CHAIR**—That is why I said it, because it is my perception. I am just trying to be helpful. Let us try to work out what questions you still need to ask and what questions have not been taken on notice that you need to put on notice so that we can move on.

**Senator CORMANN**—Were there any—

**CHAIR**—If you want to spend the rest of the night on this, that is fine. I am just trying to be helpful.

**Senator CORMANN**—Were there any emails between departmental officers as a result of dealing with the implications of this particular article in which there is communication about why the allegations in the article are incorrect? Are there any email exchanges between departmental officers, or is everything verbal?

**Ms Paul**—It sounds as though it was verbal. We will check that. I want to summarise where we are at. In our view, the regions were chosen on the basis of our advice, against 70 variables which had interactions with each other. So the regions genuinely represent the regions in most need in Australia. The Jobs Fund had 2,500 applicants from right across Australia, and it was not limited to the priority regions. The assessment process was against the advertised criteria, which included gateway and other criteria. The assessment process was carried out by expert teams inside the department, at arm's length from the minister, and the decision was made by a departmental delegate and the minister was advised afterwards. At the end of the day, it appears that our analysis of the electoral result is that it pretty well reflects the proportional representation of electorates in Australia. Basically, that is the end of it.

**Senator CORMANN**—I am sure that it is the end of it from your point of view, and I do not expect you to agree with me, but I make the point that, considering that all the regionally based advertisements in newspapers were focused on key Labor electorates, it is not unreasonable to come to a conclusion.

**Ms Paul**—So this is round 1. For round 1, as I have just said, Senator, there were 2,500 applications from right across Australia. The fund was not limited to those seven regions, or indeed to the 20. The successful 172 projects also are not limited. So there is probably not too much further that we can go.

**Senator CORMANN**—Sure. I will conclude it here.

**Senator Arbib**—Senator, I wish to assure you, in relation to the location of the advertising, that there was no ministerial involvement at all. That was done independently by the department.

**Senator CORMANN**—You can give a 100 per cent guarantee on that, even though you were not the minister at the time?

**Senator Arbib**—Sorry? Are you talking about the advertising?

**Senator CORMANN**—Yes, I am talking about the advertising.

**Senator Arbib**—Sorry, it was before my time. From my end there was no advertising. Before that, you are correct. I cannot do that. I was not the minister then.

**Senator CORMANN**—Anyway, that is very strange. I can see that the minister does not think it is strange. Why you advertise? Do you advertise to generate demand?

**Senator Arbib**—It may be the way that the former coalition government dealt with funds. We talk about the regional rorts and the ANAO report. It is usual for you guys to business in that sort of fashion. For us it is bit different. I was not the delegate, so I was not making the decisions.



*Senator Abetz interjecting—*

**CHAIR**—Order!

**Senator Arbib**—There is an ANAO report that goes into the regional rorts program—

**Senator CORMANN**—Maybe we should have an ANAO report into this. Why do you advertise if it is not to generate demand? Is advertising to generate interest?

**Ms Paul**—One would presume so.

**Senator CORMANN**—If you happen to limit your advertising in regional areas to those areas that cover a particular series of Labor electorates, does it surprise you that those areas have a higher awareness?

**Ms Paul**—But we have already said that we did not limit our advertising there. It is right across the country.

**Senator CORMANN**—I am quoting from your answer.

**Ms Paul**—I think the fact that we got 2,500 applications is a bit of a indicator that it was a well-known initiative.

**Senator CORMANN**—So, as the secretary of the department and as a public servant, you are not concerned that the only regional papers that were targeted for advertising—

**Ms Paul**—In round 1.

**Senator CORMANN**—Absolutely—for \$32 million—the only regional papers that were identified were those focusing on key Labor electorates. That is not something that concerns you?

**Ms Paul**—That is correct. I am not concerned. The reason I am not concerned is that it is my understanding—and I have agreed to check—that we did national media and the regional media probably represented the first seven—

**Senator CORMANN**—Probably.

**Ms Paul**—I said I would check. The fact that we got 2,500 applications offers me significant comfort.

**Senator Arbib**—Senator, does it surprise you that some of the highest levels of unemployment are in Labor seats? This is something that has been discussed ad nauseam in the media. I do not think it is very surprising.

**Senator CORMANN**—Let us have a look at the 70 Labor indicators. I am surprised that a whole series of regional papers did not get any advertising. How much is left in phase 2?

**Ms Kidd**—There is \$93 million for round 2.

**Senator CORMANN**—And there is no phase 3, is there?

**Ms Kidd**—No. This is the final round.

**Mr Griew**—But there were successful projects from all across the priority areas and indeed beyond the priority areas in round 1.

**Senator CORMANN**—Sure.

**Mr Griew**—It is not as if round 1 was all for the first sector.

**Senator CORMANN**—I will move on in the interests of time. The allegation is that there was disproportionate weighting towards Labor electorates. I cannot say that I am reassured by the answers I have received so far. But I am very much looking forward to answers on notice.

**Ms Paul**—We disagree with your analysis.

**Senator CORMANN**—I am sure you would.

**Ms Paul**—Both on a straight statistical look at it, because the journalist was wrong—

**Senator CORMANN**—I have not seen statistics.

**Ms Paul**—And on the basis of our processes.

**Senator CORMANN**—You have not publicly released your statistical look at it yet, so I look forward to getting a copy of that.

**Ms Paul**—Sure.

**Senator CORMANN**—By then I might be reassured, but at present I am not. What is the status of the Greenacre housing project?

**CHAIR**—Is that a new topic? We should come back to that.

**Ms Paul**—Which housing project?

**Senator CORMANN**—We should go back to the earlier Jobs Fund questions.

**CHAIR**—We should do that before we move on, if we can. We were looking to get a copy of that document for everybody. Do we have that yet?

**Ms Paul**—Yes.

**CHAIR**—Let us move back to those questions.

**Senator CORMANN**—What is the difference between ‘will be provided with a training place’ and ‘are guaranteed a training place’?

**Ms Paul**—Where are you?

**Senator CORMANN**—On the left-hand side, ‘Compact with young Australians’. It says that there are three core principles, and it then has numbers 1 and 2. Number 3 is missing, but I suspect that it is supposed to go with those young people under the age of 25. I do not come from an English-speaking background and there may be a subtlety that I am missing, but I cannot understand the difference between ‘will be provided’ and ‘are guaranteed’ a training place.

**Ms Paul**—Where is the ‘guaranteed’?

**Senator CORMANN**—I will read the quote. I am sorry if I am wasting your time. Number 2 says:

Those young people under the age of 25 and not working will be provided with a training place.

Are you with me?

**Mr Griew**—The version that we have has ‘will be entitled’ in both points 2 and 3.

**Senator CORMANN**—I promise I did not make this up.

**CHAIR**—We will suspend for two minutes so that there can be a private conference. We are now back on the record.

**Senator CORMANN**—I got very confused and I am trying to understand the differences between what people under the age of 20 and people under the age of 25 are entitled to. The way it is written in the version I have is that the former ‘will be provided with a training place’ and people under 25 are ‘guaranteed’ a training place to ensure that they have the skills that are needed to be part of the recovery. I am trying to understand what is the reason for the differentiation. We talked about people under 17. You thought it was important to split people 17 to 20 from those who are 20 to 25. What are people older than 20 getting that is different from those between 17 and 20?

**Mr Griew**—I do not think that the words ‘guaranteed’ and ‘entitled’ are meant to imply a difference. I am advised that the word ‘guaranteed’ may have been used in a press release. This was a fact sheet. I think that both meant to imply exactly the same meaning. The point about the difference between people under the age of 17, people between the ages of 15 and 19 and people 20 to 24 is that specific government and governments, because this became a COAG initiative, had particular responses based on the specific needs of those age cohorts of young people. In the answer I first gave you, about the different impact of the economic downturn on people 15 to 19 versus people 20 to 24, I said that both are vulnerable. The 15- to 19-year-old group are very vulnerable and they are very vulnerable if they do not have year 12. They are vulnerable to becoming very disadvantaged and disengaged for the reasons that we are all concerned about. They are specific different initiatives.

**Senator CORMANN**—You have now added another age category. You are now talking about 15- to 19-year-olds.

**Mr Griew**—That is the group under the age of 20.

**Senator CORMANN**—Both versions have three categories: they have under 17, under 20 and under 25. We have dealt with the under 17s and we have some information coming. That is fine. What is the difference in terms of your compact between what you are committing to people under the age of 20 and to people under the age of 25? On the basis of what I have in front of me, I cannot see it.

**Ms Paul**—I will start from the beginning. Seventeen is pretty well the compulsory school-leaving age around the country. That accounts for the more mandatory sounding nature of support for under 17s. It actually represents an activity that they are compulsorily still supposed to be doing. As for under the age of 20, the fact sheet that I have—which you now also have—says ‘entitled to a government subsidised place’, the first priority being a year 12 or equivalent. The differences with the next one is not as to ‘guarantee’ or ‘entitled’. The words are the same there, but it does not focus as much on the year 12 or equivalent. I think that is the difference.

**Senator CORMANN**—The words have changed. The one that I have just said ‘ensure that they have the skills needed to be part of the recovery’. It could mean anything.

**Mr Griew**—It does say a training place at a level higher than what they already hold. So with the under 20s—or the 15- to 19-year-olds, as I called them—we are trying to get them to

year 12 or equivalent. For the over-20 group we are saying that in respect of whatever they have got we are trying to improve their skills.

**Ms Paul**—I think what has happened here in the process is that we actually updated these fact sheets after the Keep Australia Working forums. I would say that—

**Senator CORMANN**—somebody picked up the same thing.

**Ms Paul**—Yes, they probably picked up the same thing.

**Senator CORMANN**—Fair enough, and there you go. I refer to the greenacre housing projects, the 35,000 building and infrastructure projects and the insulation batts training. Is all this part of the same Keep Australia Working package?

**Ms Paul**—No.

**Senator CORMANN**—It is a different thing altogether, is it?

**Ms Paul**—It is a different portfolio.

**Senator CORMANN**—What does it come under?

**Ms Paul**—Housing comes under the Families, Housing, Community Services and Indigenous Affairs portfolio and insulation comes under the Environment portfolio.

**Senator CORMANN**—So you do not have any role as a department in terms of the employment implications of any of this?

**Ms Paul**—That is right.

**Senator CORMANN**—Okay. I will leave that aside then. Who are the local employment coordinators that are contracted by the department? I have a list of names but I am looking more for descriptions or characteristics.

**Ms Kidd**—In relation to the local employment coordinators, we advertised for the positions in the priority areas and obviously got a range of people with various backgrounds. Some of them have been working in similar roles, looking at linking up stakeholders in areas to achieve results. Some people were from within the department. Some people were with education institutions—TAFEs et cetera. So it was a very diverse range of backgrounds.

**Senator CORMANN**—Again, the document I have is a document from the department. I hope I do not have an old version of it.

**Ms Kidd**—We will see.

**Senator CORMANN**—What do local employment coordinators do? It says that local employment coordinators are ‘talented leaders with expert local knowledge who are working in priority employment areas’ until June 2011. Do they get paid?

**Ms Kidd**—Yes, absolutely.

**Senator CORMANN**—How much?

**Senator Arbib**—This was discussed at the last estimates. I am just saying that we did discuss this.

**Ms Paul**—We have got some terrific people. Many of them have been drawn out of community leadership roles in their local area and so on. I have met some of them, not all of them, and they are pretty impressive on the whole.

**Senator CORMANN**—How are they selected, and what are they paid?

**Ms Kidd**—We had a selection process that involved Hudson for recruiting. We used Hudson to help us to come up with a list of people. A panel was convened to interview them and make the selections. The panel involved members from the department that also had external members, including a member from the Department of the Prime Minister and Cabinet. Also we used—

**Senator CORMANN**—People from Prime Minister and Cabinet as well?

**Ms Kidd**—From the department, on the panel.

**Senator CORMANN**—That sounds—

**Ms Paul**—It is because of the Coordinator-General responsibility.

**Senator CORMANN**—But it was at arm's length from the minister or the government?

**Ms Kidd**—Yes.

**Ms Paul**—It was a public service selection.

**Senator CORMANN**—It was very much a departmental call?

**Ms Paul**—That is right.

**Mr Griew**—I participated in one of those panels. We were very clearly after people with the capacity to communicate well with local businesses, local business leaders, local TAFEs, so people who understood their communities. Overwhelmingly they came from their communities, and they tended to be people with business development or training development backgrounds.

**Senator CORMANN**—What sort of level of engagement would you expect them to have with, for example, local members of parliament? Would you expect them to attend the jobs forums of local federal members of parliament? If a local federal member of parliament organised a jobs forum, would you expect the local employment coordinator to go along?

**Mr Griew**—We would expect them to be engaged with everyone who is significant in the community.

**Senator CORMANN**—And across the board.

**Mr Griew**—Across the board.

**Senator CORMANN**—Do they brief you or report back if they involve themselves in local jobs forums that are organised by local federal members of parliament, or are you not really aware?

**Ms Kidd**—They report to us on a fortnightly basis on their activities. In that reporting, they may do that. A lot of the jobs forums we organise ourselves, and they attend those, but if they were invited to something locally they would advise us.

**Senator CORMANN**—But you do not keep track in terms of making sure it is all right and proper as to what sorts of activities they involve themselves in? I think going to the jobs forum of a federal member of parliament is appropriate. I am not questioning that. But is it not something that you keep track of to make sure it is appropriately non-partisan?

**Ms Kidd**—Not specifically. We have run jobs forums in each of the priority areas. We have a priority area strategy that we are rolling out in each area, and that involves a jobs forum which the local employment coordinators use to convene an advisory council to sit in the priority area. So it is quite an important component of the strategy. More often than not, the local member is involved in that.

**Mr Griew**—We have had members from both major political parties and I remember independent members as well at those forums.

**Senator CORMANN**—Sure. I am sure that that happens, but I am just trying to get a sense as to what degree the department ensures that this is all right and proper. You trust, essentially.

**Ms Paul**—The setup of these forums was through the parliamentary secretary, who wrote to members of both major political parties—you know, basically the local member—so it is set up properly from the start, basically.

**Senator CORMANN**—Sure.

**CHAIR**—We will have to conclude.

**Senator CORMANN**—Can I ask this final question before we conclude because I have already asked it but I do not have the answer yet.

**CHAIR**—I do not know; Senator Abetz has encouraged me to be very strict and precise with the times.

**Senator CORMANN**—I am sure. Can you just tell me quickly—and it might have been covered before and I am sorry if it has—how much do they get paid?

**Mr Griew**—They are paid on a contract, so they are not—

**Senator CORMANN**—Is it on a case-by-case basis, it is?

**Mr Griew**—Yes, there is some by case by case. But they are all in the broad range of the equivalent to the SES band 1, bearing in mind they are paid as a contractor

**Senator CORMANN**—So it is a full-time and quite senior role as far as you concerned.

**Mr Griew**—Yes. We were after people who would have clout in their local communities and who would be able to mobilise and advocate for their business leaders.

**Senator CORMANN**—You will get back to me.

**CHAIR**—We will now take the dinner break.

**Proceedings suspended from 6.31 pm to 7.30 pm**

**CHAIR**—I reconvene these estimates hearings. We are in outcome 4.

**Senator RONALDSON**—Thank you, Chair. I am asking for your indulgence, because I was going to ask these questions this morning but I was jammed and I have some problems a

bit later on. We were going back into Fair Work, I think, and that probably would have been a bit of a hook. I needed to have Ms Paul here, hence the trouble. When the Fair Work people were on, you were not here, Ms Paul, and I do need to direct some very quick questions to you, if that is okay. Could I ask you to take on notice for me, please, how many laptops have been issued to the minister's office since November 2007 and how many mobile phones, how many BlackBerries and how many digital voice recorders have been issued to the minister's office since 2007.

**Ms Paul**—Sure.

**Senator RONALDSON**—I am advised that on Thursday, 19 March the Fair Work (Transitional Provisions and Consequential Amendments) Bill 2009 was introduced into parliament and I am advised that on Friday, 20 March the Prime Minister's office ordered approximately \$1,800 worth of food and drinks for your minister's office to thank her for all the hard work that the Deputy Prime Minister's office had done in getting the Fair Work Bill up and running. I then understand that a couple of months later the Parliament House caterers—I think it is IHG these days, is it?—were chasing a payment for the \$1,800. After much back and forth, it turns out that the PM's office did not want to pay the invoice after all—I understand there were eight bottles of champagne, some serious nibbles, 21 bottles of wine, beer et cetera—and that DEEWR ended up paying the full amount. Are you aware of this situation?

**Ms Paul**—Not in detail at all, actually—it is almost a year ago—but I am happy to take it on notice.

**Senator RONALDSON**—Can you take both the background to and the specific question in relation to DEEWR having to foot the bill for this—take the sequential questions and scenarios on notice as well.

**Ms Paul**—I understand, yes.

**Senator RONALDSON**—Thank you, Ms Paul. Chair, thank you for your indulgence.

**Senator CORMANN**—I had better just finish off on the Jobs Fund. We were talking about local employment coordinators, I think, when we left. Senator Cash and I had a quick chat over dinner about the questions and answers around the Jobs Fund, and something occurred to me. Ms Paul, you said it was not a big deal, to the extent that nothing was put in writing. All of the communications with the minister's office and within the department were verbal, as far as we know at this point, because we are still looking at that. But you did conduct that analysis to prove that what the newspaper came up with was wrong, so you went to some effort. Is that right?

**Ms Paul**—Yes, and Mr Griew described that effort.

**Senator CORMANN**—Having gone through all that effort to demonstrate that the journalist was wrong, why wouldn't you then have made the minister aware of the outcome of your analysis in writing rather than just verbally?

**Ms Paul**—The point I was making was that electorate information was not germane in any way to the decision-making process, so the fact that the advice was verbal was quite appropriate.

**Senator CORMANN**—Sure, but with the allegation being made—it being, as far as public confidence is concerned, one of the less pleasant implications to have hanging out there—you obviously did what I think was the responsible thing and looked at the data yourself to reassure yourself, which I think is more than just not taking it seriously, which seemed to be the implication.

**Senator JACINTA COLLINS**—I did not say anything about that at all.

**Senator CORMANN**—No, but Ms Paul—and correct me if I am wrong—said, ‘It wasn’t a big deal for us.’ That is, I think, what you said.

**Ms Paul**—That is right, because it was not germane to our decision-making process. I have described in detail the whole build-up to the decision-making process, the probity processes and so on. So the fact that the advice was verbal was quite appropriate.

**Senator CORMANN**—In terms of the probity process, was there a report?

**Ms Paul**—That is right, and we had an external probity auditor with us during the whole assessment process. They sit there the whole time as the team goes through the assessment of those 2,500 applications.

**Senator CORMANN**—When did that probity assessment start? Did that start from you receiving the applications and going through them or did it start right from the word go?

**Ms Paul**—I would probably need to seek advice on that.

**Ms Kidd**—We had a probity auditor write a probity plan for the assessment process, and I can find the date for that.

**Senator CORMANN**—No, you keep saying ‘for the assessment process’. Again, maybe I am not so good at the English language, but that sounds to me as if you started the probity process when you were assessing the applications received rather than looking at the totality of the process, which starts from advertising all the way through to making a decision. Did the probity audit look at the totality of the process, from you getting the funding allocated to your budget to spending it, or did they look at the assessment post receiving the applications?

**Ms Kidd**—They looked at the totality of the process.

**Senator CORMANN**—So it was a probity audit of the whole funding allocation process, not just of the assessment of the applications?

**Ms Kidd**—That is right. They went through all of our materials. They did not start prior to the process. They were engaged on 14 July. They went back and looked at all of our materials, looked at how the process had been set up and tracked the whole lot through.

**Senator CORMANN**—Did they track any communications that may or may not have come from the minister’s office, or was that out of scope for the probity process?

**Ms Kidd**—Yes, it would have been in scope.

**Mr Griew**—Our probity auditors get full access to all of the communications.

**Senator CORMANN**—That is a pretty good way to clear all of this up then. Is that report a public document?



**Ms Paul**—I think we may have already made public a summary report, but if not I will get it for you.

**Senator CORMANN**—So you are happy to give us a copy of the report?

**Ms Paul**—Yes.

**Senator CORMANN**—Beautiful!

**Ms Paul**—We have a summary report that is—

**Senator CORMANN**—How about getting the whole report?

**Ms Paul**—I will take it on notice and we will get something for you.

**Senator CORMANN**—Get something for me or get me a copy of the report?

**Ms Paul**—I want to consider that, and I will take it on notice.

**Senator CORMANN**—So that means that we might not get a copy of the probity report?

**Ms Paul**—I have taken it on notice and I will have a look at it.

**Senator CORMANN**—The summary can be so high level that you do not actually get the information?

**Ms Paul**—No, the summaries that we have released about other processes are quite detailed, actually. I am sure it will be satisfactory, but I am happy to take it on notice.

**Senator CORMANN**—Okay. You will be pleased to know that that will be it for the Jobs Fund, unless anybody else wants to ask any questions.

**CHAIR**—No.

**Senator CORMANN**—Are you happy for me to move on to Job Services Australia?

**CHAIR**—Yes, I am.

**Mr Griew**—I would like to clarify something, if I may. When I answered you previously, Senator, and explained the process of checking the electorate distribution, that was not on the assumption that there was a problem, or could be a problem, in the process. It was just to see where it happened to have come out, because I was surprised by what was in the article. There was no question about the process.

**Senator CORMANN**—You did that after the article or before the article?

**Mr Griew**—I saw the article and said to myself, ‘Well, I wouldn’t have expected it to look like this, actually.’ So I was just interested as to where it came out. That is why it was not a big deal.

**Senator CORMANN**—So it was just personal interest rather than wanting to make sure that everything was right and proper?

**Mr Griew**—We already had a probity report and I knew the process intimately, so I was just interested in the distribution.

**Ms Paul**—Yes, we knew everything was right and proper. That was not the question.

**Mr Griew**—That was not the question. It was just an interest as to how the—

**Senator CORMANN**—But, if everything was right and proper and there was no issue, why did you allocate resources to going through that exercise?

**Mr Griew**—Because I was interested to know where the distribution had come out.

**Senator CORMANN**—For what purpose?

**Mr Griew**—Because it is interesting to know where the distribution had come out.

**Senator CORMANN**—It is interesting?

**Ms Paul**—Because it did not look right, and indeed it was not.

**Senator CORMANN**—If it had been right, you would have been concerned.

**Ms Paul**—No, not necessarily.

**Senator CORMANN**—So, if it had been right, you would not have been concerned.

**Ms Paul**—It would not have made any difference, because our process never took electorate information into account. The process is the process, and it would have been the same.

**Senator CORMANN**—I guess—and we have gone through this—because there are different processes at different levels. Even without the department taking electorate-by-electorate information into account, there are other ways of skinning the cat, as I have said before.

**Ms Paul**—No, if it had been correct it would have been correct. Our process was all finished and done and it had never taken those things into account.

**Senator CORMANN**—Which faction is your predecessor in, Senator Arbib? Is he in the left faction or in the—what faction of the Labor Party is he in?

**Senator Arbib**—Why is that relevant?

**Senator CORMANN**—I was intrigued by—

**Senator Arbib**—Which faction are you in?

**CHAIR**—Come on!

**Senator Arbib**—The hard right of the extreme Western Australian branch.

**CHAIR**—This is a silly question. For estimates, that is a silly question. If you want to take that sort of stuff up in the chamber do so. For the process of estimates that is not appropriate, so move on.

**Senator CORMANN**—Let me just say that I was intrigued by the factional make-up of the members covering the areas in which advertisements were placed in regional areas. Let me just put it that way.

**Senator JACINTA COLLINS**—We do not need to hear your commentary.

**CHAIR**—We should start asking questions about some of the difficulties you have had in your—who did you back as the leader of your party?

**Senator CORMANN**—I look forward to the advice.

**CHAIR**—Were you one of the votes that could have swung either way, Senator Cormann?

**Senator CORMANN**—Which vote? I am quite happy to say—

**CHAIR**—Are you in the Turnbull camp, the Abbott camp? Which one were you?

**Senator CORMANN**—I am very happy to answer that question, Mr Chairman.

**CHAIR**—Answer it and let's have a good old discussion about it.

**Senator CORMANN**—I am very happy to answer that I was well and truly—

**CHAIR**—And have you changed your mind yet?

**Senator CORMANN**—supportive of Tony Abbott. I am happy to be on the record.

**CHAIR**—Can we be sure that Tony Abbott has got your support for the immediate future?

**Senator CORMANN**—One hundred per cent. I am very happy to put that on the record, Mr Chairman, and if the minister can now answer the question that I have asked—which faction his predecessor was in—that would be very helpful. But I suspect he will not want to.

**Senator JACINTA COLLINS**—It is not relevant to the budget estimates.

**Senator CORMANN**—It is just intriguing.

**CHAIR**—It is a silly—

**Senator Arbib**—I would not grace it because it is such a ridiculous question.

**Senator CORMANN**—It is just that I am intrigued.

**Senator Arbib**—And especially, given again—

**Senator JACINTA COLLINS**—Point of order.

**Senator Arbib**—I know you will not take this on board and you keep going around, but this was done independently by the department.

**Senator CORMANN**—We have not had that answer yet—

**Senator JACINTA COLLINS**—Point of order, Chair.

**Senator CORMANN**—as to whether those regional papers and those—

**Senator JACINTA COLLINS**—Point of order, Chair.

**CHAIR**—Yes, all right.

**Senator CORMANN**—metropolitan papers, whether they were identified by the department—

**CHAIR**—Senator Cormann.

**Senator JACINTA COLLINS**—Senator Cormann, there is a point of order. I ask the Chair that he rule that question out of order. It is not relevant to the budget estimates and should not be wasting our time.

**Senator CORMANN**—On the point of order, this goes to the performance of the department and the spending of taxpayers' money.

**Senator JACINTA COLLINS**—What faction the previous minister was? I do not think so.

**Senator CORMANN**—If funding was allocated.

**CHAIR**—Anyway, the committee is not interested, so either move on or—

**Ms Paul**—And I would just briefly draw attention to my lengthy summary before about how the process worked right from the identification of regions on.

**Senator CORMANN**—I would not be pursuing any of these questions if you had been able to assure me, Ms Paul—which so far you have not, unless you want to correct me now—that the decision of which regional and metropolitan papers were to advertise those grants, beyond the state by state papers, had been taken by the department, irrespective of any suggestion from the then minister or the minister's office. You have told me, as I understood, that you took that on notice, so I have not had any indication yet that that was an independent decision by the department and on what basis. So I am waiting for some further material, but until—

**CHAIR**—So everything turns on that?

**Senator CORMANN**—It turns to a certain degree on that, I have got to say.

**CHAIR**—You said you would have been satisfied if you had the answer to that question.

**Senator CORMANN**—That would be a very significant—

**Senator Arbib**—I have got to say, it is pretty thin. If that is your grant conspiracy, then really, Perry Mason you are not.

**CHAIR**—This is ridiculous. I think we should start again and go through the whole process, Senator Cormann.

**Senator JACINTA COLLINS**—I am starting to get concerned about his comprehension capacity.

**Senator CORMANN**—I can understand why you would go this way. Look, there is—

**CHAIR**—No. Please—because you have made that accusation twice. I am very happy for you to continue and we can go through this whole thing again if you like, so keep going.

**Senator CORMANN**—As I said, it was my last question.

**CHAIR**—So are you finished?

**Senator CORMANN**—In terms of the Jobs Fund. I am now going to the next part of outcome 4.

**CHAIR**—Just before we move on, is there anything anyone else needs to say about that previous issue?

**Ms Paul**—I am tempted, but I will not.

**CHAIR**—I think everything is on the record that probably needs to be on the record.

**Ms Paul**—I think it is on the record.

**CHAIR**—Senator Cormann, you can move on to the next subject now.

**Senator CORMANN**—Thank you. In terms of current data as to how many people are in the Job Services Australia system, for want of a better word, what are the dates of the most recent data that you might be able to assist us with today?

**Mr Griew**—We have brought data up to 31 December.

**Senator CORMANN**—2009?

**Mr Griew**—2009.

**Senator CORMANN**—How many job seekers are in the Job Services Australia system across the four streams at present?

**Ms Parker**—We can give you stream numbers. In terms of the current case load of job seekers engaged in total, we have 546,920.

**Senator CORMANN**—Hang on. That sounds a bit low.

**Ms Parker**—Sorry, let me just correct that number. I apologise. 791,292. In terms of streams, stream 1, 198,110. But that is not the total. I will read the total numbers. There are breakdowns within those.

**Senator CORMANN**—If you could give me the totals by stream.

**Ms Parker**—Yes, total by stream: 259,127 for stream 1; 202,158 for stream 2; 202,964 for stream 3; 110,780 for stream 4.

**Senator CORMANN**—Those four streams go from stream 1, least intensive support, to stream 4, most intensive. You are nodding.

**Ms Parker**—Yes.

**Senator CORMANN**—Has there been any change since the start of the new contract on 1 July 2009 in terms of the focus within those individual streams or the way job seekers are allocated to those different streams?

**Ms Caldwell**—Since the start of the network, case loads have changed a little bit; broadly around that level but building up slightly. At the start of the market we successfully transitioned pre-existing job seekers out of seven different programs. So we had a starting case load of job seekers who were coming across to the new arrangements. Since that time more job seekers, as they become unemployed, have obviously entered the new services in accordance with the assessment arrangements that have been notified.

**Senator CORMANN**—Have there been any changes, as a result of the way the global economic downturn was developing, in the way you allocated levels of support to different categories of job seekers in those different streams?

**Mr Griew**—The compact with retrenched workers that was mentioned earlier included a commitment to include retrenched workers into stream 2 automatically.

**Senator CORMANN**—Yes.

**Mr Griew**—And some 130,000—someone will correct me if I am wrong in that; I am saying it off memory—people have gone into stream 2, or the equivalent services, immediately prior to the commencement of the new contract.

**Senator CORMANN**—So what that means in effect is that they get more than just the one-off interview and help with the resume; they get more intensive support. Is that right?

**Ms Parker**—Yes, that is correct.

**Mr Griew**—I can confirm it is just 130,000 since April that have had that support.

**Senator CORMANN**—Yes, great. You published an evaluation strategy for Job Services Australia. Have you done anything yet in terms of releasing interim reports as part of that evaluation strategy, or are we just at the monitoring stage at this point?

**Ms Caldwell**—It is too early.

**Mr Griew**—It is six months into the contract.

**Senator CORMANN**—Yes, sure.

**Mr Griew**—We are still bedding it down. We have early results that we can share with the committee.

**Senator CORMANN**—Yes, please.

**Mr Griew**—As Ms Caldwell alluded to, 99 per cent of the job seekers in the previous programs have now been engaged by providers; 160,000 job placements in the first six months; 35,000 of these for the most disadvantaged job seekers in streams 3 and 4. On a like-for-like basis, that is a 16 per cent increase from the first six months of the Job Network where 136,900 placements were made. Job Services Australia has expended \$121 million of employment pathway funds to help job seekers, which is \$100 million more, or three times as much, as the equivalent funds for job seekers in the job seeker account under the first six months of the Job Network.

The other measure which is indicative is that, if we look at compliance activity in the first six months, compliance activity has resulted in 12,283 penalties compared to 10,951 penalties under the first six months of the previous contract. So those would be figures that would indicate that the first six months of Job Services Australia has been very successful, but of course we are very committed to doing a full evaluation and monitoring closely as we go.

**Senator CORMANN**—When you say ‘the previous contract’, was that the previous three-year contract?

**Ms Paul**—That is right.

**Senator CORMANN**—When you say 5,000 compared to 10,000, presumably there is a population increase: that is 12,000 out of a larger cohort of job seekers, I would have thought. Is that right?

**Mr Griew**—These figures are indicative of mainly the process of bedding down of the system and comparing two new contracts.

**Senator CORMANN**—Yes. I understand. But if you do go down that path and if you give that at least a proxy performance measure and you do compare it to the previous contract, from my point of view I then want to know that it is comparing apples with apples and that it is telling us something.

**Ms Caldwell**—The numbers that Mr Griew was speaking of were in fact based on like-to-like job seeker characteristics, looking at our placements compared to similar job seekers under Job Network. So the services have apples and oranges because of the changes—seven programs combined into one, uncapping access to the most disadvantaged, bringing a large number of people in from waiting lists that previously existed. So it is correct to say that it is apples and oranges because of quite substantial changes. The figures that Mr Griew alluded to

were based on the department's analysis of what would be the most meaningful comparison of job seekers with comparable levels of difficulty in getting jobs.

**Senator CORMANN**—I think that is entirely reasonable. I am trying to get an indication as to what the overall number is. What is the total group in this contract compared to the total group in the previous contract? Take it on notice.

**Ms Caldwell**—No, I can answer that now. In terms of the total case load, it is quite similar, inasmuch as the former Job Network was predominant. There are seven programs, but your quantum, your order of magnitude, is obviously predominated by the major service but folding in those smaller ones.

**Senator CORMANN**—I take your word for it that it is quite similar, but perhaps on notice we could get an answer as to what the total group numbers are so that we can try and track it a bit more. I do not want to dwell on it; it is not a major issue, honestly. Your budget forecast was that 450,000 job seekers would be placed over the first five months. That is right, isn't it?

**Mr Griew**—Yes.

**Senator CORMANN**—You said at the end of December 2009 it was 160,000. If I understood you correctly, it started as you would expect. The rate has been increasing, presumably. The rate of placement as you get into the new contract has been increasing. The question I am asking you is: do you expect to reach your budget forecast of 450,000 placements by the end of June?

**Ms Caldwell**—Yes. In terms of how those forecasts are measured, we rely not only on the administrative data but on looking at post-program monitoring for some of our short-term job seekers, where we have basic information about them. But because of the cutting of the red tape under the new services, our providers do not always have to report on an individual itemised basis. We have cut red tape, so there are people who will get jobs after our assistance. Our evaluation post-program monitoring survey will pick that up on the survey methodology.

**Senator CORMANN**—Just not yet, is what you are saying.

**Ms Caldwell**—But they will not yet be reported to us in terms of individual transactions where providers have 28 days to notify us.

**Senator CORMANN**—I am not worried about the transactions. I am just looking at your budget forecast of 450,000 placements.

**Mr Griew**—I think the summary is that we are confident of meeting that target.

**Senator CORMANN**—You are confident of meeting that target?

**Mr Griew**—Yes.

**Senator CORMANN**—Out of interest, there were 2,700 people that had gone missing from the books of agencies in the transition. That was something that was discussed at the last Senate estimates. Do you know what I am talking about? I am keen to find out whether they have been found.

**Ms Paul**—I do not think they went missing. There was a transition involving 700,000 job seekers, which was the number of job seekers affected.

**Senator CORMANN**—Yes.

**Ms Paul**—I would not characterise it as ‘going missing’, because they transitioned really well. In fact, it is the best transition that has ever been done.

**Senator CORMANN**—That is great.

**Ms Paul**—There was a lot of matching up, where there were new providers—matching up the job seeker with their new provider—and often the department facilitated the old provider and the new provider meeting up with the job seeker—that sort of business.

**Senator CORMANN**—So I guess, when you say 99 per cent have now been properly transferred from one to the other, we are nearly there.

**Ms Paul**—Yes, that is right. There was always going to be a staged transition, according to where the person was in the system. That whole stage is now coming to a close successfully.

**Senator CORMANN**—In terms of this evaluation strategy, you make the point that it has only been six months but you have done some monitoring and you have gone through some of those figures. It is a three-year contract. How often do you expect to release evaluation reports?

**Ms Mercer**—With a large evaluation such as this, it does take time. As I indicated before, we would expect next year to be able to release some evaluation reports, but we are progressively monitoring. I think Ms Caldwell mentioned before that we monitor through our post-program monitoring survey what is happening for job seekers so that we know what outcomes are being delivered. Under a new contract like this, that will take about a year to get enough outcomes, and that will be reported in the annual report.

**Senator CORMANN**—When you say ‘next year’, you expect to release evaluation reports in 2011?

**Ms Mercer**—2011.

**Senator CORMANN**—The reason I am asking this is because in your Evaluation Strategy for Job Services Australia you mentioned:

... specific studies will result in a series of evaluation papers.

**Ms Mercer**—Yes. There are project based reports, but I thought you were going to the bigger evaluation.

**Senator CORMANN**—I understand that at the end of it there is going to be a huge evaluation and I am sure that is going to tell us a lot of great things. But, as I understood it, there were going to be a series of studies.

**Ms Mercer**—Yes, there will be. We are progressively doing reports and they will progressively become available. I do not have any time frames. I think they would certainly be later this year.

**Senator CORMANN**—Later this year?

**Ms Mercer**—Later in 2010 would be the earliest for those.

**Senator CORMANN**—In your evaluation strategy paper it said:



Subject to Ministerial agreement these papers could be made publicly available on the department's internet site.

Has there been any clarification from the minister as to whether there will be ministerial agreement to publish those discussion papers or these studies?

**Ms Mercer**—That is a longstanding practice. As reports become available, we would put them up to the minister.

**Senator CORMANN**—On a case-by-case basis, is it?

**Ms Mercer**—Yes, and the decision will be made. That has been the practice for many years. That is a standard practice: we take our reports up to government and government decides whether to release them.

**Senator CORMANN**—This is not a partisan comment, honestly, Minister, so bear with me. I suspect that ministers could be inclined to not agree to publication, if the study or the evaluation paper is not providing the answers that the government might be looking for, whereas if they tell the right story they will agree.

**Ms Paul**—You are speculating on documents which do not exist yet.

**Senator CORMANN**—No, I am not even reflecting on what the minister's motivations might be. Let me get to the question: wouldn't it be better if there could be a decision, before we know what the results are, as to whether the documents are going to be published or not, to preserve the integrity of the process? It is a genuine question.

**Mr Griew**—Evaluation of this sort involves many different kinds of questions. There may be components of the evaluation where there are reasons for not releasing them that go to business interests. There are all sorts of questions that could come up. That is why we tend to have a kind of in-principle position of saying, 'Well, let's see where we go stage by stage.'

**Senator CORMANN**—Yes. I understand. So what would be some of the things that could come up? What are some of the examples?

**Mr Griew**—As I said, there are all sorts of subject matters that you want to go into with an evaluation of this sort and you could end up with material that you might not want to release; for example, if it reflected commercial interests or business reputations.

**Senator CORMANN**—You might not want to release. I mean, why?

**Mr Griew**—We tend to focus through this sort of exercise on improving the administration of our programs and we tend not to want to make comments on third parties.

**Senator CORMANN**—Third parties like who?

**Mr Griew**—As I said, business interests would be a good example. I am just trying to explain why it is that we would not suggest making a blank, open commitment until we cross each bridge as we go through the whole process.

**Senator CORMANN**—Not that I want to go back to the Jobs and Training Compact, Chair, but it appears from the document that there is a linkage in terms of the evaluation process between Job Services Australia and the Jobs and Training Compact. Is that right?

**Ms Mercer**—Yes. There is a linkage in the sense that obviously with some of these measures there are some overlaps because of the delivery mechanisms. They are separate strategies, but I think we have raised in the Job Services Australia evaluation strategy that of course there are linkages. For example, we will draw on the same administrative datasets, longitudinal studies, our surveys. So the evidence base is useful for both broader evaluations.

**Senator CORMANN**—Given that all these things are happening—it is not a static sort of world and you might not have made these decisions yet, I do not know—how will you be able to assess cause and effect of one as opposed to the other? Is there going to be a very clear separation in terms of what, in your judgment or in the evaluator's judgment, has been the outcome of one in the absence of the other?

**Ms Mercer**—They do have separate objectives.

**Senator CORMANN**—Sure.

**Ms Mercer**—So what we are doing is assessing them against the stated objectives of the strategies.

**Senator CORMANN**—Yes, I know.

**Ms Mercer**—From an evaluator's point of view I do not see that that would be a problem.

**Senator CORMANN**—Okay.

**Ms Mercer**—These are complex evaluations but we have a lot of practice in this area.

**Senator CORMANN**—Thank you very much for that. In terms of the bedding down of the tender, can you give us a description—how shall I put it?—of how providers are at present feeling about the way the tender was conducted? I guess in the heat of the moment, in the transition, you can understand that people might feel a particular way. How are things six months down the track?

**Senator Arbib**—I might answer that because I have got—

**Senator CORMANN**—Have you got some talking points, have you, Minister?

**Senator Arbib**—No. I have a quote from the CEO of NESAs, and she said—

**Senator CORMANN**—Sally Sinclair.

**Senator Arbib**—Sally Sinclair, sorry—on 26 August 2009 she said:

In considering the magnitude of reform, I think it is fair to say that we are in the midst of the most successful transition in Australian employment services history with Job Services Australia.

In reflecting on the long winding road we have traversed to this point in Job Services Australia's existence, there is little doubt that the partnership approach adopted by Government and industry has been a major factor in the success of implementation thus far ...

I would like to acknowledge the immense level of commitment, resources and investment by industry members to participate in the myriad of forums, reference and working groups with our DEEWR colleagues.

**Senator CORMANN**—It is fair to say that that was at a time when her enthusiasm about the quality of the process was not necessarily widely spread. I was going to be quite generous and suggest that perhaps now things have settled, I suspect that in August there was still a

significantly higher level of concern among the sector at large. You would not necessarily expect Sally to come out swinging on that publicly, I would not have thought.

**Senator Arbib**—But remember some of your colleagues, including Tony Abbott who went on record on 29 March saying:

The job network faces a looming disaster at a time when even the Government says we are going to have 100,000 people made redundant ...

He was talking about:

... 1,000 workers to be sacked from the job network itself.

**Senator CORMANN**—You really do have all your talking points there ready to go, don't you?

**Senator Arbib**—No. I have got a quote from Tony Abbott. That is what he said. Tony Abbott said, because of his experience as the former employment minister, the whole place was going to collapse, and you have got NESAs saying that it is the best transition. When we look back to 2003, the transition which was a very difficult transition—they made T-shirts saying, 'I survived 2003'—it has been absolutely remarkable; the work that the department has done and the industry has done. So I think they should all be congratulated for the transition.

**Senator CORMANN**—And let's all congratulate the department. I think that is great. Nevertheless, there was a Senate inquiry into the tender which this committee obviously was on; I was not on, but I have read the report with interest.

**Senator JACINTA COLLINS**—And the government's response?

**Senator CORMANN**—And I have read the government's response. I was less impressed with the government's response than with the committee's report, I have got to say. In terms of the way communications with providers were handled during the tender process, the government's response essentially—paraphrasing—was: 'No problem. We're going to do it the same way again next time. Everything was hunky-dory.' Is that a bit unkind in terms of some of the more sincere concerns that were expressed by unsuccessful and other providers?

**Mr Griew**—I would characterise it slightly differently. The government's response and certainly the department's view is that there is strong support for the probity of the process and the transition has been very successful with particularly strong plaudits for the systems and how they have worked in the transition of job seekers. There were some comments made in the committee's report and indeed in our own internal post-implementation reviewing that there were a couple of key points in the transition where our communication with some of the parties could have been improved and we always take that very seriously. We have in fact learnt from some of that. The secretary chairs a working group with key peak industry representatives so that we can learn from those things in working towards future procurements.

Our processes in the Disability Employment Services procurement that is going on have been influenced strongly by those, so continuous improvement is very important to us. Far from being dismissive of that feedback, I would say that we see it as a great opportunity. It is good administration. But the fundamental points that need to be kept in focus here are, firstly,

that the probity tick was very strong, and secondly, the actual transition materially of the new services and of their clients, we feel that the staff and the industry did very well with.

**Senator CORMANN**—Mr Griew, your comments just now are much more conciliatory than the way I read the government's response to the Senate committee report on that point. That is my assessment of it, I understand that, and I do not expect you to comment. The reason I was asking this is because a provider told me that the head of the department—I did not know you at the time—had apologised to tenderers for the way communications were handled during the tender process. Is that right?

**Ms Paul**—I do not know that I went out and did a public apology. What Mr Griew said is absolutely right. Some providers, not all, were concerned about the communication during about a week time frame or two-week time frame—and we have discussed this before here—between when we went out—

**Senator CORMANN**—Indulge me. I am new in this portfolio, so please.

**Ms Paul**—Sure. Between when we went out with the first—I forget the technical term now—business offers and when we went out with the final word, as it were, and I have acknowledged, exactly like Mr Griew has, that some providers thought that was confusing and we can improve on that. So we have this industry reference group which I am chairing, which Mr Griew mentioned, to exactly look at those sorts of things.

**Senator CORMANN**—Yes.

**Ms Paul**—And it is doing a really good job. It has got a wide range of people on it and so on and I think that will be great. But I entirely agree with Mr Griew. The transition itself, of the 700,000 job seekers and all of the service providers, was sensational. It is a great tribute to the teams that did it and we have received tremendous feedback from providers, particularly around the IT, because an enormous amount of planning and work went into the IT transition and they really like the new look and it all worked beautifully, which is fantastic. Then there was the sort of personal effort that went into helping all those job seekers into their new provider and so on. So we are really proud of that, but you never rest on your laurels. If people are saying, 'We could have done that communication piece better,' well, fair enough, and we will do it better.

**Senator CORMANN**—I have absolutely no doubt that officers of the department would have given it their absolute best, to do the best job possible—

**Ms Paul**—Yes.

**Senator CORMANN**—to work through the transition, which would have been challenging and everything else. The final point is, in terms of the transition side of it and the feedback that I got in my initial round of discussions, one of the concerns was—and I think we have discussed this privately—that there seemed to be a bias towards people who could write good, solid, strong submissions with the right sentences and the right words, and insufficient—from their point of view—consideration for capacity to do the job, because a lot of the process was paper based and not enough consideration was given to capacity to do the work and past performance. Do you care to comment on that?

**Ms Paul**—Sure. I am aware of the criticism and we have answered it many times. The tender process was absolutely clear. The RFT was that thick and the weightings on each of the criteria were absolutely clear. The process that we went through to assess each tender had seven levels of consideration, checking, more checking, looking across a state, looking across an employment services area et cetera. Having sat in the tender room myself for some time, it was a very impressive process.

As the RFT spelled out clearly, that process involved a range of considerations, as well as of course considering the written word: referees, experience and the extent of collaboration. They were all set out and we took them into account. So we actually went much broader than just the written word, and I can absolutely assure people who had that concern that, even though perhaps they did not like the result to the extent they would have liked for themselves—

**Senator CORMANN**—Yes, sure.

**Ms Paul**—the process was extremely robust and very thorough indeed.

**Senator CORMANN**—Yes. It is difficult to convince somebody who was unsuccessful that it was the fairest possible process.

**Ms Paul**—Of course.

**Senator CORMANN**—But from your point of view, you are confident that the balance is right as far as that part of it is concerned?

**Ms Paul**—Absolutely.

**Senator CORMANN**—Yes. In terms of cutting red tape, because that it is a commitment that was given to providers: is that going to be reflected at all in the way the next tender is going to be handled, or do you anticipate changes in the way this will be rolled out next time?

**Ms Parker**—We are still in the process of bedding down the system, as we said. There was an enormous amount of work went into reduction of red tape, but you will appreciate that has to be balanced with the need for accountability.

**Senator CORMANN**—Yes, sure.

**Ms Parker**—Some of the things that we have tested are things like simplified fee and outcome structure payments, one performance framework instead of a multitude, simpler contract arrangements and that there is an individual employment pathway plan for jobs.

**Senator CORMANN**—Sorry. They are, or you are assessing—

**Ms Parker**—These are all the changes that were made for the current arrangements.

**Senator CORMANN**—Yes, okay.

**Ms Parker**—Obviously, when I say ‘test’, I mean let them run—

**Senator CORMANN**—How that works, yes.

**Ms Parker**—and review those to ensure that where you reduce red tape you still maintain accountability. Obviously those are factors we will need to look at as the Job Services Australia model is settled.

**Senator CORMANN**—Yes. Just continuing to go through things that you would probably monitor: in terms of the first six months of the contract how are complaints from job seekers tracking?

**Ms Fletcher**—In the first six months of Job Services Australia we received 12,997 records from job seekers. Some of those were complaints. Some of those were compliments. That, in comparison to previous years, is far less than a comparable six-month period in the first six months of the—

**Senator CORMANN**—So, out of the 764,000 people across all streams, that is your total number there?

**Ms Fletcher**—Certainly.

**Senator CORMANN**—So what you tell me there is the number of contacts, rather than the number of complaints. Are you able to break that down?

**Ms Fletcher**—I do not have that with me at the moment, but I can certainly take that on notice and break it down.

**Senator CORMANN**—That would be great, because it does not really mean much to me whether you have had less or more contacts than before. Obviously the substance of the contact is quite relevant from my point of view.

**Ms Fletcher**—Certainly.

**Senator CORMANN**—How long have you been tracking complaints? This all first started in 1998. Have you been tracking complaints throughout that whole period?

**Ms Fletcher**—There have been complaint mechanisms since the commencement of Job Network in 1998. The detail of that I do not have access to.

**Senator CORMANN**—No. I am not going to ask you on the spot, for sure.

**Ms Fletcher**—Yes.

**Senator CORMANN**—But do I read between the lines that they are not necessarily comparable, because you say there have been complaint mechanisms as if it is a bit different from what it is now—as if in the past it has been a bit different.

**Ms Fletcher**—Obviously as the model matures and the employment services market matures, we would also mature our processes for monitoring job seeker feedback and interaction with the actual users of the service. So, yes, it has evolved over time.

**Senator CORMANN**—Yes, that is fair. Going through some more numbers, how many employment pathway plans have been approved to date?

**Ms Parker**—From 1 July to 31 December we have—hang on, I have just got dollars. Sorry, I will check that.

**Mr Griew**—We may not have that. We have the amount that has been credited for them, rather than the number of plans. But we can get you the number of plans.

**Senator CORMANN**—Sorry, say that again? You have—

**Mr Griew**—The amount of money that is credited in respect of those plans, but I am sure we can get you the number of plans on notice.

**Ms Parker**—Actual plans.

**Senator CORMANN**—Yes, I think the number of plans would be what I am after because, yes, I think somebody might have just brought it up. You have provided that in the past, so I am sure it is—

**Mr Griew**—Then I would expect we could.

**Ms Paul**—We will have it, yes.

**Senator CORMANN**—Yes.

**Ms Parker**—We have employment pathway plans approved for that period, 925,196. This is at 31 December 2009.

**Senator CORMANN**—Nine hundred and twenty-five thousand?

**Ms Paul**—People come and go.

**Senator CORMANN**—Yes, okay. That does not actually tell me individual people, does it? Some people could have had two or three pathway plans approved, could they?

**Ms Paul**—Yes.

**Ms Parker**—So you want to know actual numbers of people who have had plans?

**Senator CORMANN**—Yes, okay. Are you in a position to tell me how many people have had an employment pathway plan?

**Ms Parker**—I think we would need to take that on notice. We just have numbers of plans.

**Senator CORMANN**—Are you able to tell me how many job seekers do not currently have an employment pathway plan approved?

**Ms Parker**—We would need to take that on notice as well, I am sorry.

**Senator CORMANN**—So that is not something that is top of mind? Is that not something that gets monitored, because presumably it would be an area of concern? Again, I am just trying to understand what your thinking is. Presumably, if there was not an employment pathway plan for a job seeker, that would be an issue from your point of view, wouldn't it?

**Ms Caldwell**—I think the department has taken on notice to give you some of the exact figures but the committee's question went to the issue of how many job seekers would not have an employment pathway plan.

**Senator CORMANN**—Yes.

**Ms Caldwell**—Without having the exact numbers in front of me, all job seekers receive an initial employment pathway plan when they are referred from Centrelink to Job Services Australia. The timing of Job Services Australia then building and customising that plan varies between the streams. For example, in stream 1 for the more work ready, they work within the initial plan for about three months. After that a skills assessment and an inventory of needs are done and then an employment pathway plan would be updated for those job seekers but only after they had been with us for three to four months, approximately. For streams 2 and 3 job seekers, Ms Parker gave you the numbers as at 31 December in both of those streams. They can have their employment pathway plan updated when first they come through the door and we start working with them in Job Services Australia. Stream 4 job seekers will also come to

us from Centrelink, but, because of the great disadvantage in that group, there is a greater leeway, so a provider may want to have a number of conversations with this very disadvantaged group before they frame and commit to the individual's plan for a pathway to employment.

**Senator CORMANN**—When you say that all job seekers are provided with an initial pathway plan through Centrelink, that is really just a pro forma. That is like a template, isn't it? That is not actually a plan. It is just a piece of paper—'This is the pathway template that you could expect.' Is that right?

**Ms Caldwell**—It is correct that that would be more pro forma. With the additional details that I was providing to the committee, I was hoping to explain that there will always be some gap, so everyone has at least the initial start plan to get them through the door to us, but then how often and the precise timing of when an individual gets their plan will depend on their level of disadvantage, the stream they are in and ensuring that it is a good plan. There are different rules across the different streams.

**Senator CORMANN**—Understood. But there are 925,000-odd individual employment pathway plans, and obviously some people would have more than one. How does that compare to budget? Would you remind me what your budget forecast was in terms of the number of plans that you anticipated.

**Ms Caldwell**—There would not be a budget for a plan.

**Senator CORMANN**—So this is at it comes?

**Ms Caldwell**—I may be corrected by colleagues, but an individual can have a plan. That plan can be refreshed as circumstances change or they say, 'You've done step 1, the training. Let's talk about the next stage of the work experience we are going to put you into.' So it is not a one-for-one correlation and I am not aware of any target. It depends on what the individuals need and when the provider wants to refresh and update and provide more flesh on that.

**Senator CORMANN**—I am particularly interested in people that initially come through the process. Are you able to provide me with some data about how quickly from the initial entry into the system, for want of a better word, people will actually end up with an employment pathway plan beyond the initial piece of paper from Centrelink?

**Ms Caldwell**—If we could take that on notice, it is certainly something we look at through our performance indicator on quality servicing, together with other feedback. If we take it on notice, we can see whether that data and information will answer that specific question.

**Ms Parker**—I do have a figure here for numbers of job seekers in that time: 222,918 job seekers were assisted through the Employment Pathway Fund.

**Senator CORMANN**—In the first six months?

**Ms Parker**—Yes.

**Senator CORMANN**—Have you got any sort of target, from a budget point of view, in terms of numbers of people that you anticipate would go through this over the first 12 months? I am not talking about individual plans now; I am talking about—



**Mr Griew**—I imagine that our target would be for 100 per cent of those in the appropriate streams to have a plan. The budgeting goes to the level of funds we would expect to allocate—the credits we would expect to put in the Employment Pathway Fund.

**Senator CORMANN**—In providing those answers on notice, could you perhaps put them against that context?

**Mr Griew**—So the question you are asking is: how long on average does it take for someone referred to JSA in the appropriate stream to have a plan?

**Senator CORMANN**—Yes, that is right.

**Mr Griew**—We will see if we can answer that question. Some of the questions we are taking on notice are a bit vague, so I want to be clear about them.

**Senator CORMANN**—How many of them have you done compared to what you expected and are there any budget implications of having more or less than what you expected?

**Mr Griew**—Let me clarify again: how long on average is it taking, six months in, for job seekers in the appropriate streams to get a plan and has that deviated from what we—

**Senator CORMANN**—Anticipated.

**Mr Griew**—expected?

**Senator CORMANN**—And, if it has deviated, what are the budget implications?

**Mr Griew**—We will do our best with that question.

**Senator CORMANN**—Great. Again, bear with me if it is a dumb question, but why is there a difference between the number of job seekers in your system and the ABS data of people identified as unemployed? There is quite a significant difference.

**Mr Griew**—ABS measures via survey the number of people available for work and not working an hour in a week, and that is the number of unemployed people. JSA picks up people coming in as job seekers, through Centrelink or directly. It is a measure of a different thing.

**Senator CORMANN**—Would it be fair to say then that your data is a more accurate reflection of the number of Australians out there looking for work?

**Mr Griew**—No, they are just measures of different things. The measure of people in JSA is a measure of an administrative structure.

**Ms Paul**—The ABS measurement is an international standard.

**Senator CORMANN**—Sure, and the ABS measures the unemployment rate, and not necessarily—

**Ms Paul**—It is neither more accurate nor less accurate. It is the international standard, and every country has a different way of supporting job seekers.

**Senator CORMANN**—But the difference is about 100,000 people, or slightly more. I am intrigued as to how it can be that far apart. Is there no explanation? You have never wondered why there is such a difference? Presumably job seekers that come into your system through Centrelink are currently unemployed.

**Ms Caldwell**—As the secretary and others have indicated, the ABS, as a statutory body, does provide the government and the public with a measure of unemployment rates and other labour market indicators that are arm's length from government and based on international standards of how these things are measured on a whole-of-population basis. The actual number of people on any day in any year who are on the case load of Job Services Australia will depend on a range of things. Some of the people in the broad population-wide survey may be in different circumstances of not being in the labour force, of being incapacitated, of being in disability services or of being in other training and related services. So we are really counting the number of people that Job Services Australia is helping, and there are other people who, from an ABS point of view, on a whole-of-population basis are unemployed but not in the survey.

**Mr Griew**—There might be some people who are unemployed who do not seek JSA's help or income support.

**Senator CORMANN**—Exactly. I totally agree with your point. There might be people who are unemployed who might not seek JSA's help, in which case you would expect the number of the people in the JSA system to be lower, but it is higher and it is consistently higher. Maybe you could take it on notice and give it some thought. It is something that intrigues me, because presumably all the people that JSA deals with are people who do not have a job and are looking for work, and presumably the unemployment rate—

**Mr Griew**—And there are some people who are eligible for JSA help who might not count as unemployed because they worked an hour that week.

**Senator CORMANN**—Who are the people that qualify for JSA that do not qualify—

**Ms Caldwell**—People who are working part time.

**Mr Griew**—Yes, somebody working part time on a very low income would not count as unemployed for ABS but might get our help to get a job.

**Senator CORMANN**—Okay, we are getting somewhere. Where is the threshold where you go from unemployed into—

**Mr Griew**—We will have to take that on notice. We are getting into quite difficult—

**Senator CORMANN**—Okay. But you understand what I am after?

**Dr Morehead**—Yes, and there is a good technical explanation which I cannot remember.

**Senator CORMANN**—I am looking forward to reading it.

**Senator Arbib**—But that last point is the main point. That is the crux of the issue.

**Senator CORMANN**—Yes, sure.

**Senator Arbib**—There are people who are in the Job Services Australia system who may have some sort of employment, on a small wage, therefore they would not show up on the unemployment figures.

**Senator CORMANN**—Yes.

**Senator Arbib**—We will get you a technical answer on it, but they are the reasons why.

**Senator CORMANN**—I am trying to identify, beyond the ABS unemployment rate, how many other people are out there. That is what I am looking for.

**Senator Arbib**—Yes, I understand.

**Mr Griew**—We can actually have the answer here. We have the right person.

**Senator CORMANN**—Okay. Beautiful.

**Dr Morehead**—The way that the ABS measures unemployment is to say, ‘Were you working for at least an hour?’ If the answer is ‘yes’ then you are not counted as being unemployed.

**Senator CORMANN**—If you work for at least an hour?

**Dr Morehead**—That is right.

**Senator CORMANN**—Per week, or is that per month or—

**Dr Morehead**—I think it is an hour per week.

**Mr Griew**—It is in a reference week.

**Senator CORMANN**—So if you work for one hour per week, you are not counted as unemployed?

**Dr Morehead**—That is right. That is a survey that is then extrapolated to say, ‘This is the number of people that are unemployed,’ and so they take a sample and then they give us the unemployment rate.

**CHAIR**—Does it have to be paid work?

**Dr Morehead**—Yes, that is right.

**Senator CORMANN**—But one hour a week—obviously there is still a significant need for support.

**Dr Morehead**—There are not very many people who only work one hour a week, obviously, but it is basically to say that they are not unemployed; they are actually receiving earnings from employment.

**Senator CORMANN**—But they need more work to be properly employed, otherwise they would not be clients of Job Services Australia.

**Dr Morehead**—That is right. Those people may not be on income support—for example, a married mother, where the father is in full-time employment and the married mother works for a few hours a week and they may not go anywhere near the income support system. With the Job Services Australia case load, nearly all of those people are in receipt of an income support payment and they may actually be working several hours a week, thus they would not meet the unemployment definition that the ABS uses. However, they are not earning enough money to get themselves off income support, so they are still financially dependent on the income support system, and what Job Services does, obviously, is try and get them not to be financially dependent on the income support system, by saying, ‘Well, let’s try and get you up to a full-time job and then you won’t need to receive welfare.’ Some people, however, are not required to get a full-time job. For example, single mothers who are receiving parenting

payment are required to only seek work that is at least 15 hours a week, due to their caring responsibilities.

**Senator CORMANN**—And people like that, even if they only have to go for 15 hours a week, are still part of your 791,000 people in the JSA system?

**Dr Morehead**—That is right. Once their child is at school, they are expected to be looking for work and they will be receiving job services and assistance with trying to find employment. However, even when they are fully meeting their participation requirements and working their 15 hours a week, they may still be receiving a part rate of payment because that may not be enough to get them off welfare.

**Senator CORMANN**—I am really understanding and getting the gist here, but how hard would it be to actually provide a high-level breakdown of the characteristics of the 791,000 people in the Job Services Australia system? How many of them are fully unemployed? How many of them are in one or other of a reasonable sort of subcategory in terms of mothers, one hour a week's work, whatever you think is a reasonable subcategorisation?

**Dr Morehead**—Yes, we can take that on notice.

**Senator CORMANN**—That would be fantastic. Thanks. Presumably you monitor the profile of job seekers over time, beyond the evaluation process itself? You would be assessing the demographic, social and economic profile of people in the Job Services system, previously the Job Network, at any one point in time. Is that a fair assumption?

**Ms Paul**—In particular, we would know the characteristics of people because of the way they are assessed to go into each stream.

**Senator CORMANN**—Over the last two years, bearing in mind the economic downturn and everything else, is there something high level that you can tell us about the sort of profile of the average job seeker that comes through Job Services Australia or its predecessor?

**Mr Griew**—Bear in mind that Job Services Australia combines a number of programs into one. I am fairly confident that the evaluation that Ms Mercer talked about will give us that sort of information, as does our monitoring, but we would probably need to get a clearer question if we are to take something here on notice that we try to give you an answer to.

**Senator CORMANN**—Yes, sure. There is a whole series of other questions here, and rather than go through them I will put them on notice. However, what I would be interested in is whether you are able to provide us with data on the number of people in receipt of Newstart allowance who are principal carers. The latest data that we could find was March 2008 and I am intrigued as to why that data is no longer published.

**Dr Morehead**—There are generally two types of payments that someone would receive if they were in need of income support and had a very young child. It would be parenting payment (partnered) if they were partnered, or parenting payment (single). The number of people, for example, on parenting payment (single), which is the largest payment compared to the two types of parenting payment, who have a child between the ages of newborn to five years—that is the break-up I have here—is 197,199 people and that is at December 2009. If we look at the parenting payment (partnered), the number is 108,502 people.

**Senator CORMANN**—Why is that particular data no longer published? It used to be, up until March 2008. Is there a reason, or is it just because the staff member that looked after that part of it is no longer there?

**Dr Morehead**—We will have to take that on notice. We are not aware that it was usually published or has been published recently.

**Senator CORMANN**—Okay. We were able to find it up until March 2008 and then it stopped.

**Dr Morehead**—It may be from a previous Senate estimates, or something that we have published just as a sentence somewhere, but it is not a regular publication for us.

**Senator CORMANN**—This goes to the previous question that I put on notice, but I am interested in the number of people on Newstart allowance who have reduced reporting requirements due to disability. That is something that I assume you would be able to—yes?

**Dr Morehead**—Yes, we can.

**Senator CORMANN**—Do you have data on the number of breaches imposed on job seekers who have failed to meet their requirements for each of the past financial years?

**Mr Griew**—Yes, we do.

**Senator CORMANN**—How has that been tracking? Maybe just give us the flavour.

**Ms Parker**—There are a number of penalties in terms of job seeker compliance. We can give you numbers of various penalties. In terms of a high-level summary, for the period July-December we had 4,353 eight-week compliance penalties.

**Senator CORMANN**—You said June to December?

**Ms Parker**—No, 1 July to the end of December.

**Senator CORMANN**—And you are talking 2009 at the moment, are you?

**Ms Parker**—Yes, I am.

**Senator CORMANN**—What I am looking for is a percentage, perhaps—how that has been tracking over the last five years.

**Ms Parker**—I have a whole number for that one which I can get you—the percentage. The attendance rate for appointments with provider as a compliance issue, 59 per cent.

**Senator CORMANN**—What is that compared to? Could you maybe take it on notice.

**Ms Parker**—Yes, I can take it on notice. I can give you whole numbers here. For participation reports, for example, there were 12,283 penalties in that period. If you want those just as percentages, we can provide that on notice.

**Senator CORMANN**—That would be great, so that we can compare it over a five-year period, if that is okay, because percentages take the population growth—

**Ms Parker**—We have a few here. It is 59 per cent for attendance, as I said. I do not have the exact numbers you want, so we will take that and provide it.

**Senator CORMANN**—Just in terms of overall assessment, has there been a noticeable change in the context of the economic downturn, or is it pretty well business as usual?

**Ms Parker**—We have comparisons with Job Network for the same period and we might have the same discussion about like for like, apples and oranges.

**Senator CORMANN**—Yes.

**Ms Parker**—But there are, according to our figures, larger numbers under Job Network for eight-week compliance, for example, compared to under Job Services Australia for the same period.

**Senator CORMANN**—We have talked about job seekers. What about providers? How have contacts with providers tracked in the first six months of the—

**Ms Parker**—Do you mean contacts by the department?

**Senator CORMANN**—No, contacts from providers. I am just saying ‘contacts’ because before when I asked for complaints you told me the number of phone calls in terms of job seekers. Is it a relevant indicator for you or not—the number of complaints that you get from providers?

**Ms Parker**—We have regular discussions with providers. Our contract managers are in regular correspondence. We do have issues raised by providers from time to time. We have a very good relationship with NESAs, that we mentioned earlier, where issues are aired regularly and we have regular meetings with them, with a view to looking at patterns and high-level issues that they can raise. But we encourage providers to raise with us issues as they arise and we try to deal with them as they arise.

**Senator CORMANN**—In terms of your performance management system, how are your current Job Services Australia providers tracking on the performance management system?

**Ms Parker**—We did mention it is early days for our providers.

**Senator CORMANN**—Yes, sure. I am not going to waste time with it. Is there some reasonable data for us to discuss or is there nothing really that you can tell us? I do not want to waste time if there is—

**Ms Parker**—No, that is fine.

**Ms Fletcher**—We have three key performance indicators and that data is being collated and will be made available to providers from March this year.

**Senator CORMANN**—And then you will be able to tell us how many providers are within each star ranking and all of that?

**Ms Fletcher**—Yes. Star ratings will be publicly released from June.

**Senator CORMANN**—From June 2010?

**Ms Fletcher**—Yes.

**Ms Parker**—Providers get data on their performance from us in between that, but that is confidential to them and between the department and them for that shorter period. But the public information, as we said, will be available in June.

**Senator CORMANN**—I am just going to try and rush through some of these things because I am going to run out of time soon. Can you give us a two-sentence high-level summary of the structure of the Work for the Dole program under the Job Services Australia?

**Ms Fletcher**—Certainly. Work for the Dole is an activity that is available for job seekers under our work experience and it is usually in the form of group based activities. It can be a small group or a mid-size group and the activity is identified based on community needs and having a community benefit.

**Senator CORMANN**—But ‘activity that is available’ sounds quite voluntary. Is it entirely voluntary? Is it an option that is available if the job seeker is interested?

**Ms Fletcher**—Work for the Dole is one option that is available to job seekers under the suite of work experience activities and the type of activity a job seeker would undertake is that identified to be best suited to their need. If that happens to be Work for the Dole—

**Senator CORMANN**—So how many job seekers are currently in that option?

**Mr Griew**—There is an additional piece of information here which is important, which is that work experience is a required activity after 12 months. So it is not an optional activity. It is one of the kinds of work experience which is not optional.

**Senator CORMANN**—Yes, okay.

**Ms Parker**—It makes up about eight per cent of the work experience activities that people are doing.

**Senator CORMANN**—How does that compare to previously?

**Ms Parker**—Work for the Dole was a much more common activity under Job Network.

**Senator CORMANN**—So it is now a much smaller component.

**Ms Parker**—Yes, it is, but there is a lot more choice in terms of other options under work experience. The percentage that Mr Griew has shown me is 48.7 per cent compared to 26.9 per cent under the new system. So it is 48.7 per cent for Job Network, 26.9 per cent for JSA.

**Mr Griew**—Job Services Australia.

**Ms Parker**—Work for the Dole, yes.

**Senator CORMANN**—Are you expecting that proportion to increase moving forward or do you think that that is pretty well where it is going to level out?

**Mr Griew**—The difference with the JSA work experience system is that there is a greater emphasis on education and training activities, which have grown significantly. So we would not necessarily expect that to change, because education and training activities will continue to be a greater part. The only other thing that may be changeable is the component of part-time work in those figures because of the changes that come out of the impact of the global downturn. So those figures may change, but we would not expect Work for the Dole necessarily to increase, because of the greater emphasis on education and training.

**Ms Paul**—Yes, there is a much greater reward given to education and training in Job Services Australia than Job Network, which means there is a better investment in people’s futures, and that is one of the work experience options. So it is just a bigger venue, basically.

**Senator CORMANN**—But education and training is very important, as long as it is well targeted in terms of being able to find a job.

**Ms Paul**—That is right.

**Senator CORMANN**—I guess we will have opportunity to talk about the Productivity Places Program tomorrow. I would be interested to see—and it is probably too early to tell still—how many people end up with a job now, having the different mix, compared to what would have been under the previous mix. But I suspect you will tell me that it is too early to reliably assess that. Is that right?

**Senator Arbib**—Just generally, the higher education you have and the more skills you have, the more chance you have of getting a job. So we are still—

**Senator CORMANN**—It depends.

**Senator Arbib**—No, the statistics show that. The higher you are educated the more chance you have of getting employment. In terms of the new job system, Work for the Dole is still very important and it is a part of work experience, but what we are trying to do and what is a large part of the system is to actually lift training levels to ensure people get the certificates they need and they get the work experience they need so that they can go on to actual employment, and not just short-term employment but sustainable employment for the long term.

**Senator CORMANN**—As long as it is getting the training and the work experience they need in order to find a job and not sort of training—

**Senator Arbib**—I could not agree more. Training for training's sake is a waste of time. We need to be training for employment.

**Senator CORMANN**—That is where we have to have a bit of a look at the detail once it comes out. But looking at the early reviews of the Productivity Places Program, it does not look as if that has been a very successful way of channelling people into work.

**Senator Arbib**—I disagree with that. You will go through it tomorrow, but certainly it will be something that I am looking at, because we want to make sure that as people are progressing through Job Services Australia—

**Senator CORMANN**—They are not my feelings, I must say.

**Senator Arbib**—they are gaining skills that get them into work.

**Senator CORMANN**—I am sure that everybody will want to structure it such that people have the maximum chance of getting a job, but I guess the key is to work backwards from what the job needs are rather than to go off and do training that does not lead into an actual job that is out there.

**Senator Arbib**—That was one of the issues with Work for the Dole. You go out and talk to Job Services Australia and they say that there are some very good Work for the Dole programs and projects but, at the same time as that, the training was not there for many of these projects and programs. So I think you have to get the balance right, because work experience is about getting the work ethic, getting people used to working again, but at the same time they need to be getting those skills so that they can go on to a job.

**Senator CORMANN**—I totally agree. It is important to get the balance right, but that might mean different things to different people.



**Senator Arbib**—Yes, I accept that. We are coming at it from different points, but we have both got the same goal.

**Senator CORMANN**—I might just quickly ask a few questions around Disability Employment Services, given that the tender has just been let. How many clients does Disability Employment Services have at present?

**Ms Paul**—In terms of the Disability Employment Network, as of 31 December 2009, we have: referrals of 35,992, commencements of 21,624 and job placements of 7,263, and I can provide 13-week outcomes and 26-week outcomes, if that would assist.

**Senator CORMANN**—Do the high levels in the system of 35,000 referrals and 7,000 placements mean that there are 28,000 waiting to be placed—is that the way it works? I guess what I am trying to find out is how many people are on the waiting list. Does the 35,000 capture everyone and then we work our way back?

**Mr Waslin**—To clarify that information, in the Disability Employment Network there are two streams or subprograms. One is a capped program with a fixed number of places, and the number of people currently in that program is 36,491, as at 31 December. There is an uncapped program, and the number of people in that is 19,587. That is the number of people participating in the program at that point in time. Not all those people are looking for work. Some of them are in what we call supported employment—they are in employment and their employment is supported by the Disability Employment Network provider.

**Senator CORMANN**—When you describe it as a capped program, the way I understand that is that there are people who would like to get in but at this point cannot because there is a cap on it.

**Mr Waslin**—For that part of the program, yes. There are a set number of places. That program ceases at 28 February this year, when the Disability Employment Services comes into play, and that program is completely uncapped.

**Senator CORMANN**—As of 1 March, everybody out there is going to be captured by the system?

**Mr Waslin**—That is correct.

**Ms Paul**—One of the most important parts of this reform was to uncap the program.

**Senator CORMANN**—How many people do you expect on 1 March to be part of the system? Is it as simple as 36 plus 19 or is it more complicated?

**Mr Waslin**—Yes; it goes a little further than that. There is another program called Vocational Rehabilitation Services, and that program also gets captured under Disability Employment Services. On 1 March all of the people participating in those programs would migrate into Disability Employment Services. So on that day the take-up rate will be the existing transfer from Disability Employment Network and Vocational Rehabilitation Services, but from that point in time anyone else that wants access to the program will have access to it.

**Senator CORMANN**—As of today, how many people want to get into the capped program but cannot? How many people are on the waiting list, for want of a better word, today?

**Mr Waslin**—There are no waiting lists for this program. There is no formal waiting list.

**Senator CORMANN**—Given the change on 1 March, I would have thought you would have an expectation of how many people are going to be added to the 36,000.

**Mr Waslin**—We have an expectation of how many people might join the program over the remaining months of the financial year, but because it is uncapped it is often subject to how the provider network will deal with the client base.

**Senator CORMANN**—The reason I am not understanding this is that, presumably, if something has been cut for a period of time, there will be people approaching service providers who have to be told, ‘Sorry—no more places available.’ I assume that somebody captures that data. I am trying to quantify what is—

**Mr Griew**—We may take that on notice. What the officer has just told me is that all he would have is some modelling that was done in the process of the designing of the program. We will take that on notice and see what we can provide you with.

**Senator CORMANN**—My next logical question is whether all of the people that were not able to get into the capped program—which I would loosely describe as being on a waiting list or being outside and wanting to get in—as of 1 March will be able to immediately access a Disability Employment Services provider. From what you have been saying it is open to everyone—it is uncapped.

**Mr Griew**—Everyone who is eligible.

**Senator CORMANN**—Sure, everyone who is eligible. That was implied.

**Mr Griew**—Yes.

**Senator CORMANN**—So everyone who is eligible, as of 1 March, is going to be able to come in, no matter what?

**Mr Griew**—With programs like this, the existence of a waiting list is lesser. Organisations may have waiting lists; people will be on a number of waiting lists.

**Senator CORMANN**—But you do not capture the—

**Mr Griew**—There will be modelling that has been conducted in the department based on our best estimates as part of a government deliberative process. So we will see what, of that information, we can provide you in an attempt to explain it.

**Senator CORMANN**—Given that there is going to be a transition—it is a transition again—what sorts of strategies do you have in place to deal with what presumably could be an immediate influx of people that currently are outside the system and will be eligible to come into the system?

**Mr Griew**—There are two halves to this reform—one being the uncapping process and the other being an assessment process, but Mr Waslin can explain that.

**Mr Waslin**—Senator, basically, the Disability Employment Service has been subject to a public tender and the different responses, or how we dealt with that, but organisations now have a contract which starts on 1 March and it is based on market share. So those organisations have an expectation of picking up those people that are currently in the DEN and vocational rehabilitation program, but they also have an expectation of picking up new

entrants. So they are gearing up to handle a share of the future flow. Their entire business case will be based on future flow.

**Senator CORMANN**—Those providers would have made assumptions as to what that future flow would mean, but that is not something that you have any sort of handle on?

**Mr Waslin**—No, we do not publish that data.

**Senator CORMANN**—So you have it; you just do not publish it.

**Mr Waslin**—No, we do not actually calculate it for providers. We provide information on the number of people that might be on income support, on a disability support pension, in their region—we provide data on the historical flows which have occurred. But their tender response is largely based on their knowledge of the local area and what they think the untapped demand might be.

**Senator CORMANN**—Yes: understood. I guess the transition of job seekers is similar but on a much smaller scale. Do you have a handle on how many of them are going to have a different employment service provider on 1 March than they are dealing with now?

**Mr Waslin**—Yes, we do.

**Senator CORMANN**—Is there a percentage?

**Mr Waslin**—It is about five per cent.

**Senator CORMANN**—How does that compare to the—somebody else might have to answer this—Job Services Australia transition? That seems to be quite a small percentage. You might have answered this in the past, but does somebody know off the top of their head how many people will be dealing with a new provider in the Job Services Australia system?

**Mr Waslin**—Perhaps I can give you some background as to why it is so much smaller. The government made a deliberate decision, because of the client group which is involved in Disability Employment Services and Vocational Rehabilitation Services, to minimise disruption to those people because they are the more highly disadvantaged and because there is often a relationship between the provider, the participant and the employer.

**Senator CORMANN**—It sounds like a very sensible thing to do.

**Mr Waslin**—We did not want to break up or disturb that three-way partnership by introducing new providers. Wherever possible we have maintained that relationship, so we have minimised disruption.

**Senator CORMANN**—So there were not many providers who chose not to continue providing services after 1 March?

**Mr Waslin**—In Disability Employment Services there are two streams. The first program was subject to a tender, and there was minimal disruption there. The other part of the program was subject to an invitation to treat, where all existing providers were offered the capacity to roll over their contract. Only one small organisation did not proceed.

**Senator CORMANN**—Thank you very much for that. I have a series of questions across a whole series of this and other areas, but I always stick to a deal and so I cede to my colleague—I was going to call him ‘the Hon. Senator Eric Abetz’. Thank you very much.

**CHAIR**—Thank you. Does that conclude questions in outcome 4? We will now move to outcome 5, and we are going to start with just a couple of questions for the Safety and Compensation Policy Branch. Ms Carapellucci, you may be aware that I have had a concern about what is described as a notional five per cent deduction from people that are permanently injured and what we refer to as being superannuated out of the Public Service under Comcare. Comcare have not necessarily satisfied me with their explanations, but they believe they are in fact applying the legislation as it is. I do not expect them to change their view given that they have formed that view. But I was interested when I was given a copy of a letter to Mr Ian Emery from yourself, which justifies this deduction in the following words. It says, ‘The higher rate of benefits payable to nonretirees is intended to provide an incentive for injured employees to seek to rehabilitate themselves and return to work, if possible, rather than taking early retirement.’

Given you are the head of safety and compensation policy, I suspect that that is a policy rationale for the notional real deduction of five per cent from permanently injured workers. So I have got a couple of questions for you. First of all, how many people have returned to work and sought to rehabilitate themselves, if possible, as a result of a penalty being applied to them of a further five per cent reduction, and how does that apply to people that are unable to be rehabilitated, who can never return to work because of their injury or illness or incapacity? How does simply penalising those people by a five per cent reduction in their compensation do anything in terms of policy outcome?

**Ms Carapellucci**—In relation to the first part of your question about numbers of employees, I would need to take advice from Comcare about that as the administrators of the scheme. In relation to the second part of your question, the focus of the Safety, Rehabilitation and Compensation Act is on rehabilitation and return to work, and it is probably what distinguishes it from its predecessor acts. The act has always provided that employees who retire early and access their superannuation benefits receive 70 per cent of their pre-injury earnings—

**CHAIR**—Even though the act specifies 75 per cent.

**Ms Carapellucci**—For this group of employees. The act specifies 75 per cent for employees who do not retire early, but for those employees who do retire early, the formula provides for them to receive 70 per cent of their pre-injury earnings.

**CHAIR**—Yes, because it deducts a notional five per cent superannuation contribution.

**Ms Carapellucci**—Yes. Historically that five per cent deduction was referred to as a notional superannuation contribution, and that was in the context that at the time all employees who were covered by the act were also covered by the CSS superannuation scheme which required all employees to contribute five per cent into their superannuation. As time went on and new super schemes and new super rules came into play, it led to a situation where Comcare was having to take out different deductions for different employees, depending on what deductions they were previously making to their super scheme. The legislation was subsequently amended to provide for a flat five per cent deduction for everybody who retires early and accesses their super.

**CHAIR**—There would be the situations now, though, where there would be people in accumulation schemes in the public sector?

**Ms Carapellucci**—Yes.

**CHAIR**—There is? How would this then apply to them, because any contribution they make into an accumulation scheme is for their direct benefit and a notional deduction then would seem to penalise them, unless that deduction was going into a superannuation scheme which they could access and benefit from.

**Ms Carapellucci**—The formula in the act applies to all employees equally, irrespective of which superannuation scheme they are in, and the effect of the formula is that employees who retire early receive 70 per cent of their previous normal weekly earnings, compared to employees who do not retire early.

**CHAIR**—Does that apply to people who retire early by choice?

**Ms Carapellucci**—Yes, it does.

**CHAIR**—Surely there needs to a distinction from those people who retire early through no choice of their own—for example, those that have an incapacity and cannot return to work and be rehabilitated—which would be the preference of most of these people, let me say to you. So again, let's come back to the people who do not have the choice to retire early but are forced into a position of retiring early because of incapacity. Why are they being penalised five per cent, because there is no incentive for them? They cannot come back. I understand what you say: you want to discourage people from retiring early by penalising them five per cent. But for people who have been forced to retire early, why are they being penalised?

**Ms Carapellucci**—I am interested in what you mean by 'forced to retire early', because the SRC Act provides for workers who are injured to receive incapacity payments up to age 65, and that applies irrespective of whether in that time they are able to achieve a partial return to work, a full return to work, or no return to work at all.

**CHAIR**—Sorry. Then we are talking about different things. Okay, it is that provision that people then go down to what the act says should be 75 per cent of their pre-injury earnings, but are then penalised another five per cent because of a notional superannuation deduction. They are the people I am talking to. They are still in the system, but they have been forced, effectively, to retire. They cannot work but they are penalised. They do not get 75 per cent; they get 70 per cent. If you retire then with your superannuation—maybe I am not an expert on the superannuation but the principle is the same. People who are forced into the situation of not being able to work again seem to have this five per cent deducted.

**Mr Kovacic**—We might take it on notice.

**CHAIR**—We are really pressed for time. What I might ask you to do is to consider what I have said and maybe give me a detailed, considered response to my concerns.

**Mr Kovacic**—Certainly.

**CHAIR**—We will see if that satisfies me and I will book more time next estimates with my colleagues up the other end and we will deal with it in May.

**Ms Paul**—We are happy to take that on.

**CHAIR**—Thank you.

**Ms Carapellucci**—I might add that these people are not necessarily people who have no capacity to work.

**CHAIR**—All right, we will come back. Use Mr Emery as your case study and respond to me as if you are responding about his circumstances. Thank you.

**Senator Arbib**—Chair, before we start, earlier Senator Cormann asked a question in relation to award modernisation and apprentices. The department has an answer that they could furnish you with.

**Mr Roddam**—Senator Cormann, I believe your question was about the Building and Construction General On-site Award 2010.

**Senator CORMANN**—That is right.

**Mr Roddam**—That award was made as part of stage 2 of award modernisation handed down on 3 April 2009. Both the exposure draft of the award and the final award contain the following clause 15.6, about attendance at technical schools:

Apprentices attending technical colleges or schools and presenting reports of satisfactory conduct must—

**Senator CORMANN**—So far you are reading out what I have previously read out to the committee.

**Mr Roddam**—So you are aware of the clause.

**Senator CORMANN**—What I am actually after is to what extent the additional cost impact on business has been assessed, the extent to which it is a disincentive for small business in particular to take on apprentices and whether the extent to which this new situation—which I understand is a new situation, in that, at least in my understanding, it has not been a prevalent practice before—is going to be an additional impost has been quantified.

**Mr Roddam**—In terms of whether it has been a previous situation, certainly the former National Building and Construction Industry Award 2000, which may not have applied in the case you are speaking about—I am not sure whether it did it or not—

**Senator CORMANN**—Across Western Australia, it certainly did not, in terms of businesses that I spoke to there.

**Mr Roddam**—I am not sure about the Western Australian situation, but in the main federal award before there was a provision for the reimbursement of training costs, and there is now this provision—

**Senator CORMANN**—A provision for reimbursement or a provision that an employer is required—

**Mr Roddam**—Sorry, that an apprentice must be reimbursed.

**Senator CORMANN**—Must be reimbursed, yes.

**Mr Roddam**—That is correct. There will be officials here tomorrow from the education area of the department who can provide more details of these programs, but there are programs where funding is provided to apprentices to undertake apprenticeships.

**Senator CORMANN**—Sure.

**Mr Roddam**—That could be funded under the User Choice program. There is also the—

**Senator CORMANN**—I understand all of that. These incentives are good incentives, which we support and which we have supported the government on, even though the minister thought the other day that we were not aware of them. Leaving that aside, they would be available in any event, irrespective of what happens to awards. I guess if we look at the test of ‘nobody is going to be worse off’, here you have a cost which a significant proportion of small business across Australia did not have to carry before but now has to, and I am trying to understand whether somebody actually—

**Mr Kovacic**—The point that Mr Roddam has made is that certainly the provision for reimbursement of apprenticeship training—

**Senator CORMANN**—In the federal award?

**Mr Kovacic**—was in the pre-existing federal award. Indeed, I think one of the points that Mr Roddam would have made was that, in terms of the wording of the original clause that was included in the modern award by the Australian Industrial Relations Commission, the Master Builders Association subsequently made an application to vary the wording of that particular clause and in doing so, to the best of our knowledge, did not raise any objections to the clause itself being included in the modern award.

**Senator CORMANN**—Are you able to give us some data, on notice perhaps, about how many people were previously covered under equivalent awards across Australia where training costs had to be reimbursed and how many were covered in awards where training costs did not have to be reimbursed?

**Mr Kovacic**—We will take that on notice.

**Senator CORMANN**—Thank you very much.

**Senator JACINTA COLLINS**—Is this just in that sector we were referring to earlier or is this across the board?

**Senator CORMANN**—I was asking a question about a particular award.

**Senator JACINTA COLLINS**—Yes, from earlier today.

**Senator ABETZ**—Did the department have any input into the very helpful guide *Applying for a take-home pay order*, which appears on Fair Work Australia’s website?

**Mr Kovacic**—I am advised not.

**Senator ABETZ**—I will very briefly put on notice some questions to Fair Work Australia. Let me express my very real concern. I asked questions about this guide and why there was not such a guide on the website. The minister was telling me that I could see it; it is clearly on the website. I had a look at the website, which showed:

#### **Latest news**

10 February 2010 New guide available—Applying for a take-home pay order.

On notice, when did Fair Work Australia put that onto their website? I suspect it was after I got my backside up here to commence the Senate estimates.

**Senator JACINTA COLLINS**—I found it at the time, Senator.

**Senator ABETZ**—On 10 February? Today?

**Senator JACINTA COLLINS**—No. I found it today.

**Senator ABETZ**—Yes, today.

**Senator JACINTA COLLINS**—When you were asking the question—

**Senator ABETZ**—It was posted today.

**Senator JACINTA COLLINS**—No. When you were asking the question, I found it, and so did the minister.

**CHAIR**—Order!

**Senator ABETZ**—I further want to ask Fair Work Australia on notice whether the accompanying guide was also placed on the website and, if so, what time today it was placed on the website.

**Senator JACINTA COLLINS**—It was there when you were asking questions.

**Senator ABETZ**—And is it true that, if you were to have punched in the words in the search engine ‘take-home pay order’ up until 10 February 2010—up to yesterday—you would have had a ‘no results’ response?

**CHAIR**—I do not know if they could take on notice what a search engine does.

**Senator ABETZ**—I am sure they knew and they know. With a judge sitting there and all the officials behind him, that no-one was willing to volunteer that it had been put on the site today flies very close to certain standing orders of this place. I will leave it at that, but I would be very interested in an explanation of why nobody at the table volunteered the fact, from what it appears, that it had only—

**Senator Arbib**—This morning you said you could not find the link and it was not on the front page. We showed you where the link was.

**Senator ABETZ**—Yes, because I had been looking at it yesterday in preparation. After I got my backside up here at about a quarter to nine this morning, I have a funny feeling it was put on the website only—

**Senator Arbib**—We found it when we found it. You are saying when—

**Senator ABETZ**—No, afterwards.

**Senator JACINTA COLLINS**—No, during.

**Senator Arbib**—We found it when you were speaking.

**Senator ABETZ**—Does the department agree that some people may in fact suffer less take-home pay as a result of modern awards?

**Mr Kovacic**—We do not agree with that assertion, for the very reason that there is provision under the act for people who may have their take-home pay affected to apply to Fair Work Australia for a take-home pay order.



**Senator ABETZ**—I understand that, but you can only apply for a take-home pay order if you have suffered a decrease in your take-home pay. Unless you can make that case out, you cannot apply for such an order. That is correct, isn't it?

**Mr Kovacic**—I will refer you to a provision which I understand is included in all modern awards, and the provision I am about to quote is taken from the General Retail Industry Award 2010 and it is one that Fair Work Australia has, as part of its model provisions, included in all awards. It says:

Neither the making of this award nor the operation of any transitional arrangements is intended to result in a reduction in the take-home pay of employees covered by the award. On application by or on behalf of an employee who suffers a reduction in take-home pay as a result of the making of this award or the operation of any transitional arrangements, Fair Work Australia may make any order it considers appropriate to remedy the situation.

**Senator ABETZ**—I know that, but isn't a threshold question that, before you can succeed with a take-home pay order, you have to show that you have suffered a decrease in your take-home pay? That is the threshold, isn't it? If you cannot prove that, you cannot succeed in a take-home pay order.

**Mr Kovacic**—The very nature of a take-home pay order is to remedy any sort of impact that the creation of a modern award may have had on take-home pay.

**Senator ABETZ**—Not remedy any impact; remedy any negative impact.

**Mr Kovacic**—On take-home pay, that is correct.

**Senator ABETZ**—If you are going to get paid more, you cannot get a take-home pay order, can you? It is only a lesser payment.

**Mr Kovacic**—Point taken.

**Senator ABETZ**—Thank you. Fair Work Australia itself describes it as 'suffered'. I know you do not want to use the term, but this very helpful guide that was put up today actually uses the word 'suffered'. Would you agree that significant confusion and angst has been caused within the community by these changes?

**Mr Kovacic**—No, I would not agree with that.

**Senator ABETZ**—You wouldn't? All right, thank you for that.

**Senator Arbib**—Not if you compare it to Work Choices, that's for sure!

**Senator ABETZ**—I will invite you then to have a look at a posting of the Health and Community Services Union of Tasmania of 14 January 2010 where they say:

The resultant changes associated with the introduction of the awards has caused significant confusion and angst amongst members.

They are not my words but those of a union from my home state.

**Senator Arbib**—It's case closed!

**Senator ABETZ**—That is fine, you do not accept that there has been any confusion. My experience is different, but I accept what the department says—that they do not believe that that is the case. Can I move on?

**Mr Kovacic**—I can explain why I do not think there is any confusion. Firstly, I think the committee was provided with evidence earlier today by the Fair Work Ombudsman that, in terms of the inquiries that they are getting from employers and employees around the Fair Work framework, the nature of those inquiries suggests that they are educated questions that are being asked and they are not questions that suggest that there is a lot of confusion and chaos in terms of the new framework. Similarly, the various education activities which the government is supporting under the new system—

**Senator ABETZ**—I am aware of all that. All I want to know is what your view and perception is—

**Senator Arbib**—Hang on a second, Senator. Have the courtesy to actually listen to the answer, because Mr Kovacic is trying to answer the question.

**Senator ABETZ**—With respect, Minister, we are very short of time and I am not going to allow what happened at climate change the other night, where certain officials just ran down the clock with answers. I am not being rude, I am just trying to get to the kernel of the point.

**Ms Paul**—I think Mr Kovacic has only taken about a minute so far, though. So perhaps if he is quick—

**Mr Kovacic**—Yes, certainly.

**Senator JACINTA COLLINS**—Yes, we do not want to revisit climate change.

**Senator ABETZ**—I am more than happy to.

**CHAIR**—Let's just move on.

**Senator JACINTA COLLINS**—I'd particularly like to take Senator Macdonald to task.

**CHAIR**—Senator Collins, please!

**Mr Kovacic**—The range of educative activities, both in terms of seminars that are being conducted under the Fair Work Education and Information program and the education visits which the Fair Work Ombudsman is conducting, together with various sites that are funded under the Fair Work Education and Information program, such as the COSBOA site, are all very positive responses to them.

**Senator ABETZ**—I am sure there are positive responses, but you do not accept the proposition that the resultant changes have caused significant confusion and angst within the community. I accept that. That is your answer and that is on the *Hansard*. I am just pointing out to you that HACSU happens to have a different view of the world. That is fine, let's move on.

**Senator Arbib**—You only have five responses on your own website—the shame file in terms of the Abetz website.

**Senator ABETZ**—Chair, this is not responsive to a question.

**Senator Arbib**—I am just making a point.

**Senator ABETZ**—Estimates is not for you to make the points you want to make; it is for responding to questions.

**Senator Arbib**—I am providing you with information to balance—

**CHAIR**—Let's all of us just get back to questions and answers.

**Senator ABETZ**—Yes, thank you. Does the department accept the basics of the story on page 4 of the *Weekend Australian* of 9 January 2010, which talks about significant wage cuts to aged-care nurses in New South Wales and Queensland? Are you aware of that story?

**Mr Kovacic**—I am aware of the issue in the broader sense. In terms of the article itself, I—

**Senator ABETZ**—It says:

The Australian Nursing Federation says thousands of aged-care nurses in the two states will lose up to \$300 a week under the award modernisation program and will be left with no choice but to leave the industry ...

Has the department done any analysis to verify whether what the Australian Nurses Federation—which of course is the union of the incoming president of the ACTU—says has any veracity?

**Mr Kovacic**—Perhaps I can begin by reiterating that aged-care nurses in New South Wales would have the capacity to make an application for a take-home pay order, which would ensure that their take-home pay would not be affected as a result of the creation of the modern award.

**Senator ABETZ**—I understand that. But for them taking such action, would they be losing \$300 per week as asserted by the federation?

**Mr Kovacic**—The starting point is that the capacity to make the application is there. Secondly, it assumes that employers will, in essence, take advantage of the situation and continue to pay nurses what they were previously being paid under the pre-existing industrial instrument.

**Senator ABETZ**—I publicly called on them not to do so, which I note Ms Gillard was unable to do or did not do.

**Mr Kovacic**—It also assumes that, again, aged-care nurses and their employers may not negotiate enterprise agreements which either maintain or improve on the sorts of wages that may have been provided for in pre-existing industrial instruments. So there are a whole range of variables there that, from my perspective, really say that there are plenty of opportunities to avoid the situation.

**Senator ABETZ**—I understand that, but it appears either HACSU has got it wrong or the ANF has got it wrong. Let's move on. Can I ask about the history of award modernisation. I do not want the whole history but answers, please, to my specific questions that now follow. The first one is about the framework for establishing award modernisation. That was in a piece of legislation that was introduced into the parliament in early 2008. Is that right?

**Mr Kovacic**—That is correct, and that legislation came into effect, from memory, in March 2008.

**Senator ABETZ**—Yes.

**Mr Kovacic**—It was the workplace relations transition forward with fairness, from memory—the Fair Work Act.

**Senator ABETZ**—Yes, ‘forward with fairness’ is the particular language. It was, in fact, part 10A, award modernisation. That came into effect as of March 2008. That also established Fair Work Australia.

**Mr Kovacic**—No, it did not.

**Senator ABETZ**—Sorry, I will withdraw that. But it tasked the predecessor to Fair Work Australia, the AIRC, to undertake the process of award modernisation. Is that correct?

**Mr Kovacic**—That is correct.

**Senator ABETZ**—Did the minister write to the AIRC asking them to undertake that?

**Mr Kovacic**—What the provisions of the act required was that the minister would issue an award modernisation request.

**Senator ABETZ**—When was that issued? One would imagine shortly after the legislation passed.

**Mr Kovacic**—We will check the exact date.

**Mr Roddam**—The first award modernisation request was issued on 28 March 2008.

**Senator ABETZ**—So very shortly after the legislation got royal assent.

**Mr Kovacic**—That is correct.

**Senator ABETZ**—The award modernisation process then got under way. Did it need any other legislative underpinnings for that process to take place?

**Mr Kovacic**—Not that I am aware of.

**Senator ABETZ**—The AIRC did its job—

**Mr Kovacic**—That is correct.

**Senator ABETZ**—and a lot of them came out towards the end of last year.

**Mr Kovacic**—The only change is that towards the end of last year the minister made a regulation which, in terms of applications to vary modern awards, extended the period for which those applications can be—

**Senator ABETZ**—That is right, until 31 March.

**Mr Kovacic**—Yes, 31 March.

**Senator ABETZ**—And transferred that to Fair Work Australia as opposed to the AIRC.

**Mr Kovacic**—That is correct.

**Senator ABETZ**—So anybody like HACSU and the ANF complaining about the award modernisation outcomes—and I do not want to go into the details, for they may well be mistaken—is talking about the legislation that got passed in March 2008.

**Mr Kovacic**—The legislation that governs the award modernisation process came into effect in 2008.

**Senator ABETZ**—Yes, that is right, and then there was the decision of Fair Work Australia or the AIRC in making the modern awards.

**Mr Kovacic**—There are a couple of points that are important to remember. One is that the award modernisation request required the Industrial Relations Commission to undertake the process of award modernisation in a very consultative process.

**Senator ABETZ**—Yes.

**Mr Kovacic**—Invariably, what that involved in a practical sort of sense is, initially, the AIRC convening consultations with relevant stakeholders. Emerging from those consultations, the AIRC invariably issued an exposure draft of the modern award, which was then the subject of further consultations. Arising out of that second round of consultations, the commission would then determine a final modern award, and there would subsequently be capacity for parties to make applications to vary those modern awards.

Also, at the beginning of the process and consistent with that requirement for the process to be conducted in a consultative fashion, the president consulted extensively with the key stakeholders but set out in terms of a program, both in terms of awards—

**Senator ABETZ**—Yes, I accept all that.

**Mr Kovacic**—That made it very clear.

**Senator ABETZ**—About the legislative and regulatory framework, there had been a suggestion earlier today that the legislation that got passed on, I think, the last day of sitting was needed for this award modernisation process to kick off, but I think that may—

**Mr Kovacic**—From following that discussion, that was the referrals bill.

**Senator ABETZ**—Sorry?

**Mr Kovacic**—I think the discussion earlier today was referring to the ‘referrals bills’, if you would pardon the pun—

**Senator ABETZ**—Yes.

**Mr Kovacic**—which was passed.

**Senator JACINTA COLLINS**—It was opposed in the House, wasn’t it?

**CHAIR**—We are going to leave it there and take a break.

#### **Proceedings suspended from 9.32 pm to 9.40 pm**

**Senator ABETZ**—You have given me a history of how the award modernisation process got under way. The Workplace Relations Amendment (Transition to Forward with Fairness) Bill was before the parliament in March. It was one of the first pieces of legislation introduced, wasn’t it?

**Mr Kovacic**—I think it was the first piece of legislation introduced by the new government.

**Senator ABETZ**—Yes, it was the first piece of legislation. Are you aware whether it was still before the parliament on 20 March 2008?

**Mr Kovacic**—I would have to take that on notice.

**Senator ABETZ**—If you could, please. I think we might find that it was. But that legislation which was before the parliament in March 2008 set up the award modernisation process.

**Mr Kovacic**—It enabled the framework for the process, yes.

**Senator ABETZ**—Yes, the framework, which then empowered the minister and she then, I think, wrote the first letter on 28 March, we were told.

**Mr Kovacic**—That is correct.

**Senator ABETZ**—In the House of Representatives on 8 February there was a question by the Leader of the Opposition to the Prime Minister about an answer given on 20 March 2008 in which the Prime Minister said:

No working families in this country will be worse off as a consequence of the industrial relations laws that we have advanced here in this parliament ...

When challenged about that on 8 February 2010, Mr Rudd says about that:

As the honourable member will know on any honest reflection, that refers to the transitional legislation which was before the House then.

We have now discovered that the legislation before the House then, on 20 March 2008, was the award modernisation framework legislation which has, as I think we have agreed, left some people, as a minimum, with a need to make applications for take-home pay orders because they may be suffering.

**Mr Kovacic**—Can I take two issues. First, I took the question on notice in terms of whether the legislation was still before the parliament on 20 March 2008, so I cannot confirm one way or the other.

**Senator ABETZ**—I do not want to drag you into that part of the debate, and I accept that.

**Mr Kovacic**—Yes. Second, I want to restate that I have not accepted your assertion that people will be worse off as a result of the award minimisation process.

**Senator ABETZ**—And we have had that discussion previously.

**Mr Kovacic**—Yes.

**Senator ABETZ**—I have put propositions to you which you have rejected. That is fine, and people can make up their own mind as to what they—

**Senator Arbib**—I agree, Senator. Can I just make the point that the opposition supported the take-home pay guarantee and this is what Mr Keenan said in the House on 2 June during the debate—

**Senator ABETZ**—Sorry, Chair, this is not relevant to the question asked.

**Senator Arbib**—It is relevant.

**Senator ABETZ**—No.

**Senator Arbib**—This is reasonable, and it gives effect to the minister's promise and undertaking that no employees will be disadvantaged under her changes, and that is what he said in relation to the take-home pay guarantees.

**Senator ABETZ**—That is right, because we took it at face value. We took the promise at face value and we now know that promise to be completely hollow—not courtesy of me; courtesy of the ANF, courtesy of HACSU, courtesy of all the—

**Senator Arbib**—That is not right.

**Senator JACINTA COLLINS**—There was a press release out yesterday rejecting what Tony Abbott was saying.

**Senator ABETZ**—Yes, of course they have to now.

**Senator JACINTA COLLINS**—Well, no.

**Senator ABETZ**—But unfortunately they put out a press release earlier saying that their members would be \$300 a week worse off. It is not something that Tony Abbott made up.

**Senator JACINTA COLLINS**—No, that is your interpretation.

**Senator Arbib**—Senator, your famous spokesperson agreed with us.

**Senator ABETZ**—On any honest reflection of the legislation that was before the parliament at the time, it was the legislation which established modern awards, and I trust the Prime Minister will go into the parliament tomorrow and apologise. But let's move on.

**Senator Arbib**—I think your own former spokesperson supports our position.

**Senator ABETZ**—Can I ask whether the department had any input in relation to the modern awards from a whole-of-government policy point of view as to impacts? There was one little scenario that I drew to Fair Work Australia's attention this morning. I do not know if you were listening. It was the dentist's surgery open on a Saturday. Without recounting of it, were things of that nature canvassed with Fair Work Australia from a whole-of-government point of view?

**Mr Kovacic**—I would make a couple of points on the question. One is that, in terms of the award modernisation process, the Deputy Prime Minister received representations from a number of organisations throughout the process and, as part of responding to those representations, the department at different stages provided a range of advice to the Deputy Prime Minister on issues associated with award modernisation. In terms of involvement with the award modernisation process itself—

**Senator ABETZ**—If I may interrupt, I am asking from a whole-of-government point of view. For example, was it possible for the health department to make a submission and say: 'Look, we've got this policy of wanting dentists to be open on Saturdays. This is going to make it less financially attractive for them to open, so would you mind passing that on.' That is the sort of example: not from organisations but from government departments.

**Mr Kovacic**—That is the point I was actually just about to come to. The Commonwealth made submissions to proceedings around a number of particular modern awards, and I stress it was the Commonwealth.

**Senator ABETZ**—So that was whole of government?

**Mr Kovacic**—And, as is usually the case with Commonwealth submissions, to the extent that it is necessary to consult with other agencies, we would do so in the context of developing those submissions.

**Senator ABETZ**—And those submissions are on the website?

**Mr Kovacic**—They would be. They would be on Fair Work Australia's website.

**Senator ABETZ**—Thank you. If we may move on: Minister, and possibly the department, is it the BUPA case—B-U-P-A?

**Mr Kovacic**—Yes, it is.

**Senator ABETZ**—The BUPA case. Does that decision reflect what the government was intending by its legislation? I do not want to go into the ins and outs of it, but do we believe that that decision is correctly decided, or is the government minded to appeal it? And I do not need a run-down of the case, please.

**Mr Kovacic**—No, Senator Abetz. The particular decision has been appealed by BUPA.

**Senator ABETZ**—And will the government be intervening on one or the other side?

**Mr Kovacic**—That is a matter for the government to decide.

**Senator ABETZ**—Yes, and I am asking the minister or the department. Minister, do you know?

**Senator Arbib**—I do not have that advice, but I am happy to seek that.

**Senator ABETZ**—By the time I get the answer on notice, undoubtedly I will know from Fair Work Australia.

**Senator Arbib**—I will do my best to get it for you in a hurry, Senator.

**Senator ABETZ**—If you can.

**Senator Arbib**—I do not know if I would be able to get it for you before the end of the night.

**Senator ABETZ**—The chances are, yes, that it will be on the website later on tonight, no doubt, given Fair Work's capacity to put things on.

**Senator JACINTA COLLINS**—Oh, come on, Senator Abetz. They were not anticipating your question.

**Mr Kovacic**—What I do understand is that the appeal was scheduled to be heard by a full bench of Fair Work Australia on 17 March.

**Senator ABETZ**—And do you just happen to know by which date submissions would need to be in, or applications to appear would need to be in?

**Mr Kovacic**—No, I do not.

**Senator ABETZ**—All right. That is fine.

**Mr Kovacic**—But invariably with appeals I think you can do it with a short amount of notice.

**Senator JACINTA COLLINS**—Mr Kovacic, is the Commonwealth already a party?

**Mr Kovacic**—No, it is not already a party.



**Senator ABETZ**—Access Economics did some modelling that Ms Gillard told us would save the Australian economy about \$4.8 billion over the next decade. How did we survey, as I understand it, 30 companies—is that right—or businesses?

**Mr Kovacic**—Access Economics sent out survey questionnaires to a greater number but got responses from about 30 businesses.

**Senator ABETZ**—Who selected the businesses to which those surveys were sent?

**Mr Kovacic**—Access Economics

**Senator ABETZ**—They made that decision themselves? Do we have details of the size of the 30 businesses that responded?

**Mr Kovacic**—From memory, it is a range of sizes. The report gives average numbers. There was certainly a cross-section from small, medium to large businesses.

**Senator JACINTA COLLINS**—How were they selected, Mr Kovacic?

**Senator ABETZ**—And it did include Linfox? Is that right?

**Mr Kovacic**—Just bear with me, Senator Abetz. There was a question that Senator Collins asked.

**Senator JACINTA COLLINS**—A related question.

**Senator ABETZ**—No, that is fine.

**Mr Kovacic**—I do not if it was Linfox. We would have to take that on notice because we do not know the numbers or the names of the companies.

**Senator ABETZ**—All right, thank you.

**Mr Kovacic**—Sorry, Senator Collins.

**Senator JACINTA COLLINS**—My question was: how were they selected? So if we could have a broader description of the methodology, that would be helpful.

**Mr Roddam**—We can take that on notice.

**Senator JACINTA COLLINS**—Thank you.

**Senator ABETZ**—Did the Access Economics modelling take into account potential extra payments and straightjacketing—no, I will not use that term, it might excite some interjections; but extra requirements—that may detract from this \$4.8 billion figure, or was it just a straight, ‘If you get rid of 4,000 awards and make them 122, that of itself will drive some efficiencies’? Is that all that was considered or did they then also take into account other obligations that employers might have to face?

**Senator JACINTA COLLINS**—Such as take-home pay orders and that sort of thing?

**Senator ABETZ**—Yes.

**Mr Kovacic**—There were two components that Access Economics modelled in coming to the more than \$4.8 billion in net benefits to the economy over the next decade. They included the benefits to employers from moving to a national system, which reduced regulatory costs and compliance costs—

**Senator ABETZ**—I am aware of all that, with respect.

**Mr Kovacic**—in terms of having to deal with the complexity of overlapping and dual systems, as well as the savings to—

**Senator ABETZ**—With respect, I know all that because that is what Access Economics told us about and that is how they got to the \$4.8 billion, and arguments about those figures can be held another day. What I want to know is whether they also took into account—

**Mr Kovacic**—The issue of, for instance, the reduced regulation flowing from the reduction of over 3,700 industrial instruments down to 122 modern awards was not taken into account in terms of the benefits in relation to reduced compliance costs and reduced regulatory costs for business.

**Senator ABETZ**—Yes, we know all that.

**Mr Kovacic**—The issues associated with award modernisation in terms of the reduced regulatory impact for business and the cost savings and efficiencies were not included in the \$4.8 billion that Access Economics came up with.

**Senator ABETZ**—But were other matters taken into account that may have offset the \$4.8 billion and made it a lesser figure, like certain potential downsides?

**Mr Kovacic**—As I have said, the potential benefits in terms of reduced costs flowing from the reduced number of awards was not taken into account in relation to the \$4.8 billion.

**Senator ABETZ**—When was this study undertaken?

**Mr Kovacic**—It was undertaken in November and December.

**Senator ABETZ**—In November and December, before a lot of the modern awards actually came into being, and so the cost, for example, to my dentist scenario could not have been taken into account by Access Economics, because it was not about at that time for them to consider.

**Mr Kovacic**—Over three-quarters of modern awards were actually created before September 2009.

**Senator ABETZ**—I know that. So the actual impact of modern awards clearly could not have been taken into account by Access Economics.

**Mr Kovacic**—No, those 75 per cent of modern awards were made, in terms of final modern awards, as at 3 September 2009. The final stage, which had those awards handed down, I think, on 4 December last year, involved the commission making 29 modern awards. That was the last tranche of modern awards that were made by the commission.

**Senator ABETZ**—Can I move on to the issue of compassionate leave. What does compassionate leave mean or include? I dare say we need to have a look at chapter 2, part 2.2, division 7, section 104. It states:

An employee is entitled to 2 days of unpaid carer's leave for each occasion (a *permissible occasion*) when a member of the employee's immediate family—

et cetera. I will not go through all the details, but two days per occasion: what does 'permissible occasion' mean?

**Mr Bohn**—A permissible occasion—

**Senator ABETZ**—Please do not read out the definition in the—

**Mr Bohn**—I am attempting to avoid doing that.

**Senator ABETZ**—Good. The scenario I want to put to you is: let us say somebody is engaged one day a week. There is a death in the family. Can they then take off the one day in the one week and one day in the next week as being the two days of compassionate leave for which they need to be paid? Is it pro rataed in some way, or is it just a flat two days that you are entitled to, irrespective of how long you are engaged for?

**Mr Bohn**—It is two working days.

**Senator ABETZ**—Irrespective of when? For a full-time employee, it makes good sense that you get two days compassionate leave in one of the events listed. But let us say you only work one day a week. Do you still get two days paid compassionate leave where it would be one day one week and then, separated by seven days, you get the other paid as well?

**Mr Bohn**—If the circumstances that are required to be met for the taking of the leave extend over that period, then, yes, that would be—

**Senator ABETZ**—No.

**Mr Kovacic**—Senator, you might want to have a look at section 105 subclause (2), which says:

An employee may take compassionate leave for a particular permissible occasion as:

- a single continuous 2 day period; or
- 2 separate periods of 1 day each; or
- any separate periods to which the employee and his or her employer agree.

That is the general sort of provision in the act.

**Senator ABETZ**—Yes. So it is two separate days?

**Senator JACINTA COLLINS**—So it is not pro rataed, I think is the effect.

**Senator ABETZ**—No.

**Mr Bohn**—No, obviously because of the nature of the circumstances.

**Senator ABETZ**—(1) it is not pro rataed and (2) you can take it as two separate days, which means that in that scenario of one week, one day per week and another day the next week—which was put to me by an employee who just wanted to know what her entitlement might be—she could take both those days off separated by a week and be fully paid?

**Senator JACINTA COLLINS**—So they could be present at the death and they could also attend the funeral.

**Mr Bohn**—That is right.

**Senator JACINTA COLLINS**—Whereas Jeff Kennett abolished it completely.

**Senator ABETZ**—But of course if you are a full-time employee, by Senator Collins's very smart interjection—

**Senator JACINTA COLLINS**—I am a Victorian senator, I know.

**CHAIR**—Order!

**Senator ABETZ**—you could attend either the death or the funeral but not both. Thank you very much, Senator Collins.

**Senator JACINTA COLLINS**—With this, you can attend both. That is the point.

**Senator ABETZ**—Can we move on. You usually do not bury the body the very next day after the death.

**Senator JACINTA COLLINS**—That is why it does not say ‘consecutive’. Sorry, Senator Abetz, you lost that one.

**Senator ABETZ**—Does the concept of prohibited content exist in the current workplace relations system in relation to enterprise agreements? I understand the answer is no?

**Ms Perdikogiannis**—The concept of prohibited content no longer exists.

**Senator ABETZ**—Right.

**Ms Perdikogiannis**—However, I would mention that there are content rules for enterprise agreements, which include rules around unlawful content. These are defined in—

**Senator ABETZ**—Yes, wait a minute. The concept of prohibited content no longer exists but I was then going to move on. There is such a thing as unlawful content?

**Ms Perdikogiannis**—That is correct.

**Senator ABETZ**—Is there a legal definition between prohibited content and unlawful content, because a big song and dance is being made about the fact that prohibited content has been removed, but of course we now have unlawful content, which is a neat distinction—

**CHAIR**—Stylistic.

**Senator ABETZ**—Stylistic. I think we might be on a unity ticket, and for both our endorsements’ sake, we had better be careful of that, Senator Marshall.

**Mr Kovacic**—At the end of the day, the provisions refer to provisions that you cannot have in enterprise agreements.

**Senator ABETZ**—Yet. All right. So what is the difference? It is basically stylistic?

**Ms Perdikogiannis**—If, for the benefit of the committee, I could list the terms of—

**Senator ABETZ**—No, please do not.

**Ms Perdikogiannis**—All right.

**Senator ABETZ**—Thank you for that.

**Ms Perdikogiannis**—All right.

**CHAIR**—You should take that on notice and provide it to the committee.

**Senator ABETZ**—Thank you for that. Can I ask another question? Is it correct that the new laws do not outlaw pattern bargaining, only industrial action in pursuit of it?

**Senator JACINTA COLLINS**—Who did you ask that of earlier?

**Senator ABETZ**—Fair Work Australia, and I was told to ask it here.

**Ms Perdikogiannis**—As is the case with the previous laws, the Fair Work Act does not outlaw the making of common claims per se. However, the Fair Work Act does have

sanctions, similar to those in the previous legislation, against industrial action in pursuit of pattern bargaining—

**Senator ABETZ**—I do not think Labor want to hear this. Labor do not want to hear this—that these provisions are similar to the previous legislation. I think you will have to go to re-education classes.

**Senator JACINTA COLLINS**—I think that was our election commitment actually, Senator Abetz. This is one of the ones you do not give us credit for.

**Senator ABETZ**—But can I just have confirmed that industrial action in pursuit of pattern bargaining is—

**Ms Perdikogiannis**—Will be unprotected and is subject to stop orders.

**Senator ABETZ**—Yes, is not allowed, that—

**Mr Kovacic**—And that is the same approach as was under the Workplace Relations Act under that—

**Senator JACINTA COLLINS**—And was that an election commitment?

**Mr Kovacic**—It was, indeed.

**Ms Perdikogiannis**—Yes.

**Senator ABETZ**—But pattern bargaining is not outlawed. Thank you for that.

**Ms Perdikogiannis**—I believe the phrase is ‘clear, tough rules’.

**Senator ABETZ**—How much time do we have?

**CHAIR**—An hour, nearly.

**Senator ABETZ**—I got another case in today about confusion about the Fair Work website—

**Senator JACINTA COLLINS**—Is this another shame one?

**Senator ABETZ**—Yes, and it will be posted—

**Senator JACINTA COLLINS**—Is it on the site yet?

**Senator ABETZ**—It will be posted in due course.

**Senator JACINTA COLLINS**—It is not yet.

**Senator Arbib**—So that is six?

**Senator ABETZ**—Can I tell you, there are dozens of them.

**Senator Arbib**—Six?

**Senator ABETZ**—There are dozens of them. The minimum wage panel of Fair Work Australia, that has been appointed?

**Mr Kovacic**—That is correct.

**Senator ABETZ**—Who appoints them? The minister or Executive Council?

**Mr Kovacic**—The Executive Council appoints them.

**Senator ABETZ**—Yes, thank you. I think this may have been provided previously, but are you able to provide us with the list of all the appointees and their background?

**Mr Kovacic**—Certainly, I can do that.

**Senator ABETZ**—Thank you.

**Senator JACINTA COLLINS**—There is a new process too, isn't there, Mr Kovacic?

**Mr Kovacic**—There is.

**Senator JACINTA COLLINS**—Could you give us the detail and notice of the new process too, please.

**Senator ABETZ**—I do not think you want to go there, Senator Collins.

**Senator JACINTA COLLINS**—I do.

**Senator ABETZ**—All right, good.

**Senator JACINTA COLLINS**—It is an election commitment that has been met.

**Mr Kovacic**—It is a merits election process—

**Senator ABETZ**—Absolutely, merit, yes.

**Mr Kovacic**—which, as Senator Collins has indicated, was an election commitment from the government. It was set out in the Forward With Fairness Policy Implementation Plan. In short, what it requires is that the minister will only be able to make an appointment after completing the following processes. A shortlist of candidates will be scrutinised by a panel comprising a senior official from the Department of Education, Employment and Workplace Relations who will chair the panel, a senior official from the Australian Public Service Commission, and a senior official from each state and territory department of industrial relations that wishes to participate. The minister will be required to consult with the opposition spokesperson for industrial relations and the head of Fair Work Australia prior to making any decision about appointments to recommend to cabinet.

And that process was followed both in respect of appointments to the Minimum Wage Panel, Fair Work Australia, and also in respect of the primary appointments of commissioners to Fair Work Australia as announced in December.

**Senator ABETZ**—Let's just go there, to the primary appointments, the six—if I can use that term; the half dozen. Did the department notify the shadow minister of the intended appointments or was it the Deputy Prime Minister's office who notified the shadow?

**Mr Kovacic**—It was the Deputy Prime Minister's office. It was—

**Senator ABETZ**—And when did she notify the shadow?

**Mr Kovacic**—There was a letter faxed from the Deputy Prime Minister's chief of staff on 7 December 2009.

**Senator ABETZ**—At what time?

**Mr Kovacic**—I am sorry, I do not know the precise times.

**Senator ABETZ**—Could you please take that on notice?

**Mr Kovacic**—Certainly.

**Senator ABETZ**—And when did the Deputy Prime Minister make the announcement?

**Mr Kovacic**—The announcement was made, I think—just bear with me, I need to check—on 15 December 2009.

**Senator ABETZ**—Sorry?

**Senator JACINTA COLLINS**—I think the opposition was a bit distracted at that particular point in time.

**Senator ABETZ**—Sorry?

**Mr Kovacic**—15 December 2009 was the date of the media release that I have the Deputy Prime Minister announcing the appointment of Fair Work Australia commissioners.

**Senator ABETZ**—That is the half dozen.

**Senator JACINTA COLLINS**—Did the opposition respond?

**Senator ABETZ**—That was on the 15th?

**Mr Kovacic**—As well as the dual appointees.

**Senator ABETZ**—Right.

**Mr Kovacic**—Yes.

**Senator ABETZ**—In that letter that was faxed to the shadow minister—and I think you have got that in front of you—

**Mr Kovacic**—I do not have the letter.

**Senator ABETZ**—You do not have the letter?

**Mr Kovacic**—No.

**Senator ABETZ**—If you can find out for us, please, the time it was faxed and the time that the minister required a response.

**Senator Arbib**—But under Work Choices there was no consultation, was there, because you never consulted with the shadow minister.

**Senator ABETZ**—Can I say: we do not make hollow and sham promises, and when you find out the timetable of when the letter was faxed and the time by which a response had to be back into the Deputy Prime Minister's office, when that comes back on the record with the answers on notice, I think you will find—

**Senator Arbib**—I do not fully know the weeks—

**Senator ABETZ**—that the consultation was a sham.

**Senator Arbib**—I do not fully know the weeks, but I think that was when you were getting your mojo back. It might have been at that time, around those weeks.

**Senator JACINTA COLLINS**—I think the opposition was a bit distracted at the time.

**CHAIR**—Order!

**Senator ABETZ**—It is nice to know that you acknowledge that.

**Senator Arbib**—I do acknowledge that you got your mojo back then.

**Senator ABETZ**—Can I ask, in relation—

**Mr Kovacic**—Certainly. I will take those questions on notice—

**Senator ABETZ**—Yes.

**Mr Kovacic**—but there is a point I would also make in terms of the timing. It was affected by the timing of the passage of the referrals bill, which was in terms of the bill that enabled the states to refer their workplace relations powers to the Commonwealth. It was affected by that.

**Senator ABETZ**—Yes, well, it will be interesting to see the time limit placed in the letter by the Deputy Prime Minister and then the subsequent announcement some days later. One wonders why that limit had to be there.

**Senator JACINTA COLLINS**—More than a week later.

**Senator ABETZ**—But let's talk about the six commissioners and the process—

**Mr Kovacic**—Can I just, on that point, add: there is a step between the consultation with the President and the opposition spokesperson, in the sense that the Deputy Prime Minister needs to take the recommended appointments to cabinet and then to Executive Council, so there are steps between the consultation process and the actual formal announcement that also need to occur.

**Senator ABETZ**—I understand all that, but one wonders what would have happened if these announcements may have been delayed by a day or a week or even two weeks, and I am sure the world would not have stopped.

**Senator JACINTA COLLINS**—The world does not stop for your leadership changes.

**Senator ABETZ**—In relation to the six, there was a selection process; a shortlist was provided to the minister of 25 potential applicants.

**Mr Kovacic**—In the order of 25, yes.

**Senator ABETZ**—Are you able to confirm that number on notice for us?

**Mr Kovacic**—Yes.

**Senator ABETZ**—I do not want to know the names of course of those that were being considered, but on that shortlist of 25—I am sure it was purely based on merit, like Mike Kaiser; we just happen to have five out of the six with a trade union background—how many of them had a background in the trade union movement?

**Mr Kovacic**—I will take that on notice, but—

**Senator ABETZ**—Yes, thank you.

**Mr Kovacic**—given that I chaired the panel that made the recommendations in terms of the shortlist, and was joined on it by a representative of the Public Service Commissioner, I can give you the sense that as a general rule—and as you would probably appreciate—merit selection processes live or die by the quality of applicants that actually apply for positions. On this occasion I would have to say that, in terms of depth of quality of applications from people with an employer background, that was lacking. That is, I think one of the practical difficulties—



**Senator ABETZ**—That is all very nice justification. Can you please tell me the number who just happened to make it on the shortlist that had a trade union background? We know that five out of the six of the final appointees that came out of the sausage machine had a union background. I would just like to know how many with a union background were loaded into the sausage machine before those other six came out.

**Ms Paul**—But note that this was a merit selection process. So it did have the—

**Senator ABETZ**—Of the 25—

**Senator JACINTA COLLINS**—Not jobs for the boys.

**Senator ABETZ**—the minister then used—and that is the right of an elected government to make these choices, but the 25 were selected—right?—that were presented to the Deputy Prime Minister from which she was to then make a selection of six.

**Ms Paul**—And Mr Kovacic has simply confirmed that he conducted himself, with an independent representative of the Public Service Commission, a merit process—

**Senator ABETZ**—To get to the 25.

**Mr Kovacic**—That is correct.

**Ms Paul**—That is right.

**Senator ABETZ**—And then those 25—

**Ms Paul**—And the calibre of the employer applicants was, most unfortunately, lacking in a relative sense.

**Senator ABETZ**—Very defensive! All I am asking is: out of the 25, who had a union background?

**Mr Kovacic**—I have taken that on notice.

**Senator ABETZ**—Thank you very much.

**Senator Arbib**—Can I just remind you of your record: 20 appointments between 1996 and 2007 and only two of them had union backgrounds.

**Senator BILYK**—What did the others have?

**Senator Arbib**—Eighteen had business backgrounds.

**Senator BILYK**—Where did the others come from?

**Senator Arbib**—Three were former staffers, including Reith's staffers, so Mr Reith's staffers as well. So I think, when you compare records, there is a pretty stark contrast.

**Senator ABETZ**—Once again, it was like the notice given to the shadow.

**Senator BILYK**—How many were women?

**Senator ABETZ**—We did not make shallow, hollow promises which then, when you have a look at the actual numbers—and you have basically confirmed my point, Minister—

**Senator Arbib**—You just stacked it. You stacked the appointments.

**Senator ABETZ**—Of course, five out of six trade unionists is not a stack if you are in the Labor Party! That is not a stack.

**Senator Arbib**—You know about branch stacking in Tasmania—

**Senator ABETZ**—That is not a stack.

**Senator Arbib**—and you certainly know about branch stacking here.

**Senator ABETZ**—Senator Arbib, I do not think you would want to go there at all.

**Senator Arbib**—It is on the record. It is all on the record.

**CHAIR**—Let's move on. I think Senator Bilyk wanted to clarify something.

**Senator Arbib**—It is all on the record in the newspapers.

**Senator ABETZ**—We do not make these sham, hollow promises like you did before the last election, where the figures—

**Senator BILYK**—I have a question.

**Senator ABETZ**—miraculously were like ours but, it seems, the other way around.

**Senator Arbib**—Twenty appointments, 18—

**Senator BILYK**—I have been here for—

**Senator JACINTA COLLINS**—The ratio is nowhere near yours, Senator.

**CHAIR**—Senator Bilyk wanted to clarify a point.

**Senator BILYK**—I just want to clarify something.

**CHAIR**—Then I will come back to you, Senator.

**Senator BILYK**—How did people find out about those positions? Were they advertised?

**Mr Kovacic**—They were advertised in the national press. In terms of the Minimum Wage Panel appointments, they were advertised in early April and the appointments as commissioners were advertised on 7 and 8 August.

**Senator JACINTA COLLINS**—And prior to that?

**Senator BILYK**—So basically, as long as you met the criteria, you could apply. Is that right?

**Mr Kovacic**—It was open application. For instance, in respect of the Minimum Wage Panel, we received 103 applications. In respect of the Fair Work Australia commissioners, we received 149 applications.

**Senator BILYK**—In regard to the previous government's appointment of those 20 individuals, can someone tell me how many were female?

**Mr Kovacic**—I think it was one.

**Senator JACINTA COLLINS**—What was the application process during that period?

**Mr Kovacic**—There were no positions that were not advertised. They were all matters for government.

**Senator ABETZ**—Minister Gillard indicated on 19 January, when asked, that she refused to rule out—in other words, she was considering—possibly taking action against public school teachers under the Fair Work Act. Can that be confirmed?

**Ms Paul**—She is still considering it. The position of the—

**Senator ABETZ**—I do not need any more detail. She is still considering that? That is fine.

**Ms Paul**—The union will—

**Senator ABETZ**—I do not want any more detail on that, thanks.

**Ms Paul**—That is simply because the union has not itself finalised its position on it.

**Senator ABETZ**—Yes, that is fine. On what other occasions has she considered taking action under the Fair Work Act against a union? Have there been other cases where active consideration has been given to her intervening?

**Mr Kovacic**—I will take that on notice. Off the top of my head, I am not aware of any.

**Senator ABETZ**—Only the one? Pluto, Western Australia, all those things, can go—

**Mr Kovacic**—But invariably compliance issues are—

**Senator ABETZ**—But if her education—

**Mr Kovacic**—I think it is fair to make the point that, in terms of compliance, those matters are invariably dealt with by organisations such as the Fair Work Ombudsman and, in respect of the building industry, the ABCC.

**Senator ABETZ**—But the minister could intervene in other matters, could she not? She is not giving active consideration, we believe, but you are going to take it on notice, and that is fine. We will look forward with interest—

**Senator Arbib**—How many times did coalition ministers intervene?

**Senator ABETZ**—Believe it or not, you are in government. You are responsible for your decisions.

**Senator Arbib**—I know, but I am asking you a question.

**Senator ABETZ**—I want to see what matters your minister gets excited about and thinks about intervening in. When you have multibillion-dollar projects at stake, it is all hands off, but when it is the My School website, all of a sudden, ‘Oh, this requires the minister’s active intervention.’ But we will see how it all plays out.

**Senator Arbib**—I think historically there was one intervention from the minister.

**Senator ABETZ**—Can I ask whether a bargaining representative can seek—no, we know that, I think, because Fair Work Australia has confirmed it.

**Mr Kovacic**—Can we come back to your question in terms of interventions per se. I may have interpreted it narrowly, because clearly the minister has intervened in a number of matters, both in an award modernisation context, as I mentioned before, to make submissions. Most recently, last Friday she intervened in the appeal proceedings relating to the commission’s decision in respect of Woolworths.

**Senator ABETZ**—Yes, we know that, and she has written to Fair Work Australia as well on award modernisation matters. We know all that. We know the sort of matter I am talking about, and that is in relation to proposed industrial actions such as the education union are or were considering.

**Mr Kovacic**—In that case, I have taken the question on notice.

**Senator ABETZ**—Yes, thank you, and that is why I had moved on. I will turn to the Australia Post decision that was appealed—and confirmed, as I understand it—that a bargaining representative can seek non-permitted content and at the same time still be genuinely trying to reach agreement. Is that what we were anticipating the decision would be? Is this, Minister, what the government had hoped? With new legislation, the government may have a view as to what it will mean. It then gets interpreted in a different manner, as a result of which the government says, ‘Well, that isn’t what we meant, so we’ll amend the legislation.’ Without going into the detail, all I want to know is whether the decision of the full bench on appeal is a decision that the government is comfortable with.

**Mr Kovacic**—Certainly the minister did not intervene in those appeal proceedings. In terms of the matter itself, I have just been given some material. The full bench agreed with the original decision of Commissioner Roberts.

**Senator ABETZ**—With respect, I know all that. Is the government comfortable with the decision or is the government of the view that this is an interpretation that it had not anticipated and therefore it might amend the legislation?

**Mr Kovacic**—I am unable to comment in terms of the level of—

**Senator ABETZ**—All right. If the minister can take that on notice.

**Senator Arbib**—I am happy to check that with the Deputy Prime Minister.

**Senator ABETZ**—Thank you very much. The National Tertiary Education Union had announced at one stage that it had set a floor under expected pay outcomes, and it seems that such apparent inflexibility is still deemed to be bargaining in good faith. Was that an outcome that was anticipated by the government when it considered how this legislation was worded?

**Mr Kovacic**—The issue of whether the NTEU was bargaining in good faith with individual higher education institutions would need to be determined on the facts of each particular matter.

**Senator ABETZ**—Yes, and they had set a floor at which they said they were not prepared to deal and, as I understand it, Fair Work Australia said that that is still good faith bargaining. I might have that wrong, but I want to know whether somebody can say: ‘I’m going to engage in good faith bargaining, but this is my bottom line. We can sit here for five or six days, but this is my bottom line and I’m not going to budge.’ Is that considered to be good faith bargaining under this legislation and is that what was intended?

**Mr Kovacic**—The provisions of the Fair Work Act relating to good faith bargaining are essentially a range of procedural issues in terms of requirements going to parties having to meet and also to refrain from capricious action.

**Senator ABETZ**—With great respect, I know all that.

**Mr Kovacic**—Whether a party is bargaining in good faith would need to be determined on the facts of the particular case.

**Senator ABETZ**—The fact is that in this case—

**Mr Kovacic**—Without knowing the specifics, what I am inferring from the nature of your question is that, in particular instances on this occasion, Fair Work Australia has determined that the NTEU may have been bargaining in good faith.

**Senator ABETZ**—I know all that. I am asking: is the government satisfied and did it intend that its legislation would have such an outcome? The answer is either yes or no: ‘We’re happy with that decision,’ or ‘We’re not happy with that decision. As a result, we’re going to amend the legislation.’

**Mr Kovacic**—In terms of whether the government is happy or not with a particular decision, I am unable to comment.

**Senator ABETZ**—I know. That is why I am asking the minister: what is the government’s policy position in relation to this matter?

**Senator Arbib**—I will seek out that information.

**Senator ABETZ**—Thank you very much. In relation to the possibilities in good faith bargaining, I understand that employers can be asked, or indeed told, to open their books. Is that correct?

**Ms Perdikogiannis**—The good faith bargaining obligation is disclosing relevant information, other than confidential or commercially sensitive information—

**Senator ABETZ**—Yes, so—

**Ms Perdikogiannis**—in a timely manner. As for the question about whether information is relevant: again, we all depend on the nature of the bargaining that is going on and the circumstances of the particular case.

**Senator ABETZ**—Of course, where employers are asked to open their books in these circumstances, undoubtedly it relates to capacity to pay and matters of that nature. Is that right?

**Mr Kovacic**—There is some case law around this. There is one—and I was just questioning which particular case it is. The broad situation is that there was a union—and I think it was the AMOU in respect of a Woolies matter—which was basically seeking that the employer divulge the notes that it took in the bargaining negotiations, and on that particular occasion Fair Work Australia deemed that the employer was not obliged to provide that sort of information. So, again, those sorts of decisions would—

**Senator ABETZ**—But what about their financials in relation to capacity to pay?

**Mr Kovacic**—Again, it would depend on the sort of information that was sought. Really, it would be something that would need to be determined on a case-by-case basis.

**Senator ABETZ**—All right. Can an order then be made, on the other side of the table, to require employees or unions to open their books in relation to their side of the issue?

**Mr Kovacic**—It is very difficult to envisage how that might be relevant to the bargaining context.

**Senator ABETZ**—The business might say, ‘We can’t afford to pay, and I reckon you guys are on a pretty good wicket. Would you mind disclosing all your household expenditure and how much you spend on this and that to make out the case as to whether you actually need

this 30 per cent pay rise, for example, in north-west Western Australia to get a pay rise from \$130,000 to \$180,000? I am just wondering whether it potentially works both ways to require people to justify their claim.

**Mr Kovacic**—In terms of the requirement to share information, if I can use that terminology, to the extent that it is relevant to the bargaining process and Fair Work Australia considers it is important, Fair Work Australia could make an order.

**Senator ABETZ**—It can make an order the other way as well, against unions and employees?

**Mr Kovacic**—Sharing information in the particular scenario that you have pointed to is something that would need to be determined on the facts of the particular matter.

**Senator ABETZ**—But there is a specific power, isn't there, in the legislation in relation to employers? Is that right?

**Ms Perdikogiannis**—The obligation is to disclose relevant information.

**Senator ABETZ**—On all parties?

**Mr Kovacic**—Exactly.

**Ms Perdikogiannis**—Yes.

**Senator ABETZ**—On all parties?

**Mr Kovacic**—That is correct.

**Senator ABETZ**—All right. So in that case that is fair and reasonable, because you are telling me it applies equally to all parties. Is that right?

**Mr Kovacic**—That is correct.

**Senator ABETZ**—Because the information I had received was that it was only for the employer side. So that is good. Thank you for that. The Prime Minister told us, in relation to the Matthew Spencer case—and this is for the minister; this is the young fellow at the hardware store in western Victoria—that basically you make no apologies. This young man might lose his job—because Mr Rudd said the awards were put in place to protect basic conditions.

**Senator JACINTA COLLINS**—I do not think that was all he said.

**Senator ABETZ**—Take the tip: when Kevin Rudd opens his mouth, he says a lot more than that. That would have to have been one of his shortest sentences, I agree with that, Senator Collins, but that is what I have distilled out of the whole lot of verbiage that came out on 3AW. In relation to the vehicle manufacturing and retail modern award, whatever its correct title is, is there a similar requirement that young people be clocked on for a minimum of three hours?

**Mr Kovacic**—There is, I think, in respect of that award, a minimum engagement period for part-time employees, but for casual employees my understanding is that there is no minimum engagement period.

**Senator ABETZ**—That is right. So Mr Rudd says these awards—

**Mr Kovacic**—Can I just add that, in terms of the award modernisation process, the approach that the commission adopted to deal with the very complex task of trying to reduce numerous instruments into a modern award has been, invariably, to pick up the most commonly applied provision in pre-existing instruments and reflect that in the modern award.

**Senator ABETZ**—Yes, I know all that, thank you. What we have, Minister, is the Prime Minister saying that these awards were put in place to protect basic conditions. So, if Matthew Spencer as a casual wants to work at the hardware store, he has to be clocked on for three hours even if he is not available and even if the business is not open for that three-hour period. But, if Matthew Spencer were to cross the road and work at the local service station after school, this important basic condition would just disappear. Can we be given some understanding of the Prime Minister's thinking as to why this is such a fundamental, basic condition for Matthew Spencer working in a hardware store but not for Matthew Spencer working at the local petrol station?

**Senator Arbib**—I think, as you know, minimum shift provisions are longstanding arrangements in many awards. I think that is understood.

**Senator ABETZ**—I accept that.

**Senator Arbib**—And it is an important community standard that prevents employees from having to work very short shifts that might not even cover their costs of getting to work and getting home.

**Senator ABETZ**—And I can understand that.

**Senator JACINTA COLLINS**—And they vary.

**Senator Arbib**—That is exactly right. So in this case—

**Senator ABETZ**—Yes, but why does it depend on which side of the road Matthew wants to work on?

**Senator JACINTA COLLINS**—No, which industry.

**Senator ABETZ**—All right, in which business—selling hardware items as opposed to pumping petrol—

**Senator JACINTA COLLINS**—Because they vary.

**Mr Kovacic**—That is right.

**Senator ABETZ**—There is a huge material difference in the skills required.

**Mr Kovacic**—Can I just assist in terms of the retail area which relates to the hardware store.

**CHAIR**—I think that would be good.

**Mr Kovacic**—The pre-existing industrial instruments that applied in this area predominantly provided for a minimum engagement period of three hours for casuals, the exceptions being in Victoria where the minimum payment was for a period of two hours. There are also a couple of exceptions: one in South Australia where, in respect of junior casuals working between the hours of 4.00 pm and 6.00 pm on weekdays, the minimum engagement period was 1½ hours—

**Senator ABETZ**—That is all very interesting—

**Mr Kovacic**—and also in respect of casuals. If I can bring you back to—

**Senator ABETZ**—No, sorry.

**Mr Kovacic**—No, the process—

**Senator ABETZ**—I was asking—

**Senator JACINTA COLLINS**—Mr Kovacic is still answering—

**Senator ABETZ**—No, I was—

**Ms Paul**—And it is—

**Senator ABETZ**—asking about—

**Ms Paul**—absolutely essential—

**Mr Kovacic**—The process the commission adopted—

**CHAIR**—Order!

**Mr Kovacic**—was to reflect—

**Senator ABETZ**—I was not asking that. I was asking the minister about the Prime Minister's—

**Mr Kovacic**—Yes.

**Ms Paul**—This is essential information to get the context of this particular case.

**Mr Kovacic**—In this case, what the commission has done is consistent with its general approach in terms of developing modern awards.

**Senator ABETZ**—Can you tell us whether we can take a tea-break during this and just come back when you have finished?

**Senator JACINTA COLLINS**—I am interested, if you are not.

**Mr Kovacic**—It is to pick up the most—

**Senator ABETZ**—That is just winding down—

**Mr Kovacic**—commonly applied provisions in the pre-existing awards.

**CHAIR**—Senator Abetz—

**Senator ABETZ**—This is winding down the clock.

**CHAIR**—your question was very politically charged and—

**Senator ABETZ**—And that is why it was directed to the minister and not to the officials, and the fact that the official deliberately intervened—

**Senator JACINTA COLLINS**—Senator Abetz, why do you not want the facts on record?

**Senator ABETZ**—is, I must say, a matter of concern.

**CHAIR**—And it is appropriate that there is a proper answer to what you are seeking, so Mr Kovacic—



**Senator ABETZ**—And that is why, because it was politically charged, I asked the minister, not the officials—

**Senator Arbib**—What, you admit it is politically charged!

**Senator ABETZ**—but the official has deliberately sought to intervene.

**Mr Kovacic**—What I was doing is providing some contextual information which I think is important. The other point that I would make is that, in terms of the consultation phase of the award modernisation process, I am aware of one employer organisation suggesting that there should be a capacity to bargain a lower minimum engagement period, but following the commission issuing a draft modern award which provided for a three-hour minimum engagement for casuals, to the best of my knowledge, no employer organisation has raised any concerns with that period of minimum engagement.

**Senator ABETZ**—That was singularly unhelpful but wound down the clock for a few minutes.

**Senator JACINTA COLLINS**—I thought it was very useful.

**Senator ABETZ**—Can I move on to Comcare. In relation to the moratorium that the minister announced, what legal effect did that have? Was it legally effective?

**Ms Baxter**—Are you referring to the moratorium that the minister announced in 2007?

**Senator ABETZ**—That is it—11 December, I think, 2007.

**Ms Baxter**—That is right, yes.

**Senator ABETZ**—Let's cut through: when were instructions for the Safety, Rehabilitation and Compensation Amendment Bill sent to the drafters?

**Mr Kovacic**—We would have to take that on notice.

**Senator ABETZ**—Was any legal advice received by the minister or department in relation to the validity of the moratorium? I know I am not allowed to be told what that advice was, but I want to know whether advice was received.

**Ms Baxter**—Minister, I would need to take that on notice to check the exact nature of the advice provided to the minister. There was advice provided. Whether or not it encompassed—

**Senator ABETZ**—Pre moratorium or post-moratorium announcement of 11 December. If you could let me know that as well.

**Mr Kovacic**—We will need to take that on notice.

**Ms Baxter**—We will take that on notice.

**Senator ABETZ**—If you could let me know that as well. When was the need for the legislation first considered, if you can take that on notice as well.

**Ms Baxter**—I will. Thank you, Senator.

**Senator ABETZ**—I think that covers that. Thank you very much. Is somebody able to tell me, under the new regime commencing on 1 January, what new rights came to employers, other than the capacity to pay less in certain circumstances until take-home orders were made?

**Senator Arbib**—I wish you had shown that concern during Work Choices.

**Mr Cully**—The general protections that are contained in part 3-1 of the act do contain some new rights for employers. There are enhanced protections against coercion. Previously coercion was largely only prohibited in relation to agreement making and in some areas the freedom of association.

**Senator ABETZ**—Wait a minute, sorry. There was protection against coercion previously?

**Mr Cully**—In certain circumstances.

**Senator ABETZ**—Yes, previously. Right.

**Mr Cully**—But that has been enhanced to cover coercion in relation—

**Senator ABETZ**—All right. What else?

**Mr Cully**—There is also a protection for employers from being coerced to engage particular people and to engage people in particular areas, which is a provision that was lifted from the building act.

**Senator ABETZ**—And that was not there previously?

**Mr Cully**—No, it was not there previously.

**Senator ABETZ**—Right.

**Mr Cully**—And there is also much greater protection against misrepresentations.

**Senator ABETZ**—Greater protection?

**Mr Cully**—Yes, significantly greater.

**Senator ABETZ**—What I am seeking to explore is—and we always massage and nuance them, let's say—the coercion and misrepresentation provisions; and they are not new rights. I think you described them appropriately as enhanced rights.

**Mr Cully**—I would possibly describe them as—

**Senator ABETZ**—But the middle one you said was a new right.

**Mr Cully**—Yes.

**Senator ABETZ**—Are there any others that did not previously exist? For example, you could say that increasing a penalty for something provides an employer with new rights or greater protection because the threat of a higher fine might protect them more. I understand all that. What I am trying to seek is actual new rights; something that was not part of the legislative framework before.

**Mr Kovacic**—That distinction that you have just made is not an accurate distinction. For instance, in terms of the greater protection against coercion, under the previous workplace relations act that was largely limited to agreement making. It now applies to all workplace rights or engaging in industrial activities, as defined in the act. So it is a much wider range of issues that are covered by those provisions in terms of coercion. I think that is significant enough to actually recognise it as new rights for employers.

**Senator ABETZ**—We can debate whether it is enhanced or not. I feel sorry for Mr Cully, who said it was enhanced. You are now saying it is new.

**Ms Paul**—It is a right that was not there before in that broad sense.

**Senator ABETZ**—I do not want to get involved in that intradepartmental discussion. Are there any other new rights that you can point to, or do you want to that on notice?

**Mr Kovacic**—In terms of rights, we would take on notice the question—

**Senator ABETZ**—All right. Thank you.

**Mr Kovacic**—of whether we can identify any others. But I also would point to the benefits of the national system and I would again refer to—

**Senator ABETZ**—Please! I am talking about new rights under the legislation.

**Ms Paul**—This is answering your question, Senator.

**Senator Arbib**—This is the Holy Grail. You talked about it yourself and you never had the guts to do anything about it.

**Mr Kovacic**—The Access Economics modelling indicated that the benefit to employers was \$4.56 billion over the next 10 years.

**Senator ABETZ**—Please! I have already quoted that before. It is even on the record courtesy of me, to avoid this sort of winding down of the clock, with great respect.

**Mr Kovacic**—I am trying to provide a comprehensive answer.

**Senator Arbib**—You asked about rights, and here are benefits, so—

**Ms Paul**—I think Mr Kovacic is simply trying to answer the question.

**Senator ABETZ**—Can I ask what the department's view is in relation to the very substantial cost of workplace bullying, as disclosed by the Productivity Commission's draft report that has just been released. I would have thought that is a matter of concern for many Australians, irrespective of what industry et cetera. Do you have any involvement or input to assist Fair Work in, let's say, developing their occupational health and safety national framework—whatever we call it.

**Ms Paul**—We did not have input to that, but it is a really important issue.

**Senator ABETZ**—It is, hugely.

**Ms Paul**—It is a new piece of information and we will have a good look at it. We certainly have a policy interest in wellbeing in the workplace and so on. While we have not really had input up to this date, now that that report is there we will be having a look at it to see if there are policy implications. Absolutely, we will.

**Senator ABETZ**—All strength to your arm, and I wish you well with it.

**Mr Kovacic**—In terms of input into the work that Safe Work Australia is doing more broadly with model OHS, as a jurisdiction in our own right we would have input by virtue of that as well.

**Senator ABETZ**—Yes, I asked them earlier on.

**Senator Arbib**—We did talk about that before in terms of the new model laws being based on the Victorian OH&S act where the offence provides for imprisonment and, if the elements of the offence are proven, a bully could be sent to gaol. So this is in the new OH&S.

**Senator ABETZ**—Thank you for that. Can I ask what advertising has been undertaken in relation to the opportunity for people to apply for take-home orders, or is that something that only Fair Work Australia would be involved in?

**Mr Kovacic**—Certainly Fair Work Australia, as we have discussed earlier today, have material available on their website. The Fair Work Ombudsman, by way of both their website as well as through their fair work information line, would be able to provide information to people about take-home pay orders. I would need to check whether it has also been canvassed in the context of some of the educative activities through the Fair Work education and information program that is run.

**Senator ABETZ**—That is what I was about to get onto, and I think Senator Cash might have some questions on that campaign. Part of that was Fair Work Week, where the minister went around. Are we able to be told how many small businesses she visited during that tour around Australia?

**Mr Kovacic**—I would take that notice.

**Senator ABETZ**—All right.

**Mr Kovacic**—But I recall there were certainly two small businesses in Adelaide.

**Senator ABETZ**—That would have been public, as in with a media event?

**Mr Kovacic**—I think all of the events that were part of Fair Work Week were public.

**Senator ABETZ**—If you are able to without offending privacy principles, could let us know the names of those businesses? That would be helpful. Thanks.

**Mr Kovacic**—Certainly.

**Senator ABETZ**—How are you assessing the success of Fair Work Week, if at all?

**Mr Kovacic**—The purpose of Fair Work Week was really to highlight to employers and employees the commencement of—

**Senator ABETZ**—We know that, with respect. How are you measuring its success?

**Mr Kovacic**—And, secondly, to raise awareness in terms of where people could actually go to get information about the new system.

**Senator ABETZ**—We know that. How are you measuring its success?

**Mr Kovacic**—Probably the best indicator would be the volume of inquiries that the Fair Work information line received during the course of that week, and I think there was evidence provided earlier today by Nick Wilson that—

**Senator ABETZ**—So that is how we measure it: calls to the info line.

**Mr Kovacic**—Certainly, that is correct, but also the nature of those calls and hits on the website; those sorts of issues.

**Senator ABETZ**—Yes, all right. Anything else? So calls to the info line, website hits—

**Mr Kovacic**—Downloads in terms of the fact sheets and the best practice guides that the Fair Work Ombudsman has.

**Senator ABETZ**—Including me yesterday, no doubt, on the Fair Work Australia website and getting a ‘no’ result.

**Senator Arbib**—So you say. How are you going to prove it, though?

**Senator ABETZ**—We will revisit that in due course.

**Senator JACINTA COLLINS**—Where are we going to revisit that?

**Senator ABETZ**—At the next estimates.

**CHAIR**—We will have more time then.

**Senator ABETZ**—I am sure we will. What conditions accompanied the Fair Work Education and Information grants the government provided?

**Mr Kovacic**—Each of the grants is underpinned by a funding agreement. I will ask the officer to come up.

**Senator ABETZ**—Are you able to provide us with such an agreement?

**Mr Kovacic**—I will just check whether we might have done so in the past. I will take on notice whether we can actually provide that.

**Senator ABETZ**—All right, thank you—because some extra money was announced during Fair Work Week, wasn’t it: an extra \$10 million?

**Mr Kovacic**—That is correct.

**Senator ABETZ**—Where did that go?

**Mr Kovacic**—That is going to the Union Education Foundation.

**Senator ABETZ**—So, overall, how much?

**Mr Kovacic**—There was also an additional \$2.7 million for the Workplace Ombudsman.

**Senator ABETZ**—Anything for the other side of the equation?

**Mr Kovacic**—If you look at the money that the government has invested in terms of information and education activities around the Fair Work framework, it is in the order of \$30 million. The bulk of that money, something in the order of \$17 million, has been directed towards business, and the remaining \$13 million has been directed to employees.

**Senator ABETZ**—With the calls on the info line, is the department monitoring how many of those are in fact from employees?

**Mr Kovacic**—That info line is for the Fair Work Ombudsman.

**Senator ABETZ**—Yes, I know that, but are you—

**Mr Kovacic**—We share information in terms of a whole range of issues around implementation of the fair work system and some of that information would go to the nature of the calls, the volume of calls and the nature of inquiries that they are receiving.

**Senator ABETZ**—And Fair Work Australia have their own separate info line?

**Mr Kovacic**—We have also had regular discussions with Fair Work Australia around some issues in terms of implementation. I would have to take on notice whether it canvasses the nature of calls they get to their info line.

**Senator ABETZ**—I think the evidence this morning was, just in rough terms, that two-thirds of the calls were in fact from employees and one-third from employers.

**Mr Kovacic**—That is not surprising, in the sense that many employers would go to employer organisations as well.

**Senator ABETZ**—There are a stack more employees than employers. It makes sense.

**Ms Paul**—Just on the numbers of population versus number of employers, it makes a bit of sense, doesn't it?

**Senator ABETZ**—I think it all stands very much to reason. Mr Smythe, I think you may have been there but you no longer are our Special Labour Adviser, ILO, in Geneva—we currently have a Mr Greg Vines?

**Mr Kovacic**—That is correct.

**Senator ABETZ**—How was he appointed?

**Mr Kovacic**—A merit selection process.

**Senator ABETZ**—Without doubt.

**Mr Kovacic**—The position was advertised. It is a departmental position, so the process was consistent with the SES merit selection processes that are overseen by the Public Service Commission.

**Senator ABETZ**—Just a rough stab: has he ever held a trade union position?

**Mr Kovacic**—I think at some stage in the past, but certainly he joined the department from the Victorian public service.

**Ms Paul**—That appointment is covered by the Public Service Act.

**Mr Kovacic**—That is correct.

**Ms Paul**—So the merit selection processes in there are complied with.

**Senator ABETZ**—I am sure. When was he appointed? On Mr Smythe's return?

**Mr Kovacic**—No, it would have been before that in terms of time to enable a handover period.

**Senator ABETZ**—Yes, fair enough.

**Mr Kovacic**—The process I think roughly would have been finalised in April-May of last year, but I will take that on notice if you want a more precise timeframe.

**Senator ABETZ**—If you could. Pretty good gig, Mr Smythe?

**Mr Smythe**—I am unfamiliar with that terminology.

**Senator ABETZ**—I do not expect you to answer that.

**Senator Arbib**—Do you think you could do a better job?

**Senator ABETZ**—I have absolute confidence I could do a better job than Mr Vines—

**Mr Kovacic**—He described it to me as a hardship post.

**Senator ABETZ**—who is a former trade union official from Tasmania, with not the best of records behind him, but that is fine. Has the department monitored how Fair Work Australia is dealing with inquiries from small business and employees, or is that basically left to them to administer?

**Mr Kovacic**—Fair Work Australia is an independent statutory body, so in terms of the management of those sorts of issues, they are issues for Fair Work Australia. I mentioned before that I would take on notice the extent to which we share information about the nature of calls they receive.

**Senator ABETZ**—Clearly you must share information, because you were of the view earlier on that the description I read out about modern award implementation was not shared by you, and I assumed you had come to that conclusion from information received?

**Mr Kovacic**—No, that is not based on information I have received from Fair Work Australia.

**Senator ABETZ**—All right. So how have you come to that conclusion?

**Mr Kovacic**—The conclusion in terms of the issue of whether people have been disadvantaged as a result of award modernisation?

**Senator ABETZ**—No, that there is confusion amongst workers.

**Mr Kovacic**—That is in terms of the discussions that I have had both with the Fair Work Ombudsman, in terms of the nature of calls that they have received, and a range of stakeholders more broadly.

**Senator ABETZ**—Such as?

**Mr Kovacic**—Industry organisations, unions and employers, individual employers.

**Senator ABETZ**—Clearly not with HACSU and ANF. That is fine. So it is, if I might say with respect, as a result of information received by you from the Fair Work Ombudsman and from the stakeholders that you interact with on a daily basis?

**Ms Paul**—I think Mr Kovacic has already agreed with that.

**Senator ABETZ**—And can I say, nothing surprising with that.

**Ms Paul**—No, that is right. Absolutely.

**Senator ABETZ**—Yes, but why, when I said ‘from information received’, the *Hansard* will disclose that it was disagreed?

**Senator Arbib**—And the evidence you are relying on is two press releases and five people on your shame file?

**Senator JACINTA COLLINS**—And ignoring a press release as well.

**Senator Arbib**—I mean, come on!

**Senator ABETZ**—Why did you, Mr Kovacic, say it was not from information received, whereas now it is quite clear—

**Mr Kovacic**—No, what I think you were suggesting was that it was from information received from Fair Work Australia and I was drawing the distinction that we had not received it from Fair Work Australia.

**Ms Paul**—That certainly was what he was saying.

**Senator ABETZ**—Right, not from Fair Work Australia, but from all these other people. I see.

**Mr Kovacic**—If I incorrectly drew that inference, I apologise.

**Senator ABETZ**—No, understood. We can potentially be talking past each other on these things, so I accept that. Does the department have a special section in it for the small business sector or any officers particularly responsible for the small business sector?

**Mr Kovacic**—We do not have a separate unit that focuses on small business, but the small business issue would be canvassed, for instance, in our Private Sector branch. It would also be an issue that would be taken into account in terms of workplace relations policy issues which may have implications for small business, so in a generic sense we would look at the issue.

**Senator ABETZ**—So, along with everything else, small business is considered, but special attention is not given to small business as opposed to other stakeholders in the portfolio?

**Ms Paul**—Special attention might be given to small business but it could be given across a range of areas. What we are saying, simply, is there is not a structure.

**Senator ABETZ**—All right. It is like Kevin Rudd. He has about 20 No. 1 priorities. You do not have a special unit for it?

**Ms Paul**—We do not have a unit. That is correct.

**Senator ABETZ**—Yes, all right. You do not have a special unit for small business.

**Senator Arbib**—But the Fair Work Ombudsman has a small business education unit and the Ombudsman is the primary source of education for small business.

**Senator ABETZ**—I understand that, but I was just wondering in relation to the department itself—

**Senator Arbib**—Sure. I am just making sure that—

**Senator ABETZ**—to help advise the government about the needs of small business in the Employment and Workplace Relations portfolio.

**Ms Paul**—We simply have not structured ourselves like that, nor do we have a structure for multinational and so on. That is not the focus. The focus is policy, legal et cetera.

**Senator ABETZ**—Can I say, in general terms, multinationals are usually big and ugly enough to look after themselves—

**CHAIR**—You guys seemed to look after them pretty well!

**Senator ABETZ**—and small business is the engine room—I am sure that was not the chair making that comment!

**Senator JACINTA COLLINS**—The engine room of?



**Senator ABETZ**—whereas the small business sector is the engine room for employment growth.

**Senator JACINTA COLLINS**—Well, that is—

**Senator ABETZ**—Do we accept that small business is still the area that is providing employment growth within our nation?

**Ms Paul**—I am simply commenting it is not the way the department has structured itself. But of course these issues for small business come up in various areas.

**Senator ABETZ**—Sorry, but does the department know where there is employment growth within our economy?

**Ms Paul**—Do you want us to go into employment growth?

**Mr Kovacic**—Suffice to say that small business is certainly an important part of the economy.

**Ms Paul**—Of course it is. It is a very important part of the economy.

**Senator ABETZ**—Right. Good. Can I ask in relation to the ABCC and the proposed legislation, how would that work in relation to the minister's—how do we describe it—power to direct the building inspector or inspectorate?

**Mr Kovacic**—Is this in terms of the generic provisions of the capacity for the minister to make a direction, or a specific question about the amendments that were announced by the Deputy Prime Minister last week?

**Senator ABETZ**—The amendments. The press release, 4 February 2010, headed:

Government proposes changes to toughen building inspectorate.

**Mr Kovacic**—That is right.

**Senator ABETZ**—You have got that press release?

**Mr Kovacic**—I have it in front of me.

**Senator ABETZ**—Four paragraphs down:

The amendments announced today would give the Minister the power to direct the Building Inspectorate about the allocation of resources, ensuring that the Building Inspectorate's resources are targeted effectively ... and ensure that those who contravene the law face tough ...

et cetera. What is the extent of the minister's power there?

**Mr Kovacic**—If I could also take you to the next paragraph, it says:

... it comes as no surprise that the sort of situations and locations the Government has in mind include the recent unlawful industrial action occurring in northern Western Australia.

So it is in circumstances where you might have an industrial hot spot—for want of a better description—in the building and construction industry, where the minister would be of the view that there may not be adequate resources in that location by the Director of the Building Industry Inspectorate. The minister would have the capacity to direct that the director redirect resources to focus attention on that area—

**Senator ABETZ**—Yes, the poor little thing! The building inspectorate would not know where the hot spots were and how to deal with them and would need the benefit of the minister to direct the directorate.

**Mr Kovacic**—It would be in those circumstances where the minister forms a view that the director may not have put adequate resources into a particular area.

**Senator ABETZ**—Right.

**Mr Kovacic**—The point I would make is that any such direction would be a disallowable instrument by the parliament.

**Senator ABETZ**—Does that say that anywhere here?

**Mr Cully**—It does not say it in the amendment, but the amendment is simply adding to an existing provision of the bill about directions by the minister, and the bill already provides that those directions under section 11 will be disallowable instruments.

**Senator ABETZ**—That is very helpful and new information for us, so thanks for that. So that would be a disallowable instrument and, as a result, the parliament would be told about any such ministerial direction.

**Mr Cully**—Yes, it would.

**Senator ABETZ**—By virtue of the regulations.

**Mr Cully**—As a legislative instrument it would have to go onto the register of legislative instruments and would also have to be tabled, yes.

**Senator ABETZ**—Could it work the other way, potentially: where the inspectorate is of the view that we have got an industrial hot spot but—and I do not want to be political here—the power exists for the minister and the political hot spot happens to be a mate of his or her who sees the inspectorate starting to move resources to deal with this problem, potentially the minister could intervene to redirect those resources away from the hot spot, albeit we have the safety valve of it being a disallowable instrument in the parliament?

**Mr Kovacic**—That is likely to be inconsistent with the provisions in the legislation because there is likely to be a direction about a particular case which would not be permissible under the current legislation or under the bill.

**Senator ABETZ**—Wait a minute. We said ‘hot spots’. So the minister has already identified a particular situation in the press release.

**Mr Kovacic**—The way that you framed the question is taking it in to do with a particular matter. In those circumstances it would be arguably a direction about a particular case, in a general sort of sense.

**Senator ABETZ**—But wait a minute. Ms Gillard says:

... it comes as no surprise that the sort of situations and locations the Government has in mind include the recent unlawful industrial action occurring in northern Western Australia.

I would have thought that is about as specific as you can get.

**Mr Kovacic**—No, I think that is general, in terms of regional.

**Senator ABETZ**—Really! It is regional, so that is what makes it different. Please! You think that makes it materially different, do you?

**Mr Kovacic**—The nature of the direction is that the area is one where there might be a period of concerted industrial action across a range of projects or whatever, and that is the sort of example.

**Senator ABETZ**—The minister said ‘the situations and locations of recent unlawful industrial action’. So she had three or four in mind. So if the hot spot just consisted of one hot spot as opposed to three or four, but in the same area, it would be materially different how the minister could exercise her newfound powers?

**Mr Kovacic**—Let me put it in this way: if the direction was about a particular case, it is not permissible. It would not be permissible under the provisions of the amendment bill. If it is general, in the sense that it is not a direction about a specific case, under these powers—

**Senator ABETZ**—Could I invite you to be prepared for the committee stage in the Senate. I will hand over to Senator Cash.

**Senator CASH**—Very briefly, mine are just points of clarification. I may have been out of the room when the questions were answered. In terms of the take-home order provisions that Senator Abetz was referring to earlier, can I clarify what legislation they were actually contained in.

**Mr Kovacic**—It was one of the three Fair Work bills.

**Senator CASH**—Yes, I know. What I need to know is which one.

**Mr Kovacic**—I am just looking around for which one.

**Senator CASH**—Thank you.

**Mr Bohn**—It was the Fair Work (Transitional Provisions and Consequential Amendments) Act 2009.

**Senator CASH**—Thank you very much. Just going back to the take-home order provisions, do you accept that an employee who, due to the application of a modern award, suffers a reduction in the take-home pay may make an application for a take-home pay order? That is the process the employee would follow.

**Mr Bohn**—Yes.

**Senator CASH**—Is it true that unless the employee makes such an application successfully they will then suffer the reduction on an ongoing basis?

**Mr Bohn**—If an order is not made remedying—

**Mr Kovacic**—Senator, you may not have been here before. There was a clause that I read out. It has been included in all modern awards by the commission and this one was taken from the general retail industry award. It says:

Neither the making of this award nor the operation of any transitional arrangements is intended to result in a reduction in the take-home pay of employees covered by the award. On application by or on behalf of an employee who suffers a reduction in take-home pay as a result of the making of this award or the operation of any transitional arrangements, Fair Work Australia may make any order it considers appropriate to remedy the situation.

**Senator CASH**—When it says ‘may make’, does that mean it ‘will make’?

**Mr Kovacic**—The inference you would draw is that, in circumstances where there has been a reduction in take-home pay as a result of award modernisation, Fair Work Australia has the capacity to make the order and is likely to do so.

**Senator CASH**—So it has the capacity.

**Senator ABETZ**—So we have finally heard the words ‘reduction in take-home pay’. That is good. Thank you.

**Ms Paul**—I think you have heard the clear intention.

**Senator CASH**—But this is it: it is not ‘shall make’, it is ‘may make’.

**Mr Kovacic**—But certainly the intention is, in those circumstances, where there has—

**Senator CASH**—So why wasn’t the word ‘shall’ used then, which would obviously provide clarity surrounding whether or not a worker would be worse off under the modern award process?

**Ms Paul**—I think the intention is quite clear, actually, and we went through before what—

**Senator CASH**—Until lawyers get hold of it, and then it becomes very unclear.

**Mr Kovacic**—Why that might be the case in terms of that particular provision, given that these words were crafted by Fair Work Australia, that is a question that needs to be directed to them. I am happy to answer questions on the wording of the legislation. But because these model clauses—if I can describe them that way—were developed by the Australian Industrial Relations Commission, the question needs to be directed to Fair Work Australia.

**Senator CASH**—Thank you, Mr Kovacic. Do you agree that the framework by which modern awards can exist was contained in part 10A of the then Workplace Relations Act 1996? It might be a question for Mr Bohn.

**Mr Kovacic**—It was a provision that came into effect as a result of the Workplace Relations Amendment (Transition of Forward with Fairness) Bill, which was enacted in the early part of 2008, and earlier this evening I took a question on notice from Senator Abetz as to the precise timing of the parliamentary debate around that.

**Mr Bohn**—In addition, the transitional and consequential provisions legislation provides for the continuation of the effect of those provisions after July when this legislation came into effect.

**Senator CASH**—My questions have been answered. Thank you very much.

**CHAIR**—Thank you, Minister. Thank you, Ms Paul, Mr Kovacic, Mr Bohn and the other officers. We will now suspend until 9 am tomorrow morning.

**Committee adjourned at 11.01 pm**