



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

EMPLOYMENT, WORKPLACE RELATIONS AND EDUCATION
LEGISLATION COMMITTEE

ESTIMATES

(Budget Estimates)

MONDAY, 2 JUNE 2003

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SENATE

**EMPLOYMENT, WORKPLACE RELATIONS,
AND EDUCATION LEGISLATION COMMITTEE**

Monday, 2 June 2003

Members: Senator Tierney (*Chair*), Senator George Campbell (*Deputy Chair*), Senators Barnett, Carr, Johnston and Stott Despoja

Senators in attendance: Senators Barnett, Buckland, Carr, Collins, Cook, Crossin, Forshaw, Kirk, Mason, Murray, Sherry, Tierney, Webber, and Wong

Committee met at 9.05 a.m.

EMPLOYMENT, WORKPLACE RELATIONS AND EDUCATION

In Attendance

Senator Alston, Minister for Communications, Information Technology and the Arts

Department of Employment and Workplace Relations

Whole of Portfolio

Dr Peter Boxall, Secretary

Mr Bob Correll, Deputy Secretary, Employment

Mr John Lloyd, Deputy Secretary, Workplace Relations

Ms Malisa Golightly, Chief Financial Officer, Financial Management Group

Mr Craig Symon, General Manager, Corporate

Mr Jeremy O'Sullivan, Assistant Secretary, Legal and Risk Branch, Corporate

Mr Darren Hooper, Assistant Secretary, Business Services Branch, Corporate

Mr Brian Quade, Assistant Secretary, Parliamentary, Public Affairs and Performance Branch, Corporate

Mr Craig Farrell, A/g Assistant Secretary, Human Resources Branch, Corporate

Ms Robyn Kingston, Assistant Secretary, Internal Audit

Mr John Burston, Chief Information Officer, IT Services Group

Outcome 1 An effectively functioning labour market

Mr Michael Manthorpe, Group Manager, Job Search Support Group

Mr Stephen Moore, Assistant Secretary, Work Experience Branch, Job Search Support Group

Mr Tony Waslin, Assistant Secretary, Transition Programmes Branch, Job Search Support Group

Mr Bill Traynor, Assistant Secretary, Employment Exchange Branch, Job Search Support Group

Mr John Manthey, Director, Budget and Performance, Transition Programmes Branch, Job Search Support Group

Mr Finn Pratt, Group Manager, Intensive Support Group

Ms Kylie Emery, Assistant Secretary, Indigenous Employment Programmes Branch, Intensive Support Group

Ms Kerren Thorsen, Assistant Secretary, Employment Services Performance Branch, Intensive Support Group

Mr Phil Drever, Assistant Secretary, Contract Management Branch, Intensive Support Group
Ms Alison Durbin, Assistant Secretary, Intensive Support Operations Branch, Intensive Support Group
Mr Ken Douglas, Group Manager, Employment Analysis and Evaluation Group
Mr Graham Carters, Group Manager, Employment Policy Group
Mr Bruce Whittingham, Assistant Secretary, Policy Development Branch, Employment Policy Group
Mr Peter Hade, Group Manager, Employment Services Purchasing Group
Mr Brian McMillan, Employment Counsel, Employment Legal Team, Employment Services Purchasing Group
Mr Anthony Parsons, General Manager, Employment Systems

Outcome 2 Higher productivity, higher pay workplaces

Mr Rex Hoy, Group Manager, Workplace Relations Policy and Legal Group
Mr James Smythe, Chief Counsel, Workplace Relations Policy and Legal Group
Ms Diane Merryfull, Assistant Secretary, Legal Policy Branch 2, Workplace Relations Policy and Legal
Mr Alex Anderson, Assistant Secretary, Strategic Policy Branch, Workplace Relations Policy and Legal
Mr David Bohn, Assistant Secretary, Building Industry Legislation Team, Workplace Relations Policy and Legal
Ms Sue Sadauskas, Assistant Secretary, Wages and Conditions Policy Branch, Workplace Relations Policy and Legal
Mr Robert Bennett, A/g Assistant Secretary, Legal Policy 1, Workplace Relations Policy and Legal
Mr Ted Cole, Advocacy Team Leader, Advocacy Team
Ms Barbara Bennett, Group Manager, Workplace Relations Implementation Group
Ms Flora Carapellucci, Assistant Secretary, Industries Branch, Workplace Relations Implementation Group
Mr John Kovacic, Assistant Secretary, Public Sector Branch, Workplace Relations Implementation Group
Mr Steve Kibble, A/g Assistant Secretary, Royal Commission Implementation Team, Workplace Relations Implementation Group
Mr Nigel Hadgkiss, Director, Building Industry Interim Taskforce
Ms Jenet Connell, Group Manager, Workplace Relations Services Group
Mr Michael Maynard, Assistant Secretary, Employee Entitlements Branch, Workplace Relations Services Group
Ms Carolyn Naess
Mr Mark Jasprizza, Assistant Secretary, Workplace Services Branch, Workplace Relations Services Group
Mr Dianne Fletcher, Assistant Secretary, Employee Entitlements Project Branch, Workplace Relations Services Group

Office of the Employment Advocate

Mr Peter McIlwain, Acting Employment Advocate
Mr John Burnett, Deputy Employment Advocate
Ms Patricia Muncey, Acting Deputy Employment Advocate
Mr David Rushton, Senior Legal Manager

National Occupational Health and Safety Commission

Mr Robin Stewart-Crompton, Chief Executive Officer

Mr Tom Fisher, Senior Executive Manager
Equal Opportunity for Women in the Workplace Agency

Ms Fiona Krautil, Director

Comcare

Mr Barry Leahy, Chief Executive Officer

Mr Noel Swails, Deputy Chief Executive Officer

Mr Terry Langton, General Manager, Corporate Management

Ms Leone Moyse, General Manager, Claims Policy and Systems Improvement

Mr Stewart Ellis, General Manager, OHS (CE) Act Policy and Support

Australian Industrial Registry

Mr Nicholas Wilson, Industrial Registrar

Mr Terry Nassios, General Manager

Ms Chris Hayward, ACT Manager, Deputy Industrial Registrar

CHAIR—I declare open this public hearing of the Senate Employment, Workplace Relations and Education Committee considering the budget estimates 2003-04. On 13 May 2003 the Senate referred to this committee particulars of proposed additional expenditure for the year ending 30 June 2004 for the employment and workplace relations portfolio. The committee has agreed to meet today from 9.00 a.m. until completion or at the latest 11 p.m. and will adjourn for lunch at 12.30 and dinner at 6.30. The morning tea break will be at 10.45 and the afternoon tea break at 3.45. The committee has to report to the Senate by 19 June 2003. It has also fixed Monday, 21 July 2003 as the date for the submission by the department of written answers to questions on notice. I remind officers that all information provided to the committee, either in the course of the hearing or in response to questions on notice, is automatically made public. We will go to outcome 2, Higher productivity, higher pay workplaces. I welcome officers from the Office of the Employment Advocate. Do you wish to make a brief opening statement?

Mr McIlwain—No, we do not wish to do that.

CHAIR—Thank you. We will go to questions.

Senator WONG—Could we start by clarifying in these estimates what the extent of funding for the OEA is and where that is identified in the papers?

Mr McIlwain—Our funding is part of outcome 2 in the portfolio budget statements. Our budget for this year has slightly increased. The page reference is 44, the output is 2.2.3 and the budget figure listed for the OEA is \$16.658 million.

Senator WONG—Is that the only budget allocation to your office or do you receive funding as well in relation to, for example, advocacy from other line items?

Mr McIlwain—No.

Senator WONG—So this is the totality of your funding?

Mr McIlwain—Yes.

Senator WONG—There is \$7 million designated for enhanced compliance in the budget. Is it anticipated that your office will receive any of that?

Mr McIlwain—No.

Senator WONG—Have you had any discussions with relevant officers as to the role of the OEA in relation to the ABCC?

Mr McIlwain—I am sorry—in relation to?

Senator WONG—I think it is called the Australian Building and Construction Commission. Is that what the proposal is? It arose out of the Cole report.

Mr McIlwain—Senator, could you clarify that question for us. Have we had discussions since what time or—

Senator WONG—Let us say since the handing down of the Cole report. Have you had discussions with relevant officers regarding the proposed role of the OEA, if any, in any ABCC?

Mr McIlwain—No.

Senator WONG—Is it envisaged that you would have any role whatsoever in implementing the recommendations of the Cole commission?

Mr McIlwain—No.

Senator WONG—Or any role whatsoever in relation to the proposed commission?

Mr McIlwain—No.

Senator WONG—Do officers of the OEA work in conjunction with the interim building task force?

Mr McIlwain—No.

Senator WONG—Not at all?

Mr Rushton—What has happened with the interim building task force is that they have effectively taken over the role of dealing with breaches of the law in the building industry.

Senator WONG—Sorry, breaches of the law?

Mr Rushton—In the building industry, which covers matters that previously the OEA was involved in.

Senator WONG—What happens if something occurs—an event occurs or an allegation is made—which, but for the Cole commission, would have been normally something within the purview of your office?

Mr Rushton—We would refer that to the interim building industry task force.

Senator WONG—Is there documentation confirming that those are the arrangements?

Mr Rushton—Yes, there is.

Senator WONG—Who is that from? Is that a ministerial direction?

Mr Rushton—No, there is a memorandum of understanding with the department in relation to those matters.

Senator WONG—When was that prepared?

Mr Rushton—In March this year.

Senator WONG—Can you provide a copy of that?

Mr Rushton—Yes.

Senator WONG—Is there any other documentation that clarifies the relationship between yourselves and the interim building task force—other than this memorandum of understanding?

Mr Rushton—The delegation and directions from the employment advocate to the head of the interim building task force, which we provided on the last occasion.

Senator WONG—And the memorandum of understanding is between whom? Just the department and yourselves or also with the task force?

Mr Rushton—It is between the department and us. The task force is part of the department.

Senator WONG—Do you envisage a drop in the workload as a result of this memorandum? You have done a lot on the building industry over the years.

Mr McIlwain—There has been a drop in the number of complaints concerning alleged breaches of the Workplace Relations Act in the building industry already. We would expect there to be either a further decrease or a plateauing of our workload with regard to breaches.

Senator WONG—What sort of percentage drop are we talking about?

Mr McIlwain—I will just refer to some figures that we have compiled with regard to investigations. These are complaints that go to investigation, not all inquiries that we take, either in writing or over the telephone. To give you an indication, in the year 2000-01, we dealt in total with 307 investigations, in the year 2001-02 we dealt with 193 investigations and in the current year to date we have received 203 complaints that have gone to investigation. Between 2000-01 and the current year, there would, on those figures, appear to be a 30 per cent drop in complaints which go to investigation.

Senator CARR—Have you had a drop in staff of that number?

Mr McIlwain—We have not had a drop in staff.

Senator CARR—What do they do?

Mr McIlwain—Resources have been moved to other areas of our responsibilities under the Workplace Relations Act where there has been, at the same time, an increase in the workload that we must handle.

Senator CARR—Which industries are they working in?

Mr McIlwain—They are working in no specific industries. They are working across the full range of industry sectors in Australia.

Senator CARR—What productivity increase have you seen in those sectors that they have now been transferred to?

Mr McIlwain—I am not sure I understand your question.

Senator CARR—You have had 30 per cent; presumably that would free up 30 per cent of your staff. That was the major area of activity, wasn't it?

Mr McIlwain—Perhaps I should clarify. The growth in our responsibilities under the Workplace Relations Act has been principally in the filing and approval of Australian workplace agreements. To give you an indication there, in the 2000-01 financial year we approved 66,486 AWAs; this year, as at 31 March, we had approved 74,654 AWAs.

Senator CARR—That is not a 30 per cent increase in work, is it?

Mr McIlwain—To give you a further statistic, which I think will clarify the matter, in the March quarter this year, 2003, we filed 90 per cent more AWAs than were filed in the March quarter 2002. In the December quarter in the current financial year, we filed 36 per cent more AWAs than in the December quarter of the previous financial year.

Senator CARR—What industries were those AWAs filed in? What was the area they covered?

Mr McIlwain—They were filed across all industry sectors.

Senator CARR—You must have had significant growth in some sectors. Was there an even growth across all the sectors?

Mr McIlwain—There has been some significant growth in particular sectors. Mining is a sector where there has been growth.

Senator CARR—What is the growth in mining?

Mr McIlwain—I do not have an exact figure for you.

Senator CARR—I would like to know the number of employees in the mining sector, the number of AWAs there are and what the growth has been. Are you able to tell me that?

Mr McIlwain—We can take that question on notice.

Senator CARR—Thank you. What is the next area in which there has been significant growth?

Mr McIlwain—There has been growth also in the retail industry.

Senator CARR—What is the growth there?

Mr McIlwain—I will take that on notice also.

Senator CARR—Again, could you give me the number of retail employees that we know, or the best available statistics, the number of people who have AWAs in that industry and the level of growth that there has been. What is the next area where the growth has been?

Mr McIlwain—Communication services.

Senator CARR—Again, I take it that you will be able to provide me with the information on that.

Mr McIlwain—We will.

Senator CARR—What other areas has there been growth in? Are they the three main ones?

Mr McIlwain—They are the three principal ones.

Senator CARR—What is the total number of AWAs at the moment? Was it 74,000?

Mr McIlwain—The total number since the inception of the—

Senator CARR—No, what is the total number of current active AWAs that you have?

Mr McIlwain—As I said, in this financial year, as at 31 March, 74,654 AWAs had been approved. But that is not the total number of AWAs ever approved.

Senator CARR—No, how many are currently active? A lot of AWAs presumably would only run for a certain period, wouldn't they? They are not indefinite arrangements, are they?

Mr McIlwain—No.

Senator CARR—What is the current number that are active?

Mr Rushton—Just to clarify that point, they do not automatically terminate at a certain time; they have to be terminated or replaced by another AWA. Otherwise they continue to operate.

Senator CARR—What is the percentage of Australian workers that you think are on AWAs?

Mr McIlwain—It is between one and two per cent.

Senator CARR—What is the percentage in the public sector?

Mr McIlwain—Cumulative to date, 18 per cent.

Senator CARR—That is in the whole public sector, Commonwealth and state?

Mr McIlwain—Yes.

Senator CARR—What is the percentage in the Commonwealth public sector?

Mr McIlwain—I do not have that information.

Senator CARR—Do you not collect it?

Mr McIlwain—We collect information according to the industry sectors as defined by the Australian Bureau of Statistics. The ABS has a category known as 'Government administration and defence'. Most public sector AWAs are included in that category.

Senator CARR—You do register these? You are the approving authority for AWAs, are you?

Mr McIlwain—Yes.

Senator CARR—Do you collect statistics on the AWAs that you have approved?

Mr McIlwain—Yes.

Senator CARR—Can you tell me how many AWAs you have approved in the Commonwealth Public Service?

Mr McIlwain—Today, no.

Senator CARR—Why not?

Mr McIlwain—I do not have that information.

Senator CARR—Are you able to take that on notice.

Mr McIlwain—We will take that on notice.

Senator CARR—Thank you. What I would be interested to know is how many are active. I do not want to know about people who have left the Public Service who are—

Mr McIlwain—Some information concerning what we define as ‘live’ AWAs is available currently on our web site under the research tab, where you will find quite extensive information that compared live agreements under part 6D of the act under LK agreements and also LJ agreements.

Senator CARR—Thank you, and I appreciate your helpful advice on this, but the nature of Senate estimates is that we get to ask questions and you get to answer them. That is the normal arrangement. What I would like from you is your advice on the number of live AWAs currently in the Commonwealth Public Service. Can you provide that to me?

Mr McIlwain—Yes.

Senator CARR—Can you provide that to me as a percentage of the Commonwealth Public Service?

Mr McIlwain—Yes.

Senator CARR—I am sorry to distract you in that way, Senator Wong.

Senator WONG—While we are on this area, my recollection of previous estimates and press reports is that a significant proportion of your work has been dedicated to the building industry over the last years.

Mr McIlwain—Yes.

Senator WONG—Would you be able to provide an estimate about how much of your officers’ time, work and resources would have been dedicated to the building industry? There were certainly a lot of court cases, weren’t there, Mr Rushton?

Mr McIlwain—With regard to alleged breaches of the Workplace Relations Act concerning employers or employees in the building and construction industry, up until the advent of the royal commission we would estimate that, at any given time, between 30 and 50 per cent of the staffing resources available to handle breaches of the Workplace Relations Act were expended on alleged breaches in the building and construction industry.

Senator WONG—And you are taking into account there not just reported breaches but the fact that a number of them went beyond simple investigation to the litigation stage? Is that fact taken into account in the 30-50 per cent estimate?

Mr McIlwain—Yes.

Senator WONG—Given that these functions are all going to be hived off to another body, does OEA really need 30 to 50 per cent less funding to perform its statutory role properly?

Mr McIlwain—No.

Senator WONG—Try and explain that to me.

Mr McIlwain—I explain it by referring again to the very dramatic increase that we had seen in the current financial year in the making of AWAs.

Senator CARR—One to two per cent of private sector employees are on AWAs. The growth of 8,000 AWAs is not what I would call a significant and dramatic increase. Would you agree? It has gone from 66,000 to 74,000.

Mr McIlwain—We anticipate that we will approve this current financial year more than 120,000 AWAs, which would be almost 50,000 AWAs more than those approved in the 2001-02 financial year. The work is currently under way to process and approve those agreements.

Senator CARR—So your target now is 120,000 AWAs for this year?

Mr McIlwain—Our projected outcome of approvals for this current financial year is 120,000 AWAs.

Senator WONG—If there has been this large increase in AWAs, has there been a reassignment of staff in terms of their duties to reflect this substantial change in the work profile of your office?

Mr McIlwain—Yes.

Senator WONG—How many staff are now doing something different? Can you provide details of that?

Mr McIlwain—Yes I can. There are now 40 staff who would be doing work substantially different from the work which they were performing in the 2000-01 financial year—2001-02 having been a year of transition, and 2002-03 currently being the year in which they are now retrained and reassigned.

Senator WONG—A number of questions arise out of that. First, remind me what your total staffing level is.

Mr McIlwain—Our total staff numbers at 12 May were 117. That is staff in the office; some staff are currently on maternity leave.

Senator WONG—So you are saying about 30 per cent of them are doing different duties. What were they doing before, and what are they doing now?

Mr McIlwain—Those staff before were working either exclusively on advice and assistance to employers and employees or exclusively on the handling of complaints concerning alleged breaches of the Workplace Relations Act. They now perform both tasks in an integrated client service network.

Senator WONG—What does that mean?

Mr McIlwain—It means that they are multiskilled.

Senator WONG—How many of these staff previously were working on building industry activities?

Mr McIlwain—Twenty-seven would have worked for some time—for some of them a considerable period of their time—on alleged breaches in the building and construction industry around the country.

Senator WONG—And what are those people currently doing—multitasking?

Mr McIlwain—Yes.

Senator WONG—What are the multiple tasks involved?

Mr McIlwain—Advising employers and employees about the making of AWAs, investigating alleged breaches of the Workplace Relations Act—

Senator WONG—That are presumably not in the building industry.

Mr McIlwain—Not in the building industry.

Senator WONG—Has there been any increase in the number of staff directly involved in processing AWAs?

Mr McIlwain—Yes.

Senator WONG—What sorts of increases? Are you able to give them state by state?

Mr McIlwain—The processing unit is centralised in two locations only—

Senator WONG—Could have that clarified? By ‘processing’ do I assume we mean ensuring that these AWAs comply with the statutory requirements, the no disadvantage test et cetera?

Mr McIlwain—Yes, exactly.

Senator WONG—So it is not just the actual stamping.

Mr McIlwain—No. They file agreements, perform the NDT and subsequently approve agreements.

Senator WONG—I am sorry?

Mr McIlwain—They file agreements, they assess agreements through performing the NDT and then they approve agreements.

Senator WONG—Are we able to go through the increases in staff associated with approving and processing the AWAs over this last financial year to date?

Mr McIlwain—Yes. In 2001-02, there were 22 staff in our national AWA team—that is the team that processes AWAs—and in the current financial year, as of today, there are 42.3 staff.

Senator WONG—Somebody works part time, do they?

Mr McIlwain—Yes.

Senator WONG—You said, ‘as of today.’ How long have the additional 20 staff been in there? Did they gradually come over the financial year?

Mr McIlwain—There has been an incremental rise throughout the current financial year.

Senator WONG—What was the figure, say, two months ago?

Mr Burnett—Let me think back for a moment. I am sorry I cannot go to the exact month that you are asking for but since January there has been a general increase of 14 staff.

Senator WONG—So in January we were looking at around 28.

Mr Burnett—That would be correct.

Senator WONG—So you have caught 14 in the last five months.

Mr Burnett—Yes, that would be correct.

Senator WONG—Are all AWAs approved and processed through the central body?

Mr McIlwain—Yes. I will just clarify that answer. A small percentage of AWAs approved—those which are approved with undertakings—would be processed by the local OEA office. For example, agreements made in Adelaide, should they require an undertaking before the employment advocate is sure that the NDT is met, would be processed in the Adelaide office. But less than 10 per cent of all approved AWAs are in that category.

Senator CARR—If that is the case, can I ask you where the offices associated with the Specific Partner Pilot Program are based?

Mr McIlwain—The work associated with the specified partner program is centralised in the national AWA team in Sydney.

Senator CARR—Are they all in Sydney?

Mr McIlwain—Yes.

Senator CARR—Is that still operating? Is it still a pilot program or is it now to be expanded?

Mr McIlwain—It is still operating as a pilot program.

Senator CARR—Is that where we have some 60 businesses that have automatic approval of their AWAs?

Mr McIlwain—No, that is not correct.

Senator CARR—How would you describe the program?

Mr McIlwain—The program includes the participation of 10 OEA industry partners who submit agreements made by employers and employees under that program.

Senator CARR—Is it the case that the 10 industry programs involve 60 individual businesses?

Mr McIlwain—I do not know. It may involve less; it may involve more.

Senator CARR—We discussed this last June and I thought the figure of 60 was one you had agreed upon then.

Mr Burnett—Are we talking about individual companies that are involved?

Senator CARR—The 60 businesses.

Mr Burnett—That would probably be an accurate estimate at this point in time but I do not actually keep the figures in terms of the actual individual businesses concerned.

Senator CARR—Could I have a list of those businesses, please?

Mr Burnett—Yes, we can take that on notice.

Senator CARR—Which are the 10 industries that the 10 industry group partners are across?

Mr Burnett—There is a variety of industries that are involved there.

Senator CARR—That is what I am asking: what are the 10 industries? Can you help me with that?

Mr Burnett—They are not specific. These are bargaining agents. This is an industrial relations advisor type of process, so they may deal in a variety of industries. There is no particular one.

Senator CARR—Can I have a list of those 10 bargaining agents who are members of this specific partner plan?

Mr Burnett—Yes, I can take that on notice.

Senator CARR—So they are not really industries at all?

Mr Burnett—No.

Senator CARR—These are people that signed a declaration that their AWAs met the no disadvantage test—is that the case?

Mr Burnett—Yes.

Senator CARR—Of these new AWAs that you have mentioned, how many of them come from these 10 industrial bargaining agents?

Mr Burnett—As at the end of April, which is the only thing I have figures for, approximately a little more than 4,000 had been approved.

Mr McIlwain—I can assist Mr Burnett: 4,480 AWAs have been approved under the specified partner program.

Senator CARR—Is it fair to say, then, that of the growth of 8,000 AWAs 4,000 came from these 10 bargaining agents?

Mr Burnett—No, that would be incorrect.

Senator CARR—Of the 8,000 AWAs that you have indicated, how many of them came from these special bargaining agents?

Mr McIlwain—We do not have that information.

Senator CARR—If they have increased by 4,000, there has been a total increase of 8,000. Explain to me, please, if you would, why it is that I have misunderstood.

Mr Burnett—The 4,000 is the total number that has been lodged under this program since it started.

Senator CARR—I see.

Mr Burnett—So there has been an increase from what we told you last time, which I believe was around 2,000. So it has only been an increase of 2,000 since that time.

Senator CARR—So they have doubled their number in a year.

Mr Burnett—Yes, I believe that would be correct.

Senator CARR—We met on 3 June last year to discuss this, so it is almost a year.

Mr Burnett—The transcripts that I have from *Hansard* where these questions were brought up I believe are actually from November, but I could be mistaken on that.

Senator CARR—I do not think it really matters that much. All I want to know is: if there has been a significant growth in the number of AWAs, what is the effect of the operation of

this particular program? Given that these people have already agreed that they will only submit AWAs that meet the no disadvantage test, I would be interested to know what additional work was required by your office to process these additional AWA applications.

Mr Burnett—They still go through the approval process, like any other AWA does. It merely allows the advantage of a quicker turnaround time. It does not actually require any more or any less effort than any others.

Senator CARR—If they have a quicker turnaround time, there must be less effort.

Mr Burnett—Not necessarily. It is more a matter of being able to identify them amongst the various ones that we receive.

Senator CARR—How are you able to do it more quickly? How are you able to guarantee a quicker turnaround if there is not less effort?

Mr McIlwain—We have in place internal processes for the handling of AWAs lodged under that program. Those processes allow us to provide a turnaround time of less than 20 working days.

Senator CARR—These 10 industrial partners provide you with a legally binding assurance that they will not submit bodgie AWAs. What I would like to know is: has that assurance been met in all accounts? Have any of these 4,000 AWAs ever been not upheld or not approved?

Mr Burnett—There are none that have not been approved.

Senator CARR—So the assurance has been met in all counts?

Mr Burnett—Yes, that is correct.

Senator CARR—And you have checked each and every one of them, have you?

Mr Burnett—Yes.

Senator CARR—The question has arisen, with regard to the matters that were raised in June last year, that an officer from your agency reported the proceedings of this committee to the Federal Police. Do you recall that, Mr McIlwain?

Mr McIlwain—I am sorry—an officer?

Senator CARR—You have referred the proceedings of this committee to the Federal Police concerning this particular program, have you not?

Mr McIlwain—We have not referred the proceedings of the committee to the Federal Police.

Senator WONG—Have you referred any issues raised or discussed in the proceedings to the Federal Police?

Mr McIlwain—There was a concern that there had in fact been a leak of information from the OEA—an unauthorised use of information that could be a potential breach of the Crimes Act.

Senator SHERRY—Suspected.

Mr McIlwain—I think I said allegation. There was an alleged leak of unauthorised information from the OEA that could be a breach of the Crimes Act, of the APS code of conduct and/or of the OEA code of conduct. This matter was referred to the department's fraud and investigations team.

Senator CARR—When was that done?

Mr McIlwain—I am sorry—when was that?

Senator CARR—When was that done, yes.

Mr McIlwain—I do not have the exact date, but it was shortly after the alleged unauthorised use of information came to light, which was on 4 June 2002.

Senator CARR—How did this unauthorised disclosure come to light?

Mr McIlwain—It came to light in information that was apparently available to us. It came to light in the context of the estimates hearing on 4 June 2002.

Senator CARR—So, these were matters that were raised at the Senate estimates that you thought were appropriate to refer to the Federal Police. Is that right?

Mr McIlwain—No; that is quite untrue. What was referred to the department's fraud and investigations unit was a suspected unauthorised use of official information, potentially a breach of the Crimes Act.

Senator CARR—Yes, I understand that; but you said it came to light at the Senate estimates. That is as a result of a senator asking a question, I presume.

Mr McIlwain—Yes.

Senator CARR—As you are only too well aware, I am familiar with this because I am the Senator concerned.

Senator SHERRY—Was it the same dispute?

Senator CARR—Yes, it was. How often have you had to refer proceedings of a committee to the Federal Police?

Mr McIlwain—We have never referred proceedings of the committee to the Federal Police.

Senator WONG—How often have issues that have arisen in Senate estimates resulted in you referring matters to the Federal Police?

Mr McIlwain—Once.

Senator CARR—So, this is the one occasion—or is there another?

Mr McIlwain—Yes.

Senator CARR—This is the first time it has happened?

Mr McIlwain—Yes.

Senator CARR—Did you seek advice from the clerk on this matter?

Mr McIlwain—No.

Senator CARR—So you just sought legal advice? On what basis did you act?

Mr McIlwain—We sought our own legal advice, Senator.

Senator CARR—You are aware that proceedings of this parliament cannot be used in a court of law?

Mr McIlwain—Yes, we are aware of that.

Senator CARR—Were you provided with any caution on this matter?

Mr McIlwain—I am sorry?

Senator CARR—Were you provided with any caution in that advice about referring matters raised in parliamentary proceedings to the Federal Police?

Mr McIlwain—Senator, I think you are conflating two things here. There are two separate things here: the proceedings of this committee and a suspected unauthorised use of official information. Those are two separate things.

Senator CARR—Yes, indeed. I must say to you that I have absolutely no complaint about the Federal Police—I thought they handled the matter with the professionalism that one would expect from them. My complaint is not to them; my complaint is with the office, which feels it is necessary to run these sorts of witch hunts against people it considers to have acted wrongly in providing information to the Senate. Do you think this is covered by whistleblower legislation?

Mr McIlwain—We do not believe so.

Senator CARR—You sought advice on that, did you?

Mr McIlwain—Yes.

Senator WONG—Internally again?

Mr McIlwain—Yes.

Senator CARR—Do we have a copy of that advice?

Mr Rushton—It is not usual to provide that sort of advice.

Senator CARR—That is right.

Senator SHERRY—Why didn't you seek advice from the Clerk of the Senate, Mr Evans, about this matter?

Mr McIlwain—We did not believe it to be necessary to deal with an alleged unauthorised use of official OEA information.

Senator WONG—Well, who was making the allegation? Who says there is an unauthorised use? You do.

Mr McIlwain—Yes, the Office of the Employment Advocate says.

Senator CARR—Have you charged anyone?

Mr McIlwain—It is not for us to charge people.

Senator CARR—Presumably that is what you are seeking the Federal Police inquiry for.

Mr McIlwain—The inquiry is under way and has not yet been completed, so there have been no charges laid.

Senator SHERRY—Have the Federal Police given you an update as to the extent of their investigations?

Mr McIlwain—I do not know how recently we have had an update. There have been updates provided.

Senator SHERRY—By the Federal Police?

Mr McIlwain—Yes.

Senator CARR—How many other leak inquiries do you have at the moment?

Mr McIlwain—None.

Senator CARR—So this is the only one you have referred to the leak squad of the Federal Police?

Mr McIlwain—This is the only alleged unauthorised use of official information that we have referred to the department's fraud and investigations unit.

Senator CARR—Did you consult the minister's office on this?

Mr McIlwain—No.

Senator CARR—You acted entirely on your own authority—

Mr McIlwain—Yes.

Senator CARR—and sought no advice within government, within the department?

Mr McIlwain—We sought advice from the department.

Senator CARR—You told them that you were going to have an inquiry into matters raised by a senator at an estimates committee.

Mr McIlwain—We referred the matter to them, to their fraud and investigations team.

Senator CARR—And you explained to them that this was a matter raised at a Senate estimates committee.

Mr McIlwain—We explained that we believed that there had been an unauthorised use of official information.

Senator WONG—At any time, has this matter been discussed with the minister's office?

Mr McIlwain—I am unable to say.

Senator CARR—Could you take that on notice, please. I would be interested to know.

Senator WONG—Why are you unable to say, Mr McIlwain? This is your office making significant allegations and asking that a matter be referred to the police as a result of questions asked in estimates. Who in your office has conduct of this matter?

Mr McIlwain—I am unable to say, because I am unable to know the content of every discussion that the Office of the Employment Advocate may have—

Senator WONG—So Mr Hamberger may have had a discussion, but you are not aware of that?

Mr McIlwain—He may have. I have no knowledge of it. That is why I say I am unable to say.

Senator WONG—Perhaps I will put more detail into Senator Carr's question on notice: could we have details of the dates on which these matters were discussed with the minister's office, and particularly when the minister's office was first advised about the action taken by the Office of the Employment Advocate.

Mr McIlwain—We will take that on notice.

Senator CARR—You would have to expect, Mr McIlwain, that, if you put the Federal Police on to me, it is likely I am going to ask a few questions at the next estimates committee, wouldn't you? I am surprised you are not more thoroughly prepared.

Mr McIlwain—The matter is currently under investigation. We do not necessarily have all of the information that has so far come to light. I am able to confirm that the Federal Police, having been asked by the department's fraud and investigations unit, now have this matter under investigation.

Senator CARR—I do not want to interfere in that investigation. That is not my question. My question goes to your or your office's role in—what is unprecedented, on your advice—initiating proceedings to investigate what are matters raised in a Senate estimates committee. I am interested to know why you are not better prepared for these questions today. I am not particularly interested in the result of the police inquiry at this point; that will come later. Needless to say, I am not able to assist them in their inquiries because I regard it as a matter of parliamentary privilege. These are serious questions, and I would have thought you would be a little better prepared. How long would it take you to get me that information about the consultation with the minister's office on this?

Mr McIlwain—We will answer that question in the normal course of answering other questions.

Senator CARR—You cannot do that more quickly than that?

Mr McIlwain—We will take it on notice.

Senator CARR—You cannot make a phone call to the office to find out?

Mr McIlwain—We will take that question on notice.

Senator WONG—We could defer your evidence and have you later today if it would assist you in getting the information.

Mr McIlwain—Our position remains that we will take that question on notice and answer it in the normal course.

Senator SHERRY—Has anyone within the office been interviewed by the Federal Police on this matter?

Mr McIlwain—Yes.

Senator SHERRY—How many persons? One or more?

Mr McIlwain—We will not say anything further because of the risk of inadvertently interfering with the investigation that is still on foot.

Senator SHERRY—I would not ask you for the names, because I think that would, but I am asking how many—one or more? I do not see how that could—

Mr McIlwain—OK; I take your point. There are more than one.

Senator SHERRY—How many?

Mr McIlwain—We will take that on notice.

CHAIR—The committee stands adjourned for five minutes for a private meeting.

Proceedings suspended from 9.52 a.m. to 9.54 a.m.

Senator CARR—What is your position with regard to AWAs being compulsory for public servants?

Mr McIlwain—We have no comment on or involvement with that. We simply file and approve AWAs.

Senator CARR—You have not been consulted about the proposition concerning recruitment policies for the Australian Public Service?

Mr McIlwain—No.

Senator CARR—What about promotions and policy within the Australian Public Service and the use of AWAs?

Mr McIlwain—No.

Senator CARR—I have two reports before me, one from the *Financial Review* of 21 May 2003 and one from the *Canberra Times* of 17 December 2002, which indicate that there is a proposal currently before government in regard to Mr Abbott taking new steps in the recruitment and promotion of public servants and the use of AWAs within those processes. Are you familiar with those reports?

Mr McIlwain—I am familiar with the press reports.

Senator CARR—So you have not been consulted at all about any of those matters relating to those reports?

Mr McIlwain—In those press reports, no.

Senator CARR—These reports also say that only five per cent of Australian public servants currently have AWAs. Is that correct?

Mr McIlwain—I cannot say. I did agree to take a question on notice with regard to AWAs in the APS and their penetration rate.

Senator CARR—Yes, you did. I would like to enlarge on that question slightly. I would like to know the percentage of AWAs in the senior executive service and the percentage in the service below the senior executive level. I would like the answer broken down into the different categories of public servants. According to what is presented as a leaked cabinet submission, these press reports say that five per cent of public servants had taken up AWAs, with less than one per cent below the senior executive level. Obviously, you cannot comment on a cabinet submission, but you can comment on those statistics.

Mr McIlwain—We will take that question on notice.

Senator CARR—Thank you. With regard to the approval processes for AWAs, you mentioned a number of areas of growth. Have there been areas of growth in any particular states?

Mr McIlwain—Yes.

Senator CARR—What states stand out as being the areas of strongest growth?

Mr McIlwain—The state that stands out as the area of strongest growth is Western Australia.

Senator CARR—To what reasons do you attribute the growth in Western Australia?

Mr McIlwain—I attribute it to the changes in the state industrial relations framework.

Senator CARR—It is a state government matter, is it?

Mr McIlwain—Yes.

Senator CARR—In what industries?

Mr McIlwain—In all industries.

Senator CARR—None stand out particularly?

Mr McIlwain—Mining, communications services—

Senator CARR—The same as before? Retail?

Mr McIlwain—Retail is not one that stands out as an industry where there is a much higher than average rate of penetration within the work force.

Senator CARR—Can you tell me this: what classifications of workers tended to predominate in that growth?

Mr McIlwain—I do not have that figure, Senator.

Senator CARR—Will you take that on notice, please? What are the numbers in terms of the growth in Western Australia?

Mr McIlwain—In Western Australia, to give you a quick indication, lodgments in the March quarter of 2003 were 420 per cent higher than lodgments in the March quarter of 2002.

Senator CARR—What are the numbers?

Mr McIlwain—From 1 July to 30 April this financial year, 37,085 AWAs were filed for Western Australian employers.

Senator CARR—Can you tell me how many firms those 37,000-plus AWAs covered? Do you have a list of the number of companies?

Mr McIlwain—We would have that information, although I do not have it before me.

Senator CARR—I presume it would be a large number, because there is such a large number of workers.

Mr McIlwain—Yes, some thousands. For example, in the March quarter, 35 per cent of all employers lodging AWAs for the first time were Western Australian employers.

Senator CARR—Was there a particular group of consultants or bargaining agents that assisted those employers in Western Australia?

Mr McIlwain—There are bargaining agents and consultants who assist employers in Western Australia.

Senator CARR—Are there a number that stand out in those statistics?

Mr McIlwain—There are several that are very active in Western Australia.

Senator CARR—Can you give me, say, the top five agents? Of the top five bargaining agents, can you give me a breakdown of how many each of them submitted to you for approval?

Mr McIlwain—No, I cannot. Not today, Senator.

Senator CARR—You would not have that information?

Mr McIlwain—No, I do not have that information.

Senator CARR—I would appreciate it if you would take that on notice, because what I am particularly interested in is whether or not there is a particular group of people that are working in Western Australia providing you with assistance in getting AWAs. You would say that the answer to that would have to be yes, wouldn't you?

Mr McIlwain—We have several OEA industry partners in Western Australia.

Senator CARR—You said there were 10 major industry partners. How many of those are active in Western Australia?

Mr McIlwain—I did not say there were 10; there are in fact in excess of 90 industry partners across the country.

Senator CARR—But in terms of the Specific Partner Pilot Program, there were 10. Were any of those operating in Western Australia?

Mr McIlwain—Yes, at least two of those would be operating in Western Australia.

Senator CARR—Which two?

Mr McIlwain—Heelan and Co. and the Australian Mines and Metals Association.

Senator CARR—The Australian Mines and Metals Association are obviously working in the mining industry, are they not?

Mr McIlwain—That is correct.

Senator CARR—How many have they submitted to you?

Mr Burnett—We would have to take that on notice.

Senator CARR—You do not have that information available now?

Mr Burnett—No.

Senator SHERRY—While you are taking that on notice, can you provide a list of the numbers that all of the agents, regardless of state, have lodged?

Mr Burnett—Are you talking about under this specific program?

Senator SHERRY—Yes.

Senator CARR—I would be interested to know about the 90 that are operating as well. There must be a list of 90 or so that you can provide to us that may not be part of the program. That would be true, wouldn't it?

Mr McIlwain—Yes. In fact, the vast majority are not in it.

Senator CARR—Obviously that is the case if there are only 10 in the program. I could probably follow that line of argument. Is there a pro forma AWA that has been prepared for the mining industry?

Mr McIlwain—The OEA has not prepared a pro forma AWA for the mining industry.

Senator CARR—Has the Australian Mines and Metals Association prepared a pro forma AWA?

Mr McIlwain—I do not know.

Senator CARR—Is there any significant similarity in these AWAs in the mining industry?

Mr McIlwain—Again, I could not say. Of course, there are always similarities in all AWAs, whatever the industry sector, because the industry conditions are the same and the relevant award against which the AWA must pass the NDT is usually the same. Those two factors in themselves mean that there will be a degree of similarity in all AWAs within an industry sector.

Senator CARR—Yes, but would you say that there is a significant overlap with regard to the mining industry specifically?

Mr McIlwain—No, I would not say that.

Senator CARR—I see. So you can assure the committee that there is no pro forma AWA operating?

Mr McIlwain—No, Senator, I cannot assure the committee of that. That is a question that I am unable to answer, not being an officer of AMMA.

Senator WONG—Surely under the program, if they did have that, it would be something that they would consult with your office about? The program, as I understand it, gives them a fast-track? Is that right?

Mr McIlwain—Yes.

Senator WONG—Part of that is predicated upon their assurance that they are not going to provide something to you that does not meet the statutory tests.

Mr McIlwain—Yes.

Senator WONG—If they are using a pro forma document, surely that would have been the subject of discussions with officers of the OEA?

Mr McIlwain—We are unaware of a template or pro forma agreement being submitted by AMMA as part of their participation in the specific partner program.

Senator WONG—Not necessarily submitted, but are you unaware of any pro forma document that they have?

Mr McIlwain—I am not personally aware.

Senator WONG—Is anyone in your office aware?

Mr McIlwain—There may be someone in my office who has had a discussion concerning a pro forma agreement or a template agreement. But I am personally unaware of that, and none of my colleagues here are aware of that either. That is not to say that AMMA does not have an agreement that it would use in that way—

Senator CARR—You have just not noticed it.

Mr McIlwain—but it is not a question that I can answer.

Senator WONG—Can you take this on notice? Can you provide details of the dates of discussions with AMMA of anyone in your office regarding a pro forma AWA for the purposes of submission under this program, and copies of any documents that you have received in that context?

Mr McIlwain—We will take that on notice.

Senator SHERRY—If I may, I will raise another issue on AWAs. It is true, isn't it, that AWAs can contain provisions relating to superannuation?

Mr McIlwain—Yes.

Senator SHERRY—They can?

Mr McIlwain—Yes.

Senator SHERRY—Are you aware of any AWAs containing provisions on superannuation?

Mr McIlwain—Yes.

Senator SHERRY—Are you able to provide us with any great detail on the superannuation provisions in AWAs?

Mr McIlwain—No.

Senator SHERRY—You referred earlier to the no disadvantage test against which AWAs are tested.

Mr McIlwain—Yes.

Senator SHERRY—Are you testing the superannuation provisions against the no disadvantage test?

Mr McIlwain—An AWA cannot reduce the minimum rate of contribution which an employer must make under the superannuation guarantee act.

Senator SHERRY—That is law.

Mr McIlwain—That is law, so the law simply applies. Therefore, it is not something that comes into play when the NDT is performed. The law stands and an employer is bound to pay the minimum rate of contribution. However, that being said, were an employer to increase the rate of contribution—which some agreements do; I cannot give you numbers but over six years I have seen more than 10 off the top of my head—that would come into play in the

NDT, because there is a clear advantage where the rate of contribution is increased above the statutory minimum.

Senator SHERRY—That may or may not be true, but let me explore a circumstance. I would be interested to see whether you are testing AWAs. Some AWAs—and I have seen some—would contain reference to a specific fund. That can happen.

Mr McIlwain—Yes.

Senator SHERRY—In terms of the no disadvantage test, do you test the level of fees, charges and commissions that apply where a specific fund is nominated in an AWA?

Mr McIlwain—No.

Senator SHERRY—In view of the no disadvantage test, where the level of fees, charges and commissions can disadvantage an employee, why don't you carry out a test on that issue?

Mr McIlwain—I recall you raised this issue in June last year—

Senator SHERRY—Correct.

Mr McIlwain—and the Employment Advocate said he would be more than happy to consider any information that you or others had available that would assist the OEA to develop a position with regard to that point. That remains our position. We would be happy to consider any information that would allow us to develop a policy position for the purposes of the NDT with regard to that issue.

Senator SHERRY—At this point in time, the only testing of the superannuation provisions is a test relating to level of contribution, which as you said is covered by statute and is of a minimum of nine per cent.

Mr McIlwain—Yes.

Senator WONG—What about if there was an agreement or award in place which specified additional contributions?

Mr McIlwain—If that were in the award, that would need to be taken into account. Hypothetically, if the award said 11 per cent, that would be the figure used for the NDT on the basis that the NDT is performed against the relevant award or awards—if there is a separate award covering those employees for a specific issue.

Senator SHERRY—Where there are payments by a superannuation provider in the context of an AWA and a fund is stipulated in an AWA, are you aware of whether there are any payments from the superannuation provider to the employer?

Mr McIlwain—No, we are not aware.

Senator SHERRY—Kickbacks would be a—

Mr McIlwain—I recall that was another issue you raised with Mr Hamberger, and our answer remains the same. We are not aware of any arrangements of that kind.

Senator WONG—Do you inquire?

Mr McIlwain—No.

Senator WONG—So if an employer puts up an AWA which moves someone out of a large fund into a retail product, you do not inquire as to what arrangements might exist between that retail product provider and the employer?

Mr McIlwain—No.

Senator SHERRY—So it is possible for a person or an individual fund member to be disadvantaged if they incur higher fees and charges, isn't it?

Mr McIlwain—Hypothetically it would be possible. But I should add here that the NDT is a global test. It takes into account all of the conditions, all of the benefits, all of the disadvantages and advantages offered in the AWA as compared to the award and relevant laws. It would be very unusual indeed for an increased benefit in superannuation, for example, to come into play, even for the NDT to be passed. We would expect superannuation issues to only come into play where there was a very close NDT involved.

Senator SHERRY—But you just confirmed that you do not check in order to test and include any possible disadvantage through the superannuation arrangements with respect to NDT.

Mr McIlwain—We do not; nor do we seek actuarial advice on the forecast performance of one fund over another.

Senator SHERRY—We are not dealing here with the issue of performance; we are dealing here with the issue of fees and charges. That is what I am asking about at the moment.

Mr McIlwain—I understand, but I can extrapolate your argument.

Senator WONG—They are entirely different things. One is a judgement about the potential investment returns on a fund. I think Senator Sherry and any senator would accept that that is not something that you could bring into play for the purposes of NDT. But the reality is that there are significant differences between superannuation funds in relation to fees and charges, which can have substantial effects on the long-term remuneration of employees. It seems extraordinary to me that you do not even investigate that.

Mr McIlwain—We do not investigate that.

Senator WONG—Why don't you? Why do you not think it is relevant? On your evidence you have said that you would not be aware as to whether there is any side transaction between the employer and the superannuation provider which might benefit the employer. You do not investigate that. Why would you not check what the actual cost to the employee is likely to be of transferring from one fund to another for the purposes of the NDT? You say yourself that it is a global test. If you have a fund which has fees that are two, three, four, five or more times the fees of the fund that the employee is being proposed to move out of, surely that is relevant to the NDT.

Mr McIlwain—That may be so, but relevant to the NDT, using that argument, would also be, for example, a decision by an employee to sign an AWA that moved them from a lower performing fund to a higher performing fund.

Senator WONG—No, I disagree; they are different things. One is subject to the vagaries of the market. Investment returns are clearly not something that can be quantifiable in

advance; fees and charges are. You said last time as a result of Senator Sherry's and others' questions that you would be happy to look at any information provided on this issue. There is a wealth of information on this issue that I am sure Senator Sherry can alert you to. APRA has released a report comparing fees and charges on various funds, and there is a significant amount on the public record which demonstrates that there is a substantial difference between funds. I find it interesting that you do not choose to inquire.

Mr McIlwain—The Employment Advocate said in June last year that he was happy to consider any information that Senator Sherry or others were able to provide, and that remains our position. The Employment Advocate returns to duty on Tuesday week. I have agreed to take up one matter with him immediately upon his return. I will raise this issue with him again. I am sure, again, he would be more than happy to take into account or have regard to any information that Senator Sherry or others are able to provide on this particular issue.

Senator SHERRY—On this issue, are you aware or are any of your officers aware that since we last met there have been a number of independent reports from statutory organisations—the APRA report in the case of levels of fees, charges and commissions, and the ASIC-ACA report in respect of commissions and financial advisers? Both were released in February this year. Are you aware of those reports?

Mr McIlwain—No; the office is not aware of those reports.

Senator SHERRY—I will ask you to look at those reports in terms of the implications of fees, charges and commissions and how individuals can be hurt by the level.

Senator CARR—I will come in again on the issue of the no disadvantage test more generally. Mr McIlwain, I thought I heard you say—and I ask you to confirm this—that, with regard to the Specific Partner Pilot Program, 4,000 AWAs had been submitted by the 10 industrial agents. Is that correct?

Mr McIlwain—Yes; I think it was 4,400.

Senator CARR—With regard to the no disadvantage test, the whole purpose of the program was that these agents would provide you with a legally enforceable guarantee that they would meet the no disadvantage test. Is that correct?

Mr McIlwain—Yes, they signed a declaration.

Senator CARR—Did you also say to me that each one of these 4,400 AWAs would be checked individually?

Mr McIlwain—Yes. They were all approved, in fact, by my colleague Mr Burnett as acting deputy—

Senator CARR—Mr Burnett; you are the man. That is just what I want to hear; that is terrific. Mr Burnett, are you familiar with the email that was sent by Caroline Sternberg, who is manager of the national AWA processing team? Was she before your time?

Mr Burnett—She was there before I was in this office.

Senator CARR—This is the matter that led to the leak inquiry. It was referred to the leak squad of the Australian Federal Police. This is the matter I referred to at the committee hearing on 3 June—not on 4 June, which I believe was the date you gave before. I asked some

questions with regard to correspondence with potential participants in this new program. When did Ms Sternberg leave the office, by the way?

Mr Burnett—She has been on long service leave for quite some time. She gave an official resignation recently.

Mr McIlwain—She commenced long service leave at the beginning of October last year.

Senator CARR—She has now submitted her resignation?

Mr McIlwain—She has resigned.

Senator CARR—Obviously she has moved on to bigger and better things than the processing unit at the Office of the Employment Advocate. I noted that, in the letter to participants, Ms Sternberg said that the AWAs that were submitted did not have to be checked as to whether they met the no disadvantage test. Is that the case?

Mr Burnett—No, that is not the case.

Senator CARR—Mr Hamberger said on 3 June 2002, ‘We would not check every one under this program.’ I take it that he was wrong?

Mr Burnett—That is not the case. As the employers come in, I check them, then I perform the no disadvantage test on them.

Senator COOK—What is not the case: Mr Hamberger is not wrong or you do check them?

Mr Burnett—We have refined the procedures since that time. I believe we have gone over this matter previously.

Senator CARR—I just want to be clear.

Mr Rushton—In fact, Senator Carr, Mr Hamberger answered questions on the last occasion in relation to that very issue.

Mr Burnett—Yes, I believe so.

Senator CARR—So there is a change of policy, is there?

Mr Rushton—A refinement of the policy, yes.

Senator WONG—A refinement or a change?

Mr Burnett—At that time, there had been no employers using the program.

Senator CARR—So you can now assure the committee that every individual AWA is checked by your unit?

Mr Burnett—That is correct.

Senator CARR—Mr Hamberger said that you would not check on every detail, but that has changed?

Mr Burnett—That is correct.

Senator WONG—When did it change?

Mr Burnett—Previous to my taking over the office. I could not give you a precise date.

Senator WONG—How many agreements were processed under the policy guidelines that Mr Hamberger articulated?

Mr McIlwain—If I recall correctly, no agreements had been launched at that point.

Senator WONG—So no agreements were processed in accordance with the guidelines that were articulated by Mr Hamberger on 3 June?

Mr Burnett—That is correct.

Senator CARR—So you can say that each and every one of the 4,400 submitted has been individually checked by your unit as to the no disadvantage test?

Mr Burnett—That is correct.

Senator CARR—Thank you.

Senator SHERRY—Just to conclude the superannuation issue—and I do not expect you to have this information at the moment, so if you would take it on notice—I want to know the number of AWAs that include a provision on superannuation where the fund is different from what it would otherwise be if they were covered by the particular award. I just want the number; I do not want any detail beyond that. If you are able to give me greater detail on other enhancements of the superannuation provisions, that is fine, but I am particularly interested in the name of the fund where the fund is a variance from the award provision.

Mr Rushton—Over what period?

Senator SHERRY—I do not want to put you under too much stress, being the considerate person that I am—over the last two years.

Mr McIlwain—We will see what we can do.

Senator SHERRY—When is Mr Hamberger back?

Mr McIlwain—Tomorrow week.

Senator SHERRY—Is he on annual leave?

Mr McIlwain—He is on approved leave.

Senator SHERRY—I will seek a private meeting with him on this matter. Thank you.

Mr McIlwain—Sure.

Senator WONG—Can I go back to the no disadvantage test. Perhaps, Mr Burnett, you can assist me here. Based on Senator Sherry's questions: isn't it the case that an AWA relating to an employee could be approved despite the fact that it moves the employee into a fund which had charges and fees of any order associated with it?

Mr McIlwain—Yes.

Senator WONG—Do you not consider that that is relevant to the global no disadvantage test?

Mr McIlwain—It has not, to my own knowledge, been a factor used or taken into account when assessing the NDT.

Senator WONG—I appreciate that it has not been used administratively. As a matter of law, if you are properly applying the NDT, surely those issues would be matters that you would turn your minds to?

Mr McIlwain—I do not think I can say anything more than what I have said thus far.

Senator WONG—What is your understanding of the statutory test of an NDT?

Mr McIlwain—The statutory test is that, overall, when the AWA is compared with the designated award and the relevant laws, the employee must be no worse off for that AWA to go ahead and be approved.

Senator WONG—Isn't the possibility of an employee being charged, say, 10 times more in fees and charges than she or he previously would have been in relation to superannuation potentially making the employee worse off?

Mr McIlwain—That, I agree, could potentially affect the NDT. As I have said, the Employment Advocate is happy to take into account any information concerning this—and Senator Sherry has now referred us to two recent reports. I am certain that remains the Employment Advocate's position, and I will raise this with him on his return.

Senator SHERRY—Mr McIlwain, the compulsory minimum level of superannuation payment by the employer is now nine per cent—as of 1 July last year. Based on the two surveys I referred to earlier—and on others that I have seen, but these were by independents, the government's statutory organisations—you could have a level of fee or charge that effectively removes one or two per cent of the nine per cent. We are not talking about peanuts here; we are talking about one or two per cent, possibly higher, of wages in some circumstances. So it is a critical issue. Have you ever sought any legal advice in respect of the application of the NDT in this area?

Mr McIlwain—No.

Senator SHERRY—None at all.

Senator WONG—Would you agree that, technically, due to your failure to have regard to this, AWAs may have been approved that would not, had you regard to this, have met the NDT?

Mr McIlwain—I cannot speculate there. The NDT involves the full raft of terms and conditions of employment provided—

Senator WONG—But you have not analysed this, so you have made assumptions in relation to AWAs about the NDT that do not even take this issue into account. Surely you would have to concede there is a possibility that some AWAs may have been approved which, had you taken this into account, may not have met the NDT?

Mr McIlwain—I agree with one particular point you make. We have not analysed this, so that is the exact reason why I am unable to speculate one way or the other. What I can say is that I am not aware, in six years of approving AWAs, of our ever having received a complaint from an employee party to an AWA about this particular issue.

Senator WONG—I would suggest to you that that is not indicative of employees not being worse off. If you look at any of these reports, you will see that people's understanding about

the effects of fees and charges on their long-term retirement income is generally pretty poor across the population. To clarify for me in terms of the no disadvantage test, do you consider other non-award issues such as payment for compulsory training, uniforms or a policy of the employer to pay for breakages or goods stolen? Do you consider those sorts of non-award issues as well?

Mr McIlwain—If the AWA contains a provision that is absent from the award—for example, a provision to dock an employee's pay for a short till—we would take that as a disadvantage, obviously.

Senator WONG—But only if it is a non-award condition?

Mr McIlwain—No. To be quite clear here, some awards expressly prohibit the docking of employee's wages for a short till. It is clear what our responsibility there is with regard to the NDT. Other awards are completely silent on those sorts of issue. However, where the award is silent on that issue yet the AWA provides that an employee can have their pay docked for a short till, we would consider that provision in the AWA nonetheless to be a clear disadvantage even though the award is silent.

Senator WONG—So would you inquire as to what the current policy or practice was—whether this AWA provision was a deviation from previously applied policy—in the context of the award being silent?

Mr McIlwain—No, we would not see it necessary to make the inquiry.

Senator WONG—What if that were arguably part of their contract of employment? What if arguably there were a policy under which they had been employed that said, 'You will not be docked for a short till'—not in the award but in part of the HR manual—and then the AWA lodge alters that? Do you make inquiries to confirm whether or not what is in an AWA actually alters what could arguably be part of a person's employment contract?

Mr Rushton—Senator, the NDT has to be done against the award and any relevant laws, as Mr McIlwain has said.

Senator WONG—So the answer is no.

Mr Rushton—Yes, that is right.

Senator WONG—So the answer is that, even if an AWA altered a substantial number of conditions which, through custom and practice, had continued to be applied at the employee's workplace, and even if those customs and practices could be argued to be part of the person's employment contract, you do not make those inquiries for the purposes of assessing the NDT?

Mr McIlwain—No.

Senator CARR—In regard to the issue of penalty rates: where do penalty rates currently fit within the no disadvantage test?

Mr McIlwain—Penalty rates are taken into account when the NDT is performed.

Senator CARR—You are aware that common-rule awards in Victoria are becoming more prevalent? How will they change the way in which you effect the no disadvantage test?

Mr McIlwain—I am sorry, Senator—if federal awards are applied by common rule in Victoria?

Senator CARR—Yes, common-rule awards in Victoria which cover the issue of penalty rates. How will you factor in the penalty rates in terms of the no disadvantage test?

Mr McIlwain—If an employer is covered by an award via common rule, all of the conditions in that award will be taken into account for the purposes of the NDT.

Senator CARR—But many employers are not covered by these awards. Is that the case?

Mr McIlwain—That is right. I hope I am not incorrectly assuming your line of questioning here but, where an employer is not bound by an award, the legislation requires us to designate an appropriate award for the purpose of the NDT.

Senator CARR—Do you recall a report in 2001 called *Better off or worse off*, which showed that Victorian workers were \$92 a week worse off because of the disappearance of penalty rates under individual agreements?

Mr McIlwain—I recall that report, but you are talking about schedule 1A to the Workplace Relations Act. Schedule 1A has no part at all in the application of the NDT.

Senator CARR—So with the adoption of common-rule awards in Victoria, will there have to be an adjustment up for the calculation of penalty rates?

Mr McIlwain—No, not for the NDT, because the NDT would already take into account penalty rates because, were an employer to be award free, we would have designated the relevant award for the purpose of conducting the NDT. The law says that the NDT must always be conducted against an award. Many employers are respondent directly, as you know, but if they are not we simply designate an award. To give you an example: in Victoria, there are retail employees not working in a business covered by an award, and if their employer offers them an AWA they sign the AWA and the NDT is conducted against an award which we designate—which would be the SDA award, for Victorian retail employees.

Senator CARR—Yes, which is significantly lower than many of the enterprise bargains currently negotiated with the SDA. Is that the case?

Mr McIlwain—That may be the case, but we do what the law says we should do.

Senator CARR—In regard to the penalty rates issue though, federal awards are often considerably lower than agreements struck.

Mr McIlwain—Again, that may be the case, but we must conduct the NDT against the award.

Senator CARR—We have the specific case of a 2001 report which says that they will be \$92 a week worse off. My point is that, if there is in fact a change in that schedule, you will have to adjust the no disadvantage test upwards, will you not?

Mr McIlwain—No, we will not, because it has no effect currently on the NDT.

Senator CARR—All right. Can I come back to this issue of the template. You have indicated a significant increase in the number of AWAs in Victoria and Western Australia, and you have said that you were not aware of any templates being used.

Mr McIlwain—No, I did not say that. I said I was unaware of the pro forma AWA produced by AMMA which you referred to.

Senator CARR—Does your web site include a number of templates themselves?

Mr McIlwain—Yes.

Senator CARR—Are any of those being used?

Mr McIlwain—Yes.

Senator CARR—Are they being used in Western Australia at the moment?

Mr McIlwain—There may be some used in Western Australia, but the actual usage there is most definitely less than in Victoria in terms of percentage.

Senator CARR—So there is a significant use of templates in Victoria then?

Mr McIlwain—Yes.

Senator CARR—By which particular industrial advocates?

Mr McIlwain—With the Restaurant and Caterers Association, with the Victorian Farmers Federation, with the Australian Automotive Aftermarket Association.

Senator CARR—Is that all? Are there any others?

Mr McIlwain—There are several more. I will just explain how template agreements are developed. They tend to be developed in consultation with the relevant industry association.

Senator CARR—I thought it was the case. So you have assisted the industry associations to produce those templates?

Mr McIlwain—We have.

Senator CARR—Which industries in Victoria has your office assisted in the production of templates?

Mr McIlwain—As I just said, the Restaurant and Caterers—

Senator CARR—So all of the ones you just mentioned?

Mr McIlwain—Yes. There may be others coming on line in the future.

Senator CARR—Which others?

Mr McIlwain—There may be a template agreement for newsagents and mixed businesses. Independently, the office itself may develop template agreements for other industry sectors.

Senator CARR—I am looking for further information on that, Mr McIlwain. What other industries are you providing assistance to?

Mr McIlwain—We have developed a template agreement within the office for the Victorian retail industry. We have recently developed a template for the food processing industry.

Senator CARR—What provision do you have in these templates for working hours?

Mr McIlwain—It would vary from template to template.

Senator CARR—Let us go through them. You have mentioned retail. Have you got a working hours component in the retail one?

Mr McIlwain—There is. I cannot recall off the top of my head what it is. The templates are available for everyone to look at on our web site.

Senator CARR—Okay. What is the working hours component in the food industry template?

Mr McIlwain—Again, I cannot recall off the top of my head.

Senator CARR—How does it compare with the current enterprise agreements being struck in those industries?

Mr McIlwain—I cannot say how it compares with the current enterprise agreement struck in the food processing industry.

Senator CARR—You cannot compare?

Mr McIlwain—No, I cannot.

Senator CARR—I am surprised. Can you compare it with the relevant award?

Mr McIlwain—Yes.

Senator CARR—What does it say there?

Mr McIlwain—When I say ‘I can,’ I mean the office can and indeed has.

Senator CARR—What is the conclusion you draw? Is there a significant departure?

Mr McIlwain—The conclusion we draw is that the template will meet the NDT.

Senator CARR—Do they contain a right to refuse unreasonable overtime?

Ms Muncey—The food processing unit template, which is not yet on the web site, has a range of hours and people can choose to do overtime.

Senator CARR—They can choose to do it. So there is a right of refusal according to your template?

Ms Muncey—Not necessarily. If the work demands require people to work overtime, then the template does not specifically say there is a right to refuse overtime.

Senator CARR—What is the point of a right which you may choose not to exercise? It is a right to go to work, by the sounds of it. Is that what the thing is?

Mr McIlwain—I think the issue is that employees are able to volunteer to work overtime.

Senator CARR—I see. But I am saying that if an employer puts to an employee that they will work overtime but the employee views it as unreasonable—given that they may have, say, family commitments—what right of refusal will they have under your template?

Ms Muncey—The templates do not specify a right of refusal. A lot of those issues relate to the practices within each organisation. For a template to actually say, ‘You have the right to refuse,’ means that sometimes the business arrangements need to be met in emergencies or particular circumstances, particularly in the food processing industry, which needs to cater to seasonal or uneven work.

Senator CARR—However, most industrial agreements do have provisions in regard to the working of overtime. Your templates do not.

Mr McIlwain—Senator, we would have taken into account what the relevant award for workers in the food processing industry said in regard to overtime.

Senator WONG—Can I just clarify this? Isn't there an AIRC standard or a draft clause on the refusal of overtime, arising from last year's case?

Mr McIlwain—That may be the case, Senator.

Senator WONG—Does your template look at that?

Mr McIlwain—The template would take into account what the relevant award said.

Senator WONG—So, if the award has not yet been amended to include the provisions as articulated by the full bench, you do not assess against that—you assess against the award.

Mr McIlwain—That is correct. That is what the law requires we do.

Senator WONG—But surely best practice would be to look at what are now commission standards.

Mr McIlwain—That is not what the legislation requires us to do, Senator. The legislation requires us to conduct the NDT against the relevant award as it stands on the day before the AWA is signed.

Senator WONG—I appreciate that, but this issue of unreasonable hours of work has been the subject of some consideration by the commission. We are not talking about a minor award variation here. Surely it would be appropriate for you to have regard to the decision of the full bench, in terms of not the assessment but your template.

Mr McIlwain—Senator, the template is prepared in consultation with the relevant industry association. In this case, it in fact was perhaps not with the industry association but with several industry operators, and it reflects—or it has taken into account—the provisions in the relevant food processing awards: a federal award and several state awards. All that has been taken into account, so the template is designed to work in that industry and to pass the NDT in each state, having had regard to the relevant award.

Senator CARR—Can I ask you this: last year did the Australian Industrial Relations Commission make comment on the question of the standard of awards in these regards?

Mr Rushton—I am not quite sure what you are getting at, Senator.

Senator CARR—Pretty clearly what I am getting to is this: is the standard that you have applied in your template identical to the standard that was established by the Australian Industrial Relations Commission last year?

Mr McIlwain—Senator, all I can say is that the standard, if we use that word, used to prepare the food processing template is the standard represented by the relevant federal award and any other relevant state awards.

Senator CARR—I am asking you a different question, Mr McIlwain. In your judgment, that is the case. I am asking you: how does that compare with the position that was adopted by the Industrial Relations Commission last year on this matter? Will you take that on notice?

Mr McIlwain—We will take that on notice.

Senator CARR—I would like a detailed answer to that.

Mr Rushton—Senator, which standard are you referring to?

Senator CARR—The standards that were set down by the commission last year.

Mr Rushton—Precisely which standards, Senator?

Senator WONG—Weren't there standards in relation to reasonable working hours and the right of negotiation regarding additional overtime?

Mr McIlwain—We will take that question on notice.

Senator WONG—Have you investigated that? Have you actually looked at the commission's decision from last year?

Mr McIlwain—In the context of our template agreements, no, not to my knowledge.

Senator CARR—Do any of the AWA templates provide for a maximum number of ordinary hours to be worked in any week?

Mr McIlwain—Yes. They may be averaged over a period.

Senator CARR—No, I want a maximum number of ordinary hours of work. What is your position in regard to the templates—do you specify the maximum number of ordinary hours of work?

Mr McIlwain—There will always be a reference to a maximum number of ordinary hours. Whether that is spread over a month, a fortnight or a week will depend upon the industry. I suspect in most cases it will be over a month.

Senator CARR—The point of all this is: what safeguards are there in your templates in regard to AWAs being used and specifying limits on the working hours for any particular employee? Are there any safeguards against excessive working hours?

Ms Muncey—The food processing industry template has a guide that goes with it that talks about resolving a lot of issues through consultative committees. Having those issues raised—

Senator CARR—This is a consultative committee between the boss and the worker, is it—a committee in which the worker does not have the right of refusal of overtime? Is that the sort of consultative committee that you are proposing?

Mr McIlwain—The consultative committee would be a bipartite management-staff committee, were it to be established in a workplace.

Senator CARR—How can there be a bipartisan staff management committee between individuals in a workplace and the employer?

Mr McIlwain—If it is put into place, there can be.

Senator WONG—Could I clarify, Ms Muncey: the committee in the food processing template is comprised of whom?

Ms Muncey—It does not actually specify whom it has to be. That decision can be made by the employer or within the business, but it can be arranged.

Senator WONG—So it is up to the employer's discretion. What are the strictures on that discretion in the template?

Ms Muncey—The clauses regarding the consultative committee are in an attachment, which is a guide.

Senator WONG—So it is not mandatory?

Ms Muncey—No clause in a template is mandatory because that is up to the employer.

Senator WONG—I appreciate that but, even if the agreement were lodged in accordance with the terms of the template, would the appendix impose any duties and obligations on the employer or is it simply a guide?

Ms Muncey—The appendix does not get attached. The appendix is a guide to employers and it explains—

Senator CARR—To employers?

Ms Muncey—Yes, in establishing their AWA's.

Senator CARR—I see. So would the workers know about this consultative committee?

Ms Muncey—Yes, if a consultative committee were to be put in the AWA.

Senator CARR—I want to be clear about this. This is not an AWA to a whole group of workers; it is an individual agreement?

Mr McIlwain—An AWA is an individual agreement between an employee and an employer. However, that being said, there is nothing to stop employees and the employer establishing any kind of industrial consultative body within the workplace that they see fit. Ms Muncey has simply described a process which we recommend that the employer might consider in developing and offering AWAs, and also simple, good practice in managing the relationship between the employer and the employees on a day-to-day basis in the workplace.

Senator WONG—Ms Muncey, if I could still clarify: we are talking about an appendix to your template food processing industry agreement. Am I correct; is that what we are discussing?

Ms Muncey—We are talking about a separate document that explains further clauses that may be useful to be put into the template—further ways of making it relevant to that workplace.

Senator CARR—We are probably going around in circles here. I just find it extraordinary that an individual agreement then proposes a collective arrangement somewhere else in the whole—

Senator WONG—Is it a collective arrangement?

Ms Muncey—A consultative committee would be based generally of management and staff representatives.

Senator WONG—Generally. But the appendix allows for something other than that, does it?

Ms Muncey—No, the appendix does not say that it can be the employer and one employee. It is assumed that a committee would be composed of several people.

Senator CARR—Two, at least. Can I go back to where we started: the standards that you are proposing through these templates, which we hear are being extensively used. With regard to the reasonable working hours case, the AIRC last year said the following things, and I just want you to confirm that this is your understanding:

... an employer may require an employee to work reasonable overtime at overtime rates.

However:

1.2 An employee may refuse to work overtime in circumstances where the working of such overtime would result in the employee working hours which are unreasonable having regard to:

1.2.1 any risk to employee health and safety;

Where do I find that in your template?

Mr McIlwain—You will not find it in the template.

Senator CARR—I will go on to the next one:

1.2.2 the employee's personal circumstances including any family responsibilities;

Where will I find that?

Ms Muncey—You may find references to work and family provisions in different templates. You will also find substantial work and family references in guides, in particular to the food processing template, and also in a general guide on the web site.

Senator CARR—Yes, but where will I find the right to refuse unreasonable overtime with regard to the issue of family responsibilities?

Ms Muncey—You will not find that in the template.

Senator CARR—Thank you. If there has not been sufficient notice—where will I find that?

Ms Muncey—It could depend on the template.

Senator CARR—The right to refuse on the grounds of not having sufficient notice would be there?

Ms Muncey—It would depend on the template, but you may well not find it in the template.

Senator CARR—That is right. It will not be there, will it?

Ms Muncey—It would depend on the template.

Senator CARR—So the right to refuse is there?

Ms Muncey—I would have to go through every template.

Senator CARR—I am just interested to see if there is a right to refuse there or not, and you are telling me it is there now.

Mr McIlwain—Each template is different. Some are significantly different from others. As I have said, all of the ones that are currently in use are already published on our web site and available for anyone to peruse.

Senator CARR—I appreciate that, but you have indicated to this committee, Mr McIlwain, that these are extensively used for the drawing up of AWAs. You are telling this committee that there has been a significant increase in the number of AWAs. You indicated to the committee that a number of agents are using these quite extensively. You put them together, with the employer authority, through their agents. And now you are saying to us that they do not have basic standards written into them, like the right to refuse unreasonable working hours. I ask you to show me one that gives the right to refuse unreasonable hours.

Mr McIlwain—I do not wish to be difficult, but I think we have taken this question on notice not five minutes ago, so we will answer the question.

Senator CARR—You questioned me before about my raising of the Australian Industrial Relations Commission. I ask you: if you are not applying their standards, what protections are there? You said, ‘We apply their federal award.’ I am talking about the commission’s determinations in these matters. My concern here is: are you fulfilling your duty of care?

Mr McIlwain—We are discharging our legal obligations under the Workplace Relations Act.

Proceedings suspended from 10.58 a.m. to 11.22 a.m.

Senator CARR—Acting Chair, there has been a problem: Hansard apparently was not able to record a small section of the proceedings of the committee that arose after our last adjournment. With the agreement of the committee, I would like to go back over that matter.

ACTING CHAIR (Senator Mason)—Certainly.

Senator CARR—It was the issue of the Office of the Employment Advocate consulting with the minister or his staff about the point at which they were advised or otherwise of the reference of the matter of the Caroline Sternberg email, which was raised at the Senate estimates committee on 3 June 2002. It was indicated at that time that the committee was not able to hear from Mr Hamberger because he was overseas. I understand that Mr McIlwain indicated to us that he would be overseas until Tuesday—is that correct?

Mr McIlwain—I said that I understood that he had been and was overseas. Then I indicated that he would return to duty on Tuesday week.

Senator CARR—And that you would be seeking from Mr Hamberger advice as to these matters that I put down, and that you would be doing your best to provide us with an early answer.

Mr McIlwain—That is correct.

Senator CARR—Presumably that would mean sometime next week—is that possible, do you think?

Mr McIlwain—I will speak to Mr Hamberger first thing on Tuesday morning and we will endeavour to get an early response to you. Without being held to it absolutely, I think certainly by the end of next week is not an unreasonable guess.

Senator CARR—Thank you very much. With regard to Ms Sternberg, you said that she went on leave and has subsequently resigned from the department. Did she go on leave around October last year?

Mr McIlwain—I believe at the beginning of October.

Senator CARR—Was that about the time at which this matter was referred to the Federal Police?

Mr McIlwain—No, I believe it was some months earlier.

Senator CARR—Was her going on leave in any way related to this matter?

Mr McIlwain—No.

Senator CARR—Was her resignation in any way related to this matter?

Mr McIlwain—No.

Senator CARR—All those other questions in regard to the reference of this matter to the Federal Police and the ministerial office have been taken on notice, haven't they?

Mr McIlwain—Yes.

CHAIR—Mr McIlwain, at this point I believe you have some further information on AWAs.

Mr McIlwain—I do. The department has kindly provided me with some statistics on AWAs in the Australian Public Service. There were, as of 9 May 2003, 7,931 AWAs in the APS. Of those, 1,799 were SES AWAs and 6,132 were non-SES AWAs.

Senator CARR—Are you able to give me a percentage of the total APS?

Mr McIlwain—I am. Of the total APS, 6.4 per cent of all APS employees are covered by an AWA.

Senator CARR—What is the percentage of the senior executive service covered by AWAs?

Mr McIlwain—97.5 per cent.

Senator CARR—What percentage of those below SES rank are covered by AWAs?

Mr McIlwain—Five per cent.

Senator CARR—Thank you. Were there any other matters you wanted to address?

Mr McIlwain—No, that was all.

Senator CARR—We were discussing before the break the question of the templates that the office has prepared and, in particular, the rights of workers to refuse unreasonable hours of work. Could I ask you whether any of your template AWAs leave working hours entirely to the discretion of the employer?

Mr McIlwain—No, not entirely to the discretion of the employer.

Senator CARR—Given that answer, I was wondering if you could help me understand this clause. In clause 8 of your templates for the retail industry, it says:

The ordinary hours may be worked over any day of the week, Monday to Sunday inclusive, and shall be arranged by the employer to meet business requirements.

Further on it says:

The roster cycle shall be notified by the employer in writing, in advance. A seven day rotating roster (Monday through to Sunday) may be implemented at the discretion of the employer ...

Where do workers fit into this 'discretion'?

Mr McIlwain—That clause talks about the employer's discretion. Other clauses in other templates, and indeed in many AWAs, talk about things such as voluntary overtime. My earlier answer was in the context of templates generally and, indeed, AWAs generally.

Senator CARR—Thank you very much, Mr McIlwain, but I am interested in this specific template which implies to me that it is the employer that has the discretion. Would that not be a reasonable reading of clause 8 of this template?

Mr McIlwain—Yes.

Senator WONG—Is there any clause in this template which fetters that discretion at all?

Mr McIlwain—With regard to a roster?

Senator WONG—No, with regard to working hours.

Mr McIlwain—I cannot recall, I do not have the template before me.

Senator WONG—You gave the answer earlier, to Senator Carr, that none of your templates leave the issue of working hours and overtime entirely to the discretion of the employer. Wasn't that your evidence?

Mr McIlwain—No; I said 'not entirely at the discretion of the employer'.

Senator WONG—The clause that Senator Carr just read out appears to leave that discretion entirely at the feet of the employer. Is there another clause in that particular template?

Mr McIlwain—My answer is that I cannot recall. I do not have the template in front of me.

Senator CARR—I think your earlier answer was a little bit more definitive than that.

Senator WONG—That is right.

Senator CARR—I understand how these things work. It is just that it is very dangerous, when coming to this committee, to be emphatic about certain matters when the documents would appear to contradict your assertions.

Senator WONG—Is there any clause in the retail industry template that has regard to the section of the Workplace Relations Act that deals with family responsibilities—is that section 82BB?

Mr McIlwain—We will check.

Senator WONG—Is there any clause that has regard to it?

Mr Rushton—Senator, are you talking about the employment advocate's responsibilities in relation to—

Senator WONG—I am asking if the templates that you produce for the retail industry have any regard to family responsibilities. Sorry, I think the section was 83BB.

Mr McIlwain—I cannot recall whether the retail template for Victorian retail businesses includes clauses specifically related to work and family.

Senator WONG—Aren't you obliged under the act to have regard to the objective of assisting workers to balance work and family responsibilities?

Mr McIlwain—Absolutely.

Senator WONG—Then shouldn't your template for the retail industry, or any industry, have provisions in it that enable that to occur?

Mr McIlwain—Firstly, let me say that I do not recall whether it is in fact the case that such a provision is absent—I simply cannot recall. The office takes its responsibilities with regard to the balance of work and family very seriously, as it does its responsibilities with regard to the promotion of better work and management practices. We have extensive publications, we participate in several programs specifically designed to promote better work and management practices and to promote work-family balance in the workplace. For example, we are a sponsor of—

Senator WONG—Mr McIlwain, these are very fine initiatives. But surely one of the key issues is what are the conditions of employment under which people work. In relation to work and family responsibilities, surely one of the key issues is whether they are entitled to refuse unreasonable overtime and to have some discussion about their hours of work. Are you telling me that none of your agreements, the templates you are putting out there for employers to use, contain provisions that enable employees to refuse unreasonable overtime or to have input into their working hours?

Mr McIlwain—No, I am not telling you that—indeed, we promote, as a family friendly initiative, clauses that allow an employee to indicate their preferred hours of work.

Senator WONG—What if the employer says no?

Mr McIlwain—Whether that clause is present in the Victorian retail template, I cannot recall at the moment. However, it is present in other templates and is promoted in discussions with employers in the context of better work and management practices and better work and family balance.

Senator CARR—Mr McIlwain, the trouble with that is that is all bumf. What do your templates say? If we go to clause 9 of the same template, it actually says, 'Where the employer directs the employee to work overtime'. There is no provision there for a refusal; it says 'directs'. How do you reconcile your statutory obligations under the act with these templates that you are putting up on your web site?

Mr McIlwain—I see no inconsistency with our statutory obligations and the templates that are on our web site.

Senator WONG—Do you not see your statutory obligations as including in a template some provisions which reflect the need for people to work reasonable hours in order to manage their family responsibilities? It is a very simple question.

Mr McIlwain—The office absolutely sees work and family as an important consideration in agreement making generally, including in the making of AWAs. Some templates provide for employees to nominate their preferred hours of work. We, in fact, have a model clause which we promote and suggest employers incorporate into AWAs to allow employees that freedom to nominate the hours that best suit them to manage their work and family responsibilities.

Senator CARR—Why isn't that model clause in this template?

Mr McIlwain—I am taking your word for it, as it is not in front of me, that it is not in it. If it is not in it—

Senator CARR—You could answer me quickly, surely. You have officers at the table. Is it not in this—

Senator WONG—Ms Muncey, isn't this your area?

Ms Muncey—It may not be in that template, but that template was made also with an employer association and they need to say what is in a template that they want to use.

Senator CARR—Dear, dear, dear.

Senator WONG—Is that how it works?

Senator CARR—That is an extraordinary proposition. So the bosses determine what goes in the awards—is that what you are saying?

Ms Muncey—In the AWA?

Senator CARR—In the AWAs. Are you saying that, in these AWAs it is the employers that determine what goes in?

Mr Rushton—The parties need to agree on an AWA, hence the—

Senator WONG—That is a different issue, Mr Rushton. What Ms Muncey just said is that a template that is on your web site—is that right? We are talking about a template that is available on the web site?

Ms Muncey—Jointly prepared.

Senator WONG—A template that is on your web site is prepared only in consultation with the industry association because if they do not want a provision regarding unreasonable overtime in it it is not in there. Is that a reasonable assessment of the facts?

Mr McIlwain—If Ms Muncey will indulge me, I will make a correction to her evidence. She is unaware that that template is not a joint OEA industry association template. It is an OEA template; it does not have the badge of an industry association.

Senator CARR—So why then do you not have the model clauses in your own templates?

Mr McIlwain—We have many model clauses. Some may be included in templates; some may not be.

Senator CARR—Why aren't they? Why is such a fundamental statutory obligation, that you acknowledge that you have, not included in your own templates?

Mr McIlwain—We include the model clauses. We in fact draft templates to suit the needs of employees and employers within the industry that the template is designed for.

Senator CARR—Mr McIlwain, the problem that we have here is that this particular template, which you have now acknowledged as your template, does not have this particular model clause in it.

Mr McIlwain—And it does not have several other model clauses. However, it has other clauses that we consider to be model clauses.

Senator WONG—What is the process for developing a template?

Mr McIlwain—A template is developed either in consultation with an industry association or developed entirely in-house.

Senator WONG—What percentage of the templates that you have would be industry association templates? Perhaps we can start with the figures. How many templates do you have and how many are industry developed templates?

Mr McIlwain—About two-thirds of templates would have industry association involvement.

Senator WONG—And that means that the industry association would have to agree to all the clauses in that template?

Mr McIlwain—Yes.

Senator WONG—Did the employers in the retail industry not agree to having a provision in the template agreement that included a right to refuse unreasonable overtime?

Mr McIlwain—The relevant employer association has developed a template in-house—

Senator WONG—Which you have adopted?

Mr McIlwain—No; which it promotes to its members, and the OEA has developed a template.

Senator CARR—Do either of those have the model clauses relating to family responsibilities?

Mr McIlwain—I do not know in regard to the relevant industry association template—

Senator CARR—Yours does not.

Mr McIlwain—With respect to our Victorian retail industry template, I do not know. I do not have in front of me. If you say that particular clause is not included, Senator Carr, I will rely on that.

Senator CARR—I am just interested to know whether or not the right of refusal for unreasonable hours is incorporated in any of your templates. I think the answer so far has been no. I am wondering, given the ARC's decisions last year, how it is that you are still not applying those standards.

Mr McIlwain—I took a question on notice, where you asked me to ask the OEA to answer what regard it had given to, and how it had taken into account, the commission's decisions with regard to those templates, and we will answer that question on notice.

Senator CARR—If we were to take, for instance, the situation in the construction industry, are there significant departures in terms of your framework agreements—your templates—in the construction industry from those that are covered by the relevant national building and construction industry award?

Mr McIlwain—We have no template agreements for the construction industry.

Senator CARR—Do you have a framework document?

Mr McIlwain—No.

Senator CARR—It does not exist?

Mr McIlwain—No.

Senator WONG—You have no document in relation to proposed AWAs in the building industry?

Mr McIlwain—No, not that I am aware of.

Senator CARR—Clearly we will need to come back to that because that is not the information that we have been given. Do you want to confirm that evidence?

Mr McIlwain—We will confirm that for you. I will check that, but I have no recollection of our developing a framework or template agreement for the construction industry.

Senator CARR—If you have no recollection, is that a different thing?

Mr Burnett—That is not to say that an industry association may not have its own. But I have no recollection of the OEA—

Senator CARR—The Office of Employment Advocate has not had any involvement in the construction of a framework agreement within the construction industry?

Mr McIlwain—No. I am unaware of it, Senator.

Senator WONG—Can I just go back, while Senator Carr is looking at that issue, to the process to develop these templates. Are two-thirds of them developed in partnership with industry?

Mr McIlwain—That is the intention, yes.

Senator WONG—Presumably that means that industry have to agree to it?

Mr McIlwain—Yes. They are jointly developed agreements. They are cobadged template agreements.

Senator WONG—Has the issue of the reasonable working hours decision been raised in discussions with industry in the context of altering the templates?

Mr McIlwain—No, not to my knowledge.

Senator WONG—Why not?

Mr McIlwain—Because the agreements are designed to meet the no disadvantage test against the relevant award. That is our principal concern.

Senator WONG—The reasonable working hours decision sets out some model clauses and standards in relation to working hours, does it not?

Mr Rushton—I believe it does. I have not looked at the decision.

Senator WONG—And it has the status of a full bench decision, so it is reasonably persuasive in terms of future award arbitrations. Am I right?

Mr McIlwain—Yes.

Senator WONG—If a union or an employer sought to vary an industry award—or a particular award—in relation to this issue, the commission would have regard to the standard set by the full bench?

Mr Rushton—Yes, I would imagine so.

Senator WONG—You would agree that it is highly likely that most awards, if there were an application, would be amended to reflect the full bench decision?

Mr Rushton—It is speculation, but—

Senator WONG—Why is it speculation?

Mr Rushton—It depends on which application or award you are talking about.

Senator WONG—If an application were put in, it is the case that the commission is likely to have regard to the decision of the full bench and that that is most likely to be the standard which is adopted in awards, isn't it.

Mr Rushton—I think we have to work on the awards as they are.

Senator WONG—That is not the question that I asked you, Mr Rushton. Would you agree that, if there were an application to vary the awards in relation to reasonable hours provisions, the commission is most likely to adopt the clause as set out by the full bench?

Mr McIlwain—This is outside the area of the OEA's legislative responsibilities.

Senator WONG—I am coming to the OEA's responsibility.

Mr Rushton—It is very hard to say what the commission would decide. I would not put myself in that position.

Senator WONG—It is not your considered opinion, as a lawyer, that it would be most likely that the model clause adopted by the federal commission—

CHAIR—Senator, you are asking the officers to provide an opinion on another body.

Senator WONG—So your view is that it is not relevant to the OEA's statutory responsibilities to balance work and family to look at the most recent decision of the federal commission for the purposes of analysing whether or not your templates reflect that?

Mr McIlwain—It may be relevant.

Senator WONG—When does it become relevant?

Mr McIlwain—Our principal concern in developing template agreements is to ensure that the legislative test—that is, that the AWA passes the no disadvantage test—is met. That is our principal concern in developing template agreements. The law says that, in applying that test, we must have regard to the award as it stood on the day before the agreement was signed. That is how we do our business.

Senator WONG—I understand that. Have any of these templates been negotiated with industry subsequent to the handing down of the full bench decision?

Mr McIlwain—Yes.

Senator WONG—Has it crossed your mind that perhaps this might be a mechanism to ensure that employees do not get the advantage of that benefit?

Mr McIlwain—No.

Senator WONG—You did not consider that?

Mr McIlwain—We do not believe that that will be an outcome.

Senator WONG—If the awards are changed to reflect the full bench decision—which they will be over time—and there are AWAs in place which do not include it, then those employees will be disadvantaged, will they not?

Mr McIlwain—Only if their agreement were made after the award was varied.

Senator WONG—Not quite: if it were made prior to the award being varied and you assess it against the unvaried award and then the award is varied, they are disadvantaged in relation to the rest of the industry's employees.

Mr McIlwain—Yes, but not in relation to the statutory test.

Senator CARR—Are these model clauses that go to the issue of the right of refusal of unreasonable hours superior or inferior to the current award provisions?

Mr McIlwain—Our clauses that allow for employee preference in working hours are framed in a different language and, to my mind, take a different approach. I am not sure you could say that they are superior or inferior; they are simply different.

Senator CARR—I put it to you, Mr McIlwain, that those model clauses do not give the right of refusal.

Mr McIlwain—They do not give an express right; however, they allow an employee to express a preference to be accommodated.

Senator CARR—Yes, but they do not give the right of refusal.

Mr McIlwain—They give no express right.

Senator CARR—So it would be fair to say that they are inferior, if they do not give that express right of refusal.

Mr McIlwain—You are asking me to express an opinion, and my opinion is that—

Senator CARR—That is your job, isn't it? Your job is to measure the no disadvantage test.

Mr McIlwain—My opinion is that the clauses are different and not necessarily inferior. I believe that allowing an employee to express a preference for the hours of work that best suit them is of great benefit and an advantage to the employee.

Senator WONG—You said that there was no building industry template agreement. Was there one on your web site previously?

Mr McIlwain—I am unaware of one. It is possible that some years ago there was one, but I am really unable to recall.

Senator CARR—We are talking about 2000. That is not some years ago; it is two years ago.

Senator WONG—Was there something on your web site or produced by the OEA called the AWA construction industry framework?

Senator CARR—In fact, I have a copy of it here.

Senator WONG—Yes, we have just been emailed it. Look at that. There it is on your web site. Beautiful! Would you like to come and look at it, Mr McIlwain?

Senator CARR—How do you reconcile that with your previous evidence, Mr McIlwain?

Mr McIlwain—I cannot recall it. I find it completely reconcilable with my evidence.

Senator CARR—You can't remember it?

Senator WONG—Your evidence was that there was not, and we have just advised you that it is on your web site.

Mr McIlwain—My evidence was that I could not recall.

Senator WONG—Goodness me!

Mr McIlwain—The web site has on it several hundred documents. At some time an agreement—and I am thinking several years ago—dealing with the construction industry may have been made available on the web site. I have no recollection of it now; I had no recollection when I answered your question.

Senator CARR—Mr Rushton, do you have any recollection of it?

Mr Rushton—Not really, no. Like Mr McIlwain, I would say that it could have been something from some time ago, but my recollection is not good on that, I am afraid.

Senator CARR—We are talking about the year 2000.

Senator Alston—Are you trying to get him to admit that somehow he does remember it? He has told you he does not and he has also said there are very many—

Senator CARR—I am glad to see that you are here, Senator. I am pleased you are here. I am interested to know why it is that the officer's memory is so weak in this area. Was it not correspondence from your office that led to the establishment of the building industry royal commission?

Mr McIlwain—Yes.

Senator CARR—Was it not a result of that building industry royal commission that saw you stripped of responsibilities for this area and a new task force established?

Mr McIlwain—The interim task force was established as a result of the royal commission.

Senator CARR—Is it not the case that you advised us this morning that you have had some 30 per cent fewer inquiries in this area?

Senator WONG—About 30 to 50 per cent of your work was previously in the building industry.

Mr McIlwain—Yes, that is what I advised.

Senator CARR—You could not recall that you had a model agreement in this particular industry?

Mr McIlwain—That is correct.

Senator WONG—The site indicates that the area with this particular agreement was last updated in January this year.

Mr McIlwain—May I ask what page that is on?

Senator WONG—I have just been emailed the link, and it simply indicates that the page which includes the index to the AWA construction industry framework—which is to be found on your web site—was updated in January this year.

Mr Rushton—It may not mean that that particular agreement was updated; it may have been that something else on the page was updated. But I am speculating to try and assist you.

Senator WONG—Mr McIlwain, I do find it extraordinary that you gave evidence earlier that there was no such agreement, and there is one on the web site.

Mr McIlwain—I did not give evidence to that effect.

Senator Alston—He has already said that.

Senator WONG—Perhaps inquiries should have been made before.

Mr McIlwain—The evidence I gave was that I had no recollection.

Senator WONG—We asked a number of questions about that and we were told there was no such template.

Senator Allison—Senator, you have said that three times and he has told you each time that he said that he did not remember. You cannot convert that into him denying it.

Senator WONG—Perhaps he should check things out before he says no, Minister.

Senator CARR—Senator Alston, the *Hansard* will demonstrate—

Senator Alston—Indeed, it will. And you will have, to that extent, a dispute. I am not sure that Senator Wong is actually alleging he did deny it and is now saying he does not remember; she just keeps asserting that.

Senator Wong—Perhaps what I was saying was that the standards of the responses could have been a little better.

Senator Alston—That is a different debate. I do not know that you are asserting that you have a perfect recollection of the *Hansard*, that it is better than anyone else's.

Senator CARR—With regard to that framework, obviously, given that your memory is so poor in this area, you will probably need to take these—

Senator Alston—That is just cheap abuse.

Senator CARR—Cheap abuse?

Senator Alston—Yes.

Senator CARR—Would you like some expensive abuse?

CHAIR—Senator, perhaps you could move to questions directly.

Senator CARR—With regard to this framework, if we go through the various clauses, can you tell me how that framework measures up with regard to the National Building and Construction Industry Award 2000? I might add that that is substantially inferior to the product of the various building industry agreements. How does that measure up with regard to the following provisions: probation, casual labour, hours of work, inclement weather, RDOs, overtime, annual leave, travelling allowances, redundancy, superannuation? Can I ask you to give us an analysis of where that template meets the no disadvantage test on each one of those clauses?

Mr McIlwain—I will take that question on notice.

Senator CARR—I put it to you that the agreement is inferior to the national building and construction industry award 2000.

Mr Rushton—We have taken that on notice, but can I just say again that in the end it is a global test. In doing a line by line test, some line items may go below and some may go above.

Senator CARR—I expected you would say that. What are the compensating factors that you say would therefore allow you to claim that this framework agreement—and, as I say, we believe it to be one of your documents—meets the NDT?

Mr Rushton—We would have to take that on notice.

Senator WONG—I have one brief question in relation to working hours. In relation to AWAs covering the transport industry, do you have any regard to state legislation which sets limits on the number of hours a driver can be at the wheel when assessing your working hours provisions of the AWA?

Mr Rushton—The state OH&S legislation actually overrides provisions in the award under the act.

Senator WONG—I appreciate that but, obviously, if workers have an agreement that says one thing, they may not necessarily know that it is amended as a matter of law, or overridden as a matter of law. When you are assessing and approving AWAs in the transport industry, do you have regard to state legislation which would limit the number of hours a driver could lawfully be at the wheel?

Mr McIlwain—We have regard only to those matters that affect the NDT. As David Rushton has said—

Senator WONG—So the answer would be, if I can clarify, Mr McIlwain, that it would be possible for you to approve an AWA where the working hours provision contravenes the relevant state laws in relation to drivers?

Mr McIlwain—It cannot contravene the relevant state laws.

Senator WONG—No, in the text of the agreement, not in the legal effect.

Mr McIlwain—An agreement may purport to contravene the law but in effect of course it cannot.

Senator WONG—Let us stick with that wording then. Would you agree that your office would technically be able to approve agreements which purport to put in place working hours which contravene state OH&S legislation?

Mr McIlwain—An agreement could purport to do that.

Senator WONG—Thank you. I wanted to ask some questions about cashing out of leave while we are still on AWAs and the no disadvantage test. Are you familiar with the restaurant and catering template AWA, Mr McIlwain?

Mr McIlwain—I know of its existence, yes.

Senator WONG—Is that another industry developed template?

Mr McIlwain—It is developed in consultation with the Restaurant and Caterers Association of Victoria.

Senator WONG—So it is another one where the industry would have to sign off before it becomes a template?

Mr McIlwain—Yes.

Senator WONG—That is a provision that enables cashing out of annual leave, isn't it?

Mr McIlwain—Yes.

Senator WONG—Does the Office of the Employment Advocate not have any concerns with such a provision, bearing in mind your statutory responsibilities to which we have previously referred under the Workplace Relations Act on the issue of family responsibilities?

Mr McIlwain—We see that as a matter for the individual employee.

Senator WONG—How many of your template agreements enable cashing out of annual leave?

Mr McIlwain—I am not able to tell you off the top of my head.

Senator WONG—Are you able to take that on notice?

Mr McIlwain—We will take that on notice.

Senator WONG—Could you also identify in relation to that which of those have been developed with industry, as opposed to the one-third which were developed presumably by your office alone?

Mr McIlwain—Yes.

Senator WONG—Can I go back to the workload changes arising out of the referral of construction industry matters to the task force. I may have a poor recollection of your evidence, Mr McIlwain, but my recollection is that your evidence was that, once the royal commission had commenced, the unlawful activity as alleged to you in the building industry dropped off significantly. Is that right?

Mr McIlwain—Yes. The evidence I gave this morning was that, in 2000-01, there were 307 investigations. Not all of those were in relation to alleged breaches in the building industry.

Senator WONG—Do you have figures as to how many were?

Mr McIlwain—No. I do not have those figures with me.

Senator WONG—Could you provide those?

Mr McIlwain—Yes.

Senator WONG—I think your evidence was 193 for the next financial year.

Mr McIlwain—Yes. In 2001-02, there were 193 and, in the current financial year, as of 30 May, there were 203.

Senator WONG—What proportion of those are building industry?

Mr McIlwain—I am not able to say.

Senator WONG—Could you provide that as well.

Mr McIlwain—In the current year, it would be a small number because of the advent of the interim task force, but we will provide you with that information.

Senator WONG—What about in 2001-02? Do you have any even ballpark figures as to what percentage of the 193 would have related to the building industry?

Mr McIlwain—We have some ballpark figures which we will provide.

Senator WONG—Is it your perception from the workload of the office that, once the Cole commission was under way, the number of complaints and allegations in relation to the construction industry significantly declined?

Mr Rushton—It did decline, yes.

Senator WONG—Substantially? Are we talking half the workload? A third?

Mr Rushton—It declined fairly gradually during the course of the royal commission and has continued to decline since then.

Senator WONG—Given that, why is it so necessary to have a further commission?

Mr Rushton—I am sorry, Senator. Are you referring to the proposed Australian building construction commission?

Senator WONG—That is right.

Mr McIlwain—To be clear, what we are saying is that our workload at the OEA has declined in regard to investigations relating to alleged breaches of the act in the building industry. We are making no comment about the workload of other agencies.

Senator WONG—Can we go back to Western Australia now. I think Senator Carr asked you some questions about the increase in the number of AWAs in Western Australia. Is that right?

Mr McIlwain—Yes. That is correct.

Senator WONG—I have a document here from *Workplace Express* of 6 May 2003 in which the CCI WA employee relations director told a Melbourne conference that your office was processing 4,000 to 5,000 AWAs from WA each month, which is a tenfold increase in the number since February 2001. Does that accord with your understanding of the increased workload?

Mr McIlwain—Yes, broadly that would be the scale of the increase.

Senator WONG—Have you allocated additional staff to Western Australia to assist with this processing?

Mr McIlwain—We have a full complement of staff in Western Australia and we are able to supplement the Western Australian based staff with staff who do the work in their home offices in other states.

Senator WONG—So how many additional staff are allocated to processing the AWAs in Western Australia, for example, in this financial year as opposed to the two previous?

Mr McIlwain—Currently, two.

Senator WONG—What percentage increase on the figures are we talking about? Isn't it about four times the number of AWAs?

Mr McIlwain—We are talking of a 420 per cent increase, but what I should say—

Senator WONG—So it is over four times what you were previously dealing with.

Mr McIlwain—Yes. What I should say here though is that I am referring to staff located in Western Australia and then outside our centralised processing area. As I said earlier this morning with regard to our centralised processing unit, our national AWA team, we have in fact increased the number of staff there from 22 to 42. So we have—

Senator WONG—This is the central processing that we discussed earlier?

Mr McIlwain—It is, yes. So, a considerable proportion of that increase is expended on the processing of AWAs, naturally, coming from Western Australia. Additionally, to assist Western Australian staff manage the workload they have in their own office, which involves approving agreements that require undertakings, we have two other staff who are not located in our national processing team but who are in fact in Adelaide assisting our Western Australian staff now with that workload for which they are responsible.

Senator WONG—So, in relation to the workload of the Western Australians, you have a 420 per cent increase in workload and you allocate two additional staff to that office?

Mr McIlwain—We allocate two additional staff in another regional office and a fair proportion of 20 additional staff in our national processing team.

Senator WONG—But the 20 additional staff in the national processing centre would not deal with the AWAs that are required with undertakings.

Mr McIlwain—That is correct.

Senator WONG—So what proportion of this 420 per cent increase are AWAs with undertakings?

Mr McIlwain—I do not have that figure.

Senator WONG—Perhaps you could provide that.

Mr McIlwain—We will take that on notice.

Senator WONG—Given these sorts of increases in workload, how are you ensuring that there is no compromise on the approval and analysis process?

Mr McIlwain—We are ensuring that by increasing by 20 staff our national processing team and supplementing further the WA based staff with two staff who were working from our Adelaide office.

Senator WONG—My recollection is that your evidence was that some 14 people were employed in the last five months at the national processing centre. Is that right?

Mr Burnett—Yes, that would be correct.

Senator WONG—So, what was happening before in terms of who was doing this work? Presumably, it was the existing staff at the national processing centre.

Mr McIlwain—Yes, and for a period before the end of the calendar year 2002 five staff, located in other regional offices, were supplementing the staff of the national processing team.

Senator WONG—Just looking at it, you can understand there may be a concern that an increased workload may increase the pressure to simply rubber stamp these AWAs.

Mr McIlwain—That may be a concern, but it would be completely unfounded.

Senator WONG—What lies behind this 420 per cent increase of AWAs in Western Australia?

Mr McIlwain—As I said earlier this morning, I believe that changes to the state's IR have had a considerable impact.

Senator WONG—I missed some of Senator Carr's questioning. Did he ask you to provide some details of the terms of the AWAs in Western Australia?

Mr McIlwain—No.

Senator WONG—Can you tell me, broadly, what sorts of industries this significant increase—

Mr McIlwain—Senator, he did ask that question.

Senator WONG—Are you able to tell us whether or not they are largely on a template basis?

Mr McIlwain—I can tell you that they are not largely on a template basis.

Senator WONG—I think you were asked whether there were quite a few in the mining industry.

Mr McIlwain—There are, yes. The mining industry has the highest rate of penetration.

Senator WONG—I am not sure if Senator Carr asked this, but were you asked to provide details of the industry break downs of those AWAs in Western Australia? That is, of the however many thousands—in this industry, X per cent; in that industry, Y per cent?

Mr McIlwain—I do not believe we were asked that, but we do have that information.

Senator WONG—Could you provide that, please?

Mr McIlwain—We can provide that.

Senator WONG—I was going to move off this and ask you some brief questions about your templates and the clauses in relation to unfair dismissal, unless Senator Carr has any other questions before I move to that.

Senator CARR—No.

Senator WONG—There is a provision in a number of your templates relating to dismissal or the ending of employment which sets out this language. I will read it so the questioning is clear:

A fair and transparent process for managing unsatisfactory performance or behaviour is included in the agreement. The employer will communicate with the employee about any areas of under-performance, and will follow a fair process over a reasonable period to give the employee an opportunity to improve performance. If the employee does not achieve acceptable performance through this process, dismissal may apply.

Are you familiar with that provision, Mr Rushton?

Mr Rushton—Broadly.

Senator WONG—Yes. It would seem to be a clause which essentially entitles an employee to a fair process over a reasonable period to improve performance?

Mr Rushton—Yes.

Senator WONG—Its inclusion in an AWA would arguably provide a contractual right to that—that is a fair process over a reasonable period to improve performance?

Mr Rushton—Arguably. I should say also the unfair dismissal provisions of the Workplace Relations Act, obviously, are not overridden by the AWA.

Senator WONG—I appreciate that. Would you agree that it appears to provide some contractual right to that?

Mr Rushton—It is a provision in the AWA.

Senator WONG—Yes. 170VW of the act is the provision which enables damages to be obtained for a breach of an AWA.

Mr Rushton—Yes.

Senator WONG—It is essentially drafted in, I suppose, almost common law formulation that you can sue for loss or damage resulting from a breach. Is that right?

Mr Rushton—Yes.

Senator WONG—If an employee were dismissed, without being given the reasonable period to improve performance that I have outlined in that earlier clause, that would enable them to sue for damages under 170VW. Is that correct?

Mr Rushton—Yes.

Senator WONG—Did you take some legal advice before drafting that particular clause?

Mr Rushton—We took internal legal advice.

Senator WONG—That would be you wouldn't it, Mr Rushton?

Mr Rushton—It would be me or one of the other senior lawyers.

Senator WONG—Did you turn your mind to whether that clause in the AWA and its interaction with 170VW would give rise to the sorts of actions such as was taken in Georgevski's case—given that the restrictions in Byrne and Frew or Georgevski would not really apply because there would arguably be a contractual clause that you were suing for breach of.

Mr Rushton—I cannot recall the processes that we went through in terms of advising on that clause.

Senator WONG—Would you agree that it would appear to be a technical possibility?

Mr Rushton—It is possible. I would have to give it some thought to be honest and come back to you on that.

Senator WONG—So potentially what your clause could do is give rise to quite significant damages claims under 170VW couldn't it?

Mr Rushton—It is possible.

Senator WONG—Was there any consideration of the impact of or the possible use of actions such as was taken in Georgevski when you drafted this clause?

Mr Rushton—As I said, I cannot recall the thought processes. This is a clause that, I think, was devised some time ago. I am sorry, I just cannot recall.

Senator CARR—How many AWAs are there in the tertiary education sector?

Mr McIlwain—I do not have that information before me today.

Senator CARR—Could you take that on notice please. I would like to know what percentage of the work force are on AWAs, what are the classifications, what areas of the industry are covered by AWAs and the percentages of the work force in those particular areas.

Mr McIlwain—We will take that on notice.

Senator CARR—Has the office been consulted about the government's proposals pertaining to the higher education package in regard to the use of AWAs in the tertiary education sector?

Mr McIlwain—We have provided some statistical information.

Senator CARR—What statistical information did that cover?

Mr McIlwain—Numbers of AWAs in the tertiary sector.

Senator CARR—So, questions I have just asked you on notice, in effect.

Mr McIlwain—Yes.

Senator CARR—Have you provided advice in regard to the proposed guidelines for the expenditure of Commonwealth moneys as they relate to the offering of AWAs?

Mr McIlwain—No.

Senator CARR—Have you been consulted?

Mr McIlwain—No.

Senator CARR—So you have not provided any information in regard to the proposal for national governance protocols in universities.

Mr McIlwain—No.

Senator WONG—Before I move on to Grocon, on this issue of the 170VW damages, it is the case—isn't it, Mr Rushton?—that in Georgevski there was a substantial payment for the employee in question. It was almost \$200,000.

Mr Rushton—You have probably got the drop on me there, Senator. I will have to go back and have a look.

Senator WONG—Yes, but does that sound right? It was a pretty important case. It was a pretty substantial amount of damages, wasn't it?

Mr Rushton—I think so, yes.

Senator WONG—Certainly more than the statutory limit for most employees on unfair dismissal.

Mr Rushton—I think that is the case, yes.

Senator WONG—If an employer agreed to the provision in question in the AWA that we have gone through, if 170VW does enable these sorts of actions, wouldn't they effectively be exposed to claims for virtually uncapped damages—certainly not statutorily capped—for unfair dismissal?

Mr Rushton—There is not a limit in relation to the compensation under the provision.

Senator WONG—So that is correct, isn't it? They could be.

Mr Rushton—It is uncapped under that provision, Senator, yes.

Senator WONG—So if a breach were proved under 170VW, there would be no statutory damages an employer could be required to pay.

Mr Rushton—I suppose that is correct, Senator.

Senator WONG—And that could apply regardless of the size of the business, couldn't it?

Mr Rushton—Yes, it is a breach of the AWA.

Senator WONG—Because there is no exemption in 170VW for businesses under 20 employees, is there?

Mr Rushton—No, that is right.

Senator WONG—So, technically, a small business employer who is encouraged to sign AWAs by your office could actually be opening themselves up to claim for damages which are uncapped for unfair dismissal.

Mr Rushton—I guess that is a possibility. I would not quite characterise it the way you have done it, but—

Senator WONG—You would not characterise it.

Mr Rushton—No.

Senator WONG—Which bit don't you agree with, Mr Rushton?

Mr Rushton—The whole phrase, I suppose. I suppose parties that enter into an AWA—and then there is a breach of the AWA—are subject to the provisions of the act which deal with breaches of AWAs. If there is a clause that has breached, as you say, there is an entitlement to penalty and damages and other remedies under the act.

Senator WONG—And those damages, under 170VW, are not capped.

Mr Rushton—That is so.

Senator WONG—Is this advice you have provided to employers, including small business employers, who are considering entering AWAs?

Mr Rushton—I do not think we provide that advice specifically.

Senator WONG—Has the office ever turned its mind to this issue until we raised it today?

Mr Rushton—I certainly have not turned my mind to this for some time. Whether others have, I cannot answer for everyone in the office.

Senator WONG—In the Grocon agreement—the 170LK agreement—there was an application by the full bench pursuant to section 109 of the act for a review of the decision by Vice President Ross on 12 February 2003. Did your office have any involvement in this application?

Mr Rushton—No, we did not.

Senator WONG—Were you consulted about it?

Mr Rushton—No.

Senator WONG—Were you asked to provide any advice about it?

Mr Rushton—No.

Senator WONG—Were you aware of it before it occurred?

Mr Rushton—Aware of what?

Senator WONG—The application.

Mr Rushton—By?

Senator WONG—I understand it was by Grocon, was it not?

Mr Rushton—I do not think we were aware of it, no.

Senator WONG—Are you aware of it now; prior to today?

Mr Rushton—I am aware that there have been proceedings in the commission.

Senator WONG—Have you had any involvement in those proceedings?

Mr Rushton—No.

Senator WONG—Has it been discussed with anyone from your office by parties to the proceedings?

Mr Rushton—Not as far as I am aware.

Senator CARR—Is this a matter for the task force?

Mr Rushton—It is a matter for them.

Senator CARR—Was this matter referred to the task force?

Mr Rushton—We did not have it to refer, as I just said.

Senator CARR—You have had no dealings with this at all?

Mr Rushton—That is correct.

Senator WONG—Could you take on notice whether or not the office was aware of the application prior to its lodgement?

Mr Rushton—We can take it on notice, but I think the answer is no.

Senator WONG—Could you also take on notice whether there have been any subsequent discussions between your office and any of the parties regarding this application?

Mr Rushton—Yes.

Senator WONG—I think we had a discussion about proactive workplace visits on the last occasion; where you go out to industry, to work sites and engage in proactive interaction with them. Do you have some sort of strategic plan around which industry sectors are going to be targeted in terms of compliance and those sorts of things?

Mr McIlwain—We now make no distinction between our compliance activities and our advice and assistance activities when we speak to employers and employees. Our staff now covers the whole range of our responsibilities under the legislation. Each state will have its own areas of focus, depending upon industry issues or industrial relations framework changes in each state.

Senator WONG—Let us do it this way: does your office engage in proactive workplace visits on both compliance and advice and assessment?

Mr McIlwain—Are you referring to cold calling?

Senator WONG—Tell me what you do.

Mr McIlwain—We do almost no cold calling at all. Our visits are usually a result of an inquiry by an employee or an employer.

Senator WONG—OK. So you do almost no cold calling at all?

Mr McIlwain—That is correct. Our approach to handling alleged breaches of the legislation or advising employees and employers of their rights and obligations under the legislation is different from the approach we adopted when we first began our work six years ago. We rely very extensively now on online services and on our national telephone advisory service, so cold calling does not figure as one of our strategies at the moment.

Senator WONG—So a visit by an officer of the OEA to a workplace is generally, almost always, preceded by contact from someone at the workplace making a complaint or raising an issue. Is that right?

Mr McIlwain—Or asking for assistance or advice.

Senator CARR—We are likely to conclude this section of the proceedings at 12.30, I understand. I asked you some questions before regarding the OEA framework for the

construction industry, and you were going to give me an analysis of why it meets the no disadvantage test. If I recall the discussion, you were basically saying that you thought there were parts of it that may not meet the no disadvantage test but that overall they meet the no disadvantage test. Is that correct?

Mr Rushton—I am not sure that I said quite that. The no disadvantage test is an overall global test. Some parts may be up and down. I did not say that some parts would actually be down, without looking at the agreement.

Mr McIlwain—I also have some more information that has now been provided to me with regard to that framework agreement for the construction industry. If I may, Senator Tierney, I would like to use that information. The agreement is in fact a framework agreement that was developed some time ago. It predates the development of the template program and is not connected with the templates being developed for the use of Victorian employers. It was an earlier initiative. The framework—and I guess this goes to the question that Mr Rushton has taken on notice—provides several choices of clause or option for each employment condition. It is different from template agreements in that sense. When it comes to providing some advice with regard to the overall NDT done against a framework agreement, we need to say now that the outcome would depend upon which of those clauses the employer chose to use or not to use and also upon the pay rate that the employer eventually chose to include. I hope that more detailed information about this agreement and its characteristics is useful.

Senator CARR—Mr McIlwain, I thank you very much for the information you have provided, but I hate to have to advise you that in fact it does not satisfy me and, as a consequence, we cannot conclude this section by 12.30. I will need to ask you a series of other questions about this agreement after the lunch break. Am I correct in assuming, though, that the posting of this framework on your web site as of 1 January this year means that you regard it as the current framework? If it was on your web site as of January this year, am I able to presume that your office regards it as current advice?

Mr McIlwain—It is current advice available, yes.

Senator CARR—If that is the case, I will come back to this matter after 1.30.

Proceedings suspended from 12.28 p.m. to 1.35 p.m.

CHAIR—There will be a slight alteration in the program. Following the Office of the Employment Advocate, we will go briefly to considering matters related to the building industry task force. We will return now to the Office of the Employment Advocate.

Senator CARR—We were discussing before the break the matter of the construction industry framework agreement. You were saying that it was an old agreement that was no longer regarded as a template but that it was still active.

Mr McIlwain—It is a framework agreement rather than a template agreement, and it was published in October 2000.

Senator CARR—When was the last time it was updated?

Mr McIlwain—It may have been updated in January this year, but that reference could be to another document in the same part of the web site. It may have been updated on 24 January.

Senator CARR—How often are these types of framework agreements reviewed to ensure that they meet the no disadvantage test?

Mr McIlwain—The template agreements are reviewed every time there is an award variation. Framework agreements are reviewed less regularly because they provide a wide range of alternatives and are a looser advisory document than a template.

Senator CARR—So they have less force?

Mr McIlwain—No. Every AWA has the same effect or force in law. However, an employer using a framework agreement is given a wide range of mix and match provisions. I describe a framework agreement as providing more general advice than a template agreement.

Senator CARR—Let me go through a few basic points. What are the processes that your office uses to review AWAs to ensure they continue to meet the no disadvantage test when they are put up against a framework agreement?

Mr McIlwain—A framework agreement is used as a guide by the employer in making his or her AWA with employees. After that guide has been used and the employer has made his or her choice as to what they will take from the framework agreement, and that is signed as an AWA by both parties, the NDT is performed at the time the agreement is lodged.

Senator CARR—Who does the review of that agreement?

Mr McIlwain—The staff in our national AWA processing team perform the NDT on that AWA.

Senator CARR—What expertise do the staff in your national processing team have? What experience do they have in the construction industry?

Mr McIlwain—I do not know on an individual basis what experience they would have had in the construction industry. They have training in the performance of the NDT and rely on our procedures guide.

Senator CARR—So it is feasible then that an officer in that unit could be assessing the no disadvantage test but not have experience in the construction industry?

Mr McIlwain—Yes.

Senator CARR—How often do you think that would occur?

Mr McIlwain—I cannot say. I do not know how many of our staff have worked in the construction industry.

Senator CARR—Can you take a question on notice to that effect, please: how many persons in the national AWA processing team have experience in the construction industry?

Mr McIlwain—Yes, we will ask our staff.

Senator CARR—And how many of them have actually worked on no disadvantage tests covering the construction industry?

Mr McIlwain—We will take that on notice.

Senator CARR—Thank you. I will go through a few examples here, because I just want to be clear how this works. I suspect I have a rough idea of your response. Can we take, for

instance, the issue of casual loading. Your framework has a casual loading of 20 per cent but the award has a casual loading of 25 per cent. If all other things were equal, would you regard that in itself as satisfying the no disadvantage test?

Mr McIlwain—If all other things were equal, no, that would not meet the no disadvantage test.

Senator CARR—Let us take, for instance, the issue of hours of work. If all other things were equal, would that in itself meet the no disadvantage test?

Mr McIlwain—I do not have the award in front of me, so I am unable to say, Senator. I think it is important to note that the no disadvantage test is a global test and we must take into account not only all disadvantages but all advantages.

Senator CARR—Yes, and I asked a question along those lines before. Specifically, if we were to examine, for instance—and I go to the industry award—the minimum engagement period for casuals for overtime on Saturdays, Sundays and public holidays, would your framework agreement have provisions for that?

Mr McIlwain—For the minimum engagement of casuals?

Senator CARR—Yes.

Mr McIlwain—I do not believe so.

Senator CARR—So how would that measure up in regard to the no disadvantage test? What is the compensating factor on that issue?

Mr McIlwain—I cannot say, because this is simply a framework. It works in providing a wide range of choices for an employer to choose from to mix and match in coming up with an AWA to offer to the employer's staff. It may be that, in an individual AWA arrived at by the use of this framework, an employee is not disadvantaged overall by a clause on minimum engagement for casuals in the agreement being inferior to the clause in the award because there is a countervailing benefit elsewhere in this hypothetical agreement.

Senator CARR—What is it?

Mr McIlwain—I cannot say what it is, because it will depend on which clauses each employer chooses to put into the agreement to offer to staff and it will depend very significantly, of course, on the remuneration that they offer staff. The remuneration clause here allows employers, if they choose to use this style of remuneration clause, to insert the rate. So my answer is that we cannot conduct the NDT on an AWA until we see the signed AWA and compare it with the relevant award.

Senator CARR—What does your template agreement say with regard to the cashing out of annual leave?

Mr McIlwain—I can read what the agreement says, if you wish.

Senator CARR—The point is that you have a provision there and the original award explicitly rejects the cashing out of annual leave, except on termination. How do you measure that against any other benefit?

Mr McIlwain—The NDT is a global test. If the parliament intended that it be impossible to alter any award condition ever, the parliament would not have passed the legislation.

Senator CARR—How many AWAs have been approved in the construction industry allowing for the cashing out of annual leave?

Mr McIlwain—I cannot tell you that; I do not have the figure.

Senator CARR—Can you take that on notice?

Mr McIlwain—Yes.

Senator CARR—Thank you. How many AWAs have been approved that allow for the cashing out of annual leave across all industries?

Mr McIlwain—We will take that on notice.

Senator CARR—Are you aware that, with regard to the cashing out of annual leave, the Australian Industrial Relations Commission in the enterprise flexibility agreement test case actually argued that the cashing out of annual leave was against the public interest?

Mr McIlwain—We are aware of that.

Senator CARR—What impact has that had on your evaluations of the no disadvantage test?

Mr McIlwain—It has no impact because the test is conducted against the relevant award as the award stood on the day before the agreement was signed.

Senator CARR—Since that decision was made, have you had any AWAs granted that would seem to cash out annual leave entitlements?

Mr McIlwain—We have AWAs from time to time that cash out leave entitlements and I would speculate that, since the commission's decision, there would have been AWAs that cashed out leave entitlements.

Senator CARR—I might put the rest of these questions on notice as they go along a similar line of inquiry. I am very concerned to see this, Mr Rushton, in your response to my previous question: 'On what basis do you justify this template agreement being framed against the no disadvantage test with regard to what is clearly an inferior award?' Nonetheless, it is on the public record as being a public declaration of what the minimum entitlements are.

Mr McIlwain—The Office of the Employment Advocate's position is that we conduct the NDT as required by the legislation, which is: against the award as it stood on the day before the agreement was signed.

Senator CARR—I will put the rest on notice. Thank you very much for your time.

Senator SHERRY—Can I just raise two questions. I just wanted to go back, Mr McIlwain, to a comment you made before lunch that the templates were publicly available. I assume that was a reference to your web site?

Mr McIlwain—Yes.

Senator SHERRY—Ms Muncey mentioned the food industry template, I think, which was not publicly available.

Ms Muncey—It is not yet completed.

Senator SHERRY—It just seemed to me to be a contradiction—not an intentional one—

Mr McIlwain—Sure. That is absolutely the case. The only reason that the food processing one is not available is that it is being completed right at this moment. As soon as it is completed it will be posted on the web site.

Senator SHERRY—Okay. Is there any indication of a time line for that posting?

Ms Muncey—Within the next two months.

Senator SHERRY—Okay. Are there any other templates for industries that are being developed that are not yet publicly available?

Mr McIlwain—Yes, there are several. The only reason, again, that they are not available is that they are still in various stages of development. It is our intention, as soon as they are completed, to have them posted as quickly as we can.

Senator SHERRY—Can you just tell me which industries those templates are for?

Mr McIlwain—I could rely on my memory, but we are talking in excess of 10 or 12 in the pipeline. What I would really prefer to do is take that question on notice.

Senator SHERRY—Okay, thanks.

CHAIR—That concludes consideration of matters relating to the Office of the Employment Advocate.

[1.51 p.m.]

CHAIR—We will now briefly move to program 2.2 and consider matters relating to the building industry task force. Dr Boxall has a statement.

Dr Boxall—Does this mean that the committee does not have any cross-portfolio questions?

CHAIR—No, it means that we are temporarily moving to 2.2 and then we will go back to cross-portfolio questions.

Senator CARR—Mr Hadgkiss, it is good that you are able to attend the committee proceedings. What happened last time? Why weren't you able to address the committee last time you were here?

Dr Boxall—Mr Hadgkiss was here last time, but he was not required at the table because there were no questions put that we required him to answer.

Senator CARR—Dr Boxall, was it because you refused him permission to sit at the table? He was sitting right behind you, wasn't he?

Dr Boxall—No, I did not refuse him permission to sit at the table. This is a departmental answering of questions and we elect who will answer the questions after the committee puts them. Last time, from recollection, there were no questions put that required Mr Hadgkiss to answer them.

Senator CARR—Some questions were taken on notice, though, I recall.

Dr Boxall—That is true, but there were no questions put to the committee where we felt the need to bring Mr Hadgkiss to the table.

Senator CARR—I see.

CHAIR—Order, Senator Carr! The departmental secretary has the right to take any questions for his department, and that was the practice under your government. If he wants to refer questions to other officers he can do so.

Senator CARR—That is good. Dr Boxall, I take it then that you will be answering all questions today?

Dr Boxall—Not at all.

Senator CARR—That is good. So I can now ask Mr Hadgkiss questions directly, can I?

Dr Boxall—No, the rules, as I understand them—unless I am advised otherwise by the chair—are that committee members ask questions and then we work out who will answer them.

Senator CARR—I see. So I should ask you directly, should I?

CHAIR—Senator, you know the procedure. You are wasting time. Would you move on to questions.

Senator CARR—I want to be clear about what the ground rules are, if they have changed.

CHAIR—You know the ground rules, Senator. Let us just move on and stop wasting time.

Senator CARR—I had trouble finding Mr Hadgkiss last time. When I found him he was actually sitting behind you. I had trouble recognising him.

CHAIR—Have you got any questions for the officer, Senator?

Senator CARR—Mr Hadgkiss, what is the legal authority on which you are operating at the moment?

Mr Hadgkiss—I am acting as a public servant appointed by the Public Service Commission and seconded to the Department of Employment and Workplace Relations.

Senator CARR—And you were seconded from where?

Mr Hadgkiss—Originally from the National Crime Authority, which is now known as the Australian Crime Commission.

Senator CARR—So your substantive position is as an officer of the Australian Crime Commission?

Mr Hadgkiss—Correct.

Senator CARR—What is the period of your secondment?

Mr Hadgkiss—Until 30 June this year.

Senator CARR—When did that start?

Mr Hadgkiss—The time of my appointment, from memory, was from the end of October until 30 June this year.

Senator CARR—Do you anticipate that there will be an extension on your secondment?

Mr Hadgkiss—Yes, I do.

Senator CARR—Have you requested an extension?

Mr Hadgkiss—I understand the department has.

Senator CARR—Have you been advised of the likelihood of the success or otherwise of that request?

Mr Hadgkiss—No, Senator.

Senator CARR—Dr Boxall, has there been an extension of the secondment sought?

Dr Boxall—Yes.

Senator CARR—For what period?

Dr Boxall—For 12 months.

Senator SHERRY—Is that 12 months from June?

Dr Boxall—From 1 July.

Senator CARR—You would not anticipate any trouble with that extension?

Dr Boxall—I cannot speculate on the outcome of that.

Senator CARR—Mr Hadgkiss, what is the budget for the task force?

Ms Bennett—You are talking about the budget for 2003-04?

Senator CARR—Yes.

Ms Bennett—It is \$6.9 million.

Senator CARR—Was there not an extension of that money in the last budget? Was there an increase in the appropriations?

Ms Bennett—The allocation for this year is in line with last year's allocation. I think it was \$6.8 million last year.

Senator CARR—So it is basically just an extension of that into the forward period?

Ms Bennett—Yes.

Senator CARR—Do you have any forward estimates on the budget for the task force?

Ms Bennett—No forward estimates outside 2003-04 have been allowed for.

Senator CARR—Why is that?

Ms Bennett—It is an interim task force and we are anticipating that we will cease operation some time this financial year.

Senator SHERRY—This financial year?

Ms Bennett—The 2003-04 financial year.

Senator CARR—I take it that the expectation you would have is that the interim task force will be replaced by a permanent task force. Is that correct?

Ms Bennett—Yes.

Senator CARR—And that is conditional on the passage of legislation that is being canvassed?

Dr Boxall—Actually, it is outlined in the description of the measure on page 40 of the portfolio budget statements.

Senator CARR—I read in the *Financial Review* on 26 May that the minister intends to fast-track enabling legislation to allow the task force to operate on a permanent basis. Is that your understanding, Dr Boxall?

Mr Hoy—The government has the legislation under consideration.

Senator CARR—Has the legislation been drafted?

Mr Hoy—It is in the process of being drafted.

Senator CARR—It has not been completed then?

Mr Hoy—No.

Senator CARR—When are you expecting it back from the draftsman?

Mr Hoy—I do not have a date.

Senator CARR—This report in the *Financial Review* says that the minister hoped that the draft would be available for public comment in late July and that the bill would be before the parliament by late August. Is there any change to that?

Mr Hoy—I have nothing to add to the minister's statement.

Senator CARR—But that is consistent with what you are operating on within the department?

Mr Hoy—I have nothing further to add.

Senator CARR—Would the interim task force cease to exist at a certain point? Is there a definite legislative end to the interim phase of the task force?

Dr Boxall—In the budget measure on page 40, it says that the budget 'will provide \$6.9 million to fund an extension of the Interim Building Industry Taskforce until 30 June 2004'.

Senator CARR—So there is an extension, in effect, on the original delegation. Is that a delegation operating from within the department or is it within the Office of the Employment Advocate?

Dr Boxall—It is nothing to do with the Office of the Employment Advocate. It is within the department.

Senator CARR—So what is the legal basis, Dr Boxall, for the operation of the interim task force?

Ms Bennett—The interim task force was established administratively within the department. Staff on the task force have powers under the Workplace Relations Act or, as earlier advised by the Employment Advocate, arrangements were made for some of those powers in relation to the building industry to be conferred on the task force.

Senator CARR—So in fact it is on delegation from the Office of the Employment Advocate in regard to the powers of the commission. Is that right, Mr Hadgkiss?

Mr Hadgkiss—As authorised officers, yes. As inspectors, no.

Senator CARR—Where do the inspectors' powers come from?

Ms Bennett—The inspectors' powers come under section 84 of the Workplace Relations Act.

Senator CARR—As officers of the department?

Ms Bennett—As officers of the department.

Senator CARR—So in fact it is possible then for the government to extend the operations of the interim building industry task force on an indefinite basis on that precedent?

Ms Bennett—Yes.

Senator CARR—If the legislation does not pass, it will have no effect on the operations of Mr Hadgkiss's task force?

Dr Boxall—We cannot speculate on what will happen if the legislation passes or not.

Senator CARR—There is no legislative impediment to Mr Hadgkiss's work at the moment, is there?

Ms Bennett—The interim task force was established administratively.

Senator CARR—So it does not require any additional legislation to make it legal.

Dr Boxall—It is legal now, because it has been set up administratively.

Senator SHERRY—It can continue indefinitely so long as funding is provided.

Dr Boxall—Yes, because it is basically legal now and the government can continue to operate it if they see fit.

Senator CARR—That is all I was asking. I do not see why you are so defensive about it. I just wanted to know how it was working. Mr Hadgkiss, how many staff are employed in the interim task force?

Mr Hadgkiss—As of last week, there were 41.

Senator CARR—Do you employ any contractors?

Mr Hadgkiss—No.

Senator CARR—So the 41 is the total staff?

Mr Hadgkiss—That is correct.

Senator CARR—Are you able to tell me broadly what the background of those 41 officers is?

Mr Hadgkiss—Of those, 21 are either former or serving police officers, five are lawyers, six are seconded from the OEA and four are seconded from Workplace Relations.

Senator CARR—At what levels are they employed? Are you able to tell me that?

Mr Hadgkiss—They range through the APS levels, up to and including executive level 2.

Senator CARR—That is senior executive officer 2?

Mr Hadgkiss—No. I am the only senior executive.

Senator CARR—So there is one SES officer—

Mr Hadgkiss—Correct.

Senator CARR—and two others—

Mr Hadgkiss—There is me—an SES officer—and 40 who are at APS levels up to and including executive level 2.

Senator CARR—How many EL2s are there?

Mr Hadgkiss—From recollection, perhaps three.

Senator CARR—Could I get a breakdown of the way the task force is structured and its arrangements with regard to pay? You have no contractors at all?

Mr Hadgkiss—They are all, myself included, on AWAs.

Senator CARR—The whole 41 are on AWAs?

Mr Hadgkiss—I think with the exception of one person, who is on secondment from Workplace Relations.

Senator CARR—He or she is not on an AWA.

Mr Hadgkiss—She is dependent upon a certified agreement within the department.

Senator CARR—What are your qualifications in industrial relations?

Mr Hadgkiss—I have no formal qualifications.

Senator CARR—Do you have any with regard to employment law?

Mr Hadgkiss—Yes. In my Bachelor of Laws, my LLB, I undertook industrial relations, industrial law.

Senator CARR—Would you be able to assist me by providing me with details of the classifications of staff employed with the task force in terms of their experience in industrial relations?

Mr Hadgkiss—I will take that on notice.

Senator SHERRY—I notice the staff numbers in the department increased significantly from 534 to 665. Are the people we are talking about—I think you indicated there were 41—classified as new staff?

Dr Boxall—That is just outcome 2. It is true that outcome 2 staff numbers have gone from 534 to 665, as you observed. The establishment of the interim task force is only one part of that. As a matter of fact, the split of the administration of GEERS into an admin item and a departmental item has also influenced that, and there are some other factors.

Senator SHERRY—But these 41 people we are talking about are a part of that increase.

Dr Boxall—They are a part, but only a part. Do you remember that last year it was in place for about nine months?

Senator SHERRY—Yes.

Dr Boxall—There is an average staffing level, so there is the element of the full-year effect.

Senator CARR—You have taken this on notice, but you, Mr Hadgkiss, seem like a person who is able to have a fair command of the detail of this matter. Roughly what percentage of your task force do you think would have experience in industrial relations?

Mr Hadgkiss—Certainly those officers seconded from workplace relations and the OEA would have experience.

Senator CARR—So that is a quarter.

Mr Hadgkiss—And also the five lawyers that are on board with the task force.

Senator CARR—Yes, I expected that would be the case. Are those other officers undertaking any particular training in terms of industrial relations matters?

Mr Hadgkiss—Yes.

Senator CARR—What is the nature of that training?

Mr Hadgkiss—Sorry; training?

Senator CARR—Yes, training.

Mr Hadgkiss—Whatever training they would have undertaken, I imagine the lawyers—

Senator CARR—No, what you are saying to me is that you have 10 officers; six from the Office of Employment Advocate, four from the department and five lawyers who have qualifications in industrial relations.

Mr Hadgkiss—And a number of support staff that make up the 41, yes.

Senator CARR—So we are presuming the qualifications, because there is a difference between qualifications and experience.

Mr Hadgkiss—Correct.

Senator CARR—Of the 21 police, how many of those have experience in industrial relations as distinct from being members of the police staff association?

Mr Hadgkiss—They would have no formal qualifications.

Senator CARR—Do I take it that you are providing them with additional training in this area?

Mr Hadgkiss—They are undertaking training or have undertaken training in the Workplace Relations Act.

Senator CARR—But not necessarily industrial relations more generally.

Mr Hadgkiss—Not at this juncture, no.

Senator CARR—Of the 21 members of the police forces, can you give me a breakdown of which police forces they have been drawn from?

Mr Hadgkiss—The majority would be former Federal Police, the remainder would be from the various state police forces.

Senator CARR—Could you give me the state by state breakdown?

Mr Hadgkiss—Off the top of my head, one is from Queensland, one is from New South Wales, three are from Victoria and one is from South Australia. I am unaware of Western Australia and the Northern Territory.

Senator SHERRY—What about Tasmania?

Mr Hadgkiss—No, I am sorry.

Senator SHERRY—No-one at all?

Mr Hadgkiss—Nobody, I am sorry.

Senator CARR—Have any of your relatives got a job on this?

Senator SHERRY—Get on with the questions!

Senator CARR—Mr Hadgkiss, how many members, apart from yourself, are from the National Crime Authority?

Mr Hadgkiss—There would be three, including me, to my knowledge, and four who have served with the National Crime Authority.

Senator CARR—How many from the Federal Police?

Mr Hadgkiss—The majority, I would say. Over half of the investigators would be former Federal Police.

Senator CARR—Okay. If I could get a breakdown, once you have had a chance to look at your records in that regard. How many previously worked with you on the Wood royal commission?

Mr Hadgkiss—Again, off the top of my head, I can only recall one or possibly two.

Senator CARR—I presume you will take these on notice.

Mr Hadgkiss—I will take them on notice. Certainly one and there is the possibility of a second.

Senator CARR—How many have worked with you through the Federal Police?

Mr Hadgkiss—I served 24 or 25 years with the Federal Police. They would all have served with me at some stage, either in New South Wales, Victoria or South Australia.

Senator CARR—Would they have all have worked with you at the National Crime Authority as well?

Mr Hadgkiss—At some time or other, yes.

Senator CARR—What was the method of selection of these 21 officers? Was it self-selection; that is, did they apply or did you recruit them?

Mr Hadgkiss—As I understand—this was prior to my appointment—an advertisement appeared in the national newspapers. At the time of my appointment, a number of investigators had already been appointed and I continued that process through the normal selection process under the Public Service Act.

Senator CARR—You did not actually seek them out, though?

Mr Hadgkiss—No. It is fair to say that, following my appointment, a number did apply and late applications were accepted.

Senator CARR—This was after consultations between you and those officers.

Mr Hadgkiss—A number of people did telephone me, yes.

Senator CARR—I do not think it is inappropriate that you would be talking to people about whether or not they wanted to come and work with you, but did you feel the need to actually attract additional personnel?

Mr Hadgkiss—We are still attracting people. It goes with the volume of work. As the work increases, there is a need to take on additional staff.

Senator CARR—How many more staff do you expect will have to be employed?

Mr Hadgkiss—At the moment, I do not have in mind to recruit any investigators in the immediate future. But that is not to say that, if work increases and there is a need for additional staff, we would not readvertise. We advertised recently for additional investigators for the Sydney office. That was advertised in the *Australian* newspaper and the *Sydney Morning Herald*.

Senator CARR—How many more officers in Sydney do you think you need?

Mr Hadgkiss—At the moment, I do not know.

Senator CARR—You must have a budget, though. You must have an idea.

Mr Hadgkiss—I am within budget for this financial year, yes.

Senator CARR—So how many officers do you intend to appoint? You just do not open the doors, do you?

Mr Hadgkiss—It goes with the amount of work.

Senator CARR—I am not clear about this: you advertise for positions, but you do not have a specified number of positions you are seeking to fill.

Mr Hadgkiss—In Sydney that has now closed. The interviews have taken place, the staff are on board and there is a waiting list, as I understand it, in operation that we can select from.

Senator SHERRY—You mentioned a Sydney office. Obviously there is an office in Melbourne. Is there an intention to have physical offices anywhere else?

Mr Hadgkiss—There is an office in Perth. There is an office in Brisbane. One person has been appointed to South Australia, and one person has been appointed to look after Tasmania but operates out of Melbourne at this juncture. But, if the work in Tasmania demanded such, I would put up a submission to the department seeking a more permanent arrangement.

Senator SHERRY—So the physical offices that are already committed to are in every state capital except for Hobart at this point in time.

Mr Hadgkiss—Correct.

Senator SHERRY—What about the Northern Territory and the ACT?

Mr Hadgkiss—The Northern Territory is covered by the officer in Adelaide, and the ACT is covered by the Sydney office.

Senator WONG—With the Adelaide office, is there a dedicated office or does that person work out of a DEWR office?

Mr Hadgkiss—That person works out of a DEWR office.

Senator CARR—You have only got one person in Adelaide. Is that right?

Mr Hadgkiss—That is correct.

Senator CARR—That is a Beau Jennick. Is that right?

Mr Hadgkiss—Yes, Mr Jennick.

Senator SHERRY—None in Tasmania.

Senator CARR—In Melbourne you have got—

Mr Hadgkiss—In Melbourne we have a team leader, a legal officer and five investigators.

Senator CARR—How many in a full office? That is quite a big office, isn't it?

Mr Hadgkiss—That is the head office.

Senator CARR—That includes both Victorian functions and the national office facilities. Is that right?

Mr Hadgkiss—The national office, Victoria and Tasmania.

Senator CARR—Do the team leader investigations cover national investigations or just Victoria?

Mr Hadgkiss—No, that team leader covers Victoria.

Senator CARR—How many officers work on Victorian issues?

Mr Hadgkiss—As I say, a team leader, a legal officer, five investigators and an investigative assistant.

Senator CARR—Then you have a series of national coordinators as well, all operating in the same office.

Mr Hadgkiss—There is myself, a deputy director, corporate staff and operation support staff operating out of Melbourne.

Senator CARR—What about legal facilities?

Mr Hadgkiss—I have appointed a lawyer for each of the geographical locations.

Senator CARR—What does Ms Twigg do?

Mr Hadgkiss—Ms Twigg is a lawyer who covers what is called 'central region', which is the Northern Territory, South Australia and Tasmania.

Senator CARR—We will come to the specifics in a few moments. Were any of the employees of your task force former employees of state building industry task forces; for instance, in Western Australia and New South Wales?

Mr Hadgkiss—I understand that one was a former member of the New South Wales building task force.

Senator CARR—And is still working in New South Wales?

Mr Hadgkiss—Correct.

Senator CARR—If we were to look at the 40 employees of the task force, how many would you have worked with in former capacities?

Mr Hadgkiss—I would have to take that on notice, but I would imagine half.

Senator CARR—Do you think it is a pretty closely knit team?

Mr Hadgkiss—Morale is good, yes.

Senator CARR—Can you tell me what the salary ranges are? Are they outside of the normal APS bands?

Mr Hadgkiss—No, they are all aligned with the certified agreement.

Senator CARR—You say that 40 of the 41 are on AWAs. Was there any requirement to sign an AWA?

Mr Hadgkiss—No requirement, no.

Senator CARR—They all voluntarily signed AWAs?

Mr Hadgkiss—Yes.

Senator CARR—It is somewhat out of character with the rest of the Public Service, I notice, given the figures we had before.

Senator SHERRY—A very healthy proportion!

Senator CARR—Whereas the senior executive service seem inclined to sign AWAs, very few in the lesser ranks seem inclined to sign AWAs. Is there any reason why you might have such a high percentage of your task force on AWAs?

Mr Hadgkiss—It is the nature of the body; it is an interim body.

Senator CARR—So they all sign AWAs because it is an interim body?

Mr Hadgkiss—They are on an AWA until 30 June this year, like myself.

Senator CARR—But they would not be required to sign an AWA, would they?

Mr Hadgkiss—There is no demand on them, no.

Senator CARR—So they could be on a certified agreement if they chose?

Mr Hadgkiss—Indeed; one has made that selection.

Senator CARR—That is a seconded officer?

Mr Hadgkiss—Yes.

Senator SHERRY—Do you know how many who are on AWAs—40 out of 41, I think you have indicated—are on AWAs in the areas from which they have been seconded?

Mr Hadgkiss—I am sorry; I do not understand that question.

Senator SHERRY—They are on AWAs with the task force?

Mr Hadgkiss—Yes.

Senator SHERRY—Are they on AWAs in their previous employment, from which they have been seconded?

Mr Hadgkiss—Some are, yes.

Senator SHERRY—You say ‘some’; do you have any idea how many?

Ms Bennett—Mr Hadgkiss would not necessarily know. These are people who have joined. What their previous arrangements were is not information he would have if they were DEWR officers or from other agencies.

Senator SHERRY—I am interested because, certainly to my knowledge, there are not many Federal Police on AWAs. Why, all of a sudden, in this particular task force have they have moved onto AWAs?

Dr Boxall—It is the policy of the department, Senator Sherry, that all employees have a choice between being on an AWA and a certified agreement.

Senator SHERRY—I am just wondering why in their other employment they did not choose that preference—

Dr Boxall—I know.

Senator SHERRY—but they are doing it now.

Dr Boxall—I cannot answer that. It is possible that other departments have different policies.

Mr Hadgkiss—In fact, they are former AFP; they are not serving AFP.

Senator SHERRY—They do not have a right to go back to the AFP when the task force concludes?

Mr Hadgkiss—No.

Senator WONG—If I could just clarify that, it does seem rather high as a percentage of total staff having AWAs. We had evidence earlier today from the Office of the Employment Advocate which indicated that across the Commonwealth public sector non-SES rates of AWA engagement are around five per cent.

Dr Boxall—That is the average for the—

Senator WONG—You have got about 99 per cent.

Dr Boxall—But this is just one unit within the department.

Senator WONG—I appreciate that; I am talking about this unit.

Dr Boxall—The figures that were quoted in this morning’s evidence are the average for the APS, but I—

Senator WONG—I appreciate that. I am just making the point that it is significantly—extraordinarily—higher in relation to the task force than the average across the public sector.

Dr Boxall—With every average there are some that are much higher and some that are lower.

Senator WONG—But you have got all but one. Was there encouragement of these officers to take up AWAs through the recruitment process?

Dr Boxall—No, the policy in the department is that employees have a choice. That is the policy.

Senator WONG—I understand that. Were they encouraged to take up AWAs?

Dr Boxall—No more than they are encouraged to make a choice.

Senator SHERRY—What is the percentage in your department, Dr Boxall, outside this task force, approximately?

Dr Boxall—Probably between one-third and one-half.

Senator SHERRY—So there is this area with an extraordinarily high percentage—Senator Wong mentioned 90-odd per cent.

Dr Boxall—This is a new area, as Mr Hadgkiss was explaining. What has happened is that a number of new employees have come on board and they have elected to go on an AWA.

Senator WONG—Were the AWAs offered significantly higher in remuneration than the applicable certified agreement?

Dr Boxall—We cannot go into the details of individual AWA offers. The AWA offer was sufficiently attractive for them to take the AWA.

Senator SHERRY—So you either coerced them or bribed them.

Dr Boxall—We did not coerce them or bribe them.

Senator SHERRY—One or the other. Surely, Mr Hadgkiss—

Dr Boxall—No, not one or the other. We did not do either. The policy of the department has been well known. It is the choice for existing and new employees about whether they elect to go on an AWA or the certified agreement. In Mr Hadgkiss's area, a large number have elected to go on the AWAs.

Senator WONG—Was the same AWA offered in relation to all employees?

Dr Boxall—We do not—

Senator WONG—I am not asking you about the individuals; I am asking whether—

Dr Boxall—I did not say you were asking about the individuals. The point I was going to make was that we do not treat any two staff members exactly the same. AWAs are individual between the employee and their manager, and they are submitted up to a remuneration committee for approval. A large number of people in Mr Hadgkiss's area have elected to go on the AWAs.

Senator WONG—Are any staff members offered identical AWAs within the task force?

Dr Boxall—Not that we know of, but it is theoretically possible that they could be.

Senator WONG—Was the level of remuneration that was offered in the AWAs to the task force higher than that which has been offered to analogous positions in the department?

Dr Boxall—It depends; it is an individual thing. The level of remuneration is just one aspect of an AWA. It is quite possible. In some cases it is slightly above; in some cases it might be the same—who knows. It is individual and, as long as it passes the no disadvantage test, it is legal.

Senator WONG—Is it the case that the AWAs offered to the prospective task force employees are significantly more advantageous than the AWAs which have been offered to DEWR staff?

Dr Boxall—No, not necessarily. The AWAs offered to the task force are sufficient to attract the right number of staff and the right quality of staff to the task force, and they are within budget. Mr Hadgkiss has a budget, which is outlined in the budget papers, within which he is operating.

Senator WONG—Yes, it is quite a lot of money—we are aware of that. Was there a policy decision made to improve the AWAs offered to the task force, as opposed to those which have previously been offered to DEWR employees?

Dr Boxall—No policy decision was to be made on that. That issue was not entertained. AWAs are individual and they depend on the individual.

Senator WONG—Who makes the decision in relation to the task force employees in terms of the AWAs offered?

Dr Boxall—The task force follows the same policy as the rest of the department. AWAs come to a remuneration subcommittee and management board and are approved or not approved. Then they go to the Office of the Employment Advocate for lodgement.

Senator WONG—Who takes them to the subcommittee—presumably Mr Hadgkiss?

Dr Boxall—Mr Hadgkiss or one of his managers.

Senator WONG—At the stage they go to the subcommittee, are they already at the point of having been offered to the employees, subject to the approval process?

Dr Boxall—They are subject to the approval process and obviously subject to the Office of the Employment Advocate.

Senator WONG—But at the stage that they go to the remuneration committee they have, in fact, already been discussed with the relevant employee?

Dr Boxall—Yes, in general.

Senator WONG—So at the end of the day the original terms of the AWAs to be offered to task force members was a matter for Mr Hadgkiss?

Dr Boxall—No, Mr Hadgkiss made that offer because it is operational. We cannot have the remuneration subcommittee making offers in a department of 2,000. That is something that is delegated to each manager and, in the case of Mr Hadgkiss, it is delegated to him, just like for any other manager in the department.

Senator WONG—But the point is that it only goes to the subcommittee, as you say, after Mr Hadgkiss has already made an offer.

Dr Boxall—Somebody has to submit it to the subcommittee, otherwise it cannot function. The way that is done in this department is that it is submitted by the relevant manager. In the case of the task force, that is Mr Hadgkiss.

Senator SHERRY—The budget for the task force is \$6.9 million. Approximately, what proportion of that is wages and salaries? Obviously, there would be some sort of rental component, buildings and those sorts of things, in there as well.

Ms Bennett—Last year just over a third was wages and salaries.

Senator SHERRY—Approximately, what is it projected to be in 2003-04?

Ms Bennett—I expect it would be along the same lines.

Senator SHERRY—Okay.

Senator WONG—Mr Hadgkiss, given Dr Boxall's evidence about the process of offering AWAs, how did you go about formulating the offers to these employees?

Mr Hadgkiss—That depends on the experience and skills that the individual has to offer the task force.

Senator CARR—But are the offers of remunerations not significantly outside of the band?

Mr Hadgkiss—No; for investigators it is in the EL1 range.

Senator CARR—So, it is not significantly outside any of those bands? Or is it within those bands?

Mr Hadgkiss—It is within the EL1 band.

Senator WONG—For investigators?

Mr Hadgkiss—Yes.

Senator WONG—What about other staff?

Mr Hadgkiss—Again, it depends on the nature of the individual: what skills they bring and what they were commanding in their previous positions et cetera.

Senator WONG—Were other staff offered AWAs that would have extended them beyond the relevant band?

Mr Hadgkiss—Not to my knowledge. The majority are within the band if they are on a secondment.

Senator SHERRY—Mr Hadgkiss, if I take one-third off \$6.89 million I am left with about \$4.6 million. If I divide that by 41 I get an average total salary cost—and I assume this includes oncosts—of \$110,000 to \$112,000 per employee. That seems to be somewhat high.

Ms Bennett—As I said, it is an estimate. It takes into account superannuation arrangements and it may take into account some arrangements for cars or other aspects of their AWAs—mainly super; or overtime, if that applies.

Senator SHERRY—Let us get to a bit of this detail, then. I have calculated that it is about \$112,000 average, so presumably there are some above and some below \$112,000. If they are in the public sector, their super is 18 to 20 per cent. If we take that off, we are down to about

\$90,000 average. It still seems quite high in terms of an average payment. How many are getting cars?

Mr Hadgkiss—Except for myself as an SES officer, nobody is entitled to a car.

Senator SHERRY—So, no-one is getting a car. Let us work it out: with the public sector super at roughly 18 to 20 per cent, we are still looking at about—Ms Bennett, you said cars. Why did you say cars?

Ms Bennett—Sorry, I meant superannuation.

Senator SHERRY—Yes, but then you went on and said cars.

Ms Bennett—It was an error.

Senator SHERRY—It was an error?

Ms Bennett—Yes.

Senator SHERRY—Okay.

Mr Hoy—Senator, that figure you are using is the average cost for an EL1 in our department.

Senator CARR—Yes, but you only have a couple of EL1s on this payroll.

Mr Hoy—I was talking about the department.

Senator CARR—I know that, Mr Hoy; but Mr Hadgkiss has informed us that he only has a couple of EL1s.

Mr Hadgkiss—No, the majority are EL1s.

Senator CARR—The majority are EL1s?

Mr Hadgkiss—Yes. I would have less than a handful of EL2s—probably three.

Senator CARR—Is that the normal staffing distribution for other units within the department, Mr Hoy?

Mr Hoy—I can only talk about my unit. It ranges from APS3 up to SES.

Senator CARR—So most of your officers in other units would be at EL1 and EL2 levels?

Mr Hoy—No.

Senator CARR—It would be unusual in that regard?

Mr Hoy—I cannot comment on his operations.

Senator CARR—Dr Boxall, would you agree that that would be an unusual staffing distribution?

Dr Boxall—I would not agree.

Senator CARR—What is the usual distribution for a unit of 41?

Dr Boxall—There is no such thing as usual in this case. There might be an average, but it depends what is required to do the job. Mr Hadgkiss has testified that a large number of his employees are at the EL1 level, and that is what is required to do the job.

Senator SHERRY—What is the basic rate of pay at an EL1 level at the moment?

Dr Boxall—Mr Hoy has just said that an average cost to the department of about \$110,000 is broadly in line.

Senator SHERRY—That is for EL1s?

Dr Boxall—Yes.

Senator SHERRY—What is the base rate of pay then, Mr Hoy, for an EL1 at the moment?

Dr Boxall—We would have to get somebody to get information from our certified agreement. We could give you the range on that which I am sure someone could get in a few minutes.

Senator SHERRY—Okay, I will come back to that.

Senator CARR—Mr Hadgkiss, do you pride yourself on your independence?

Mr Hadgkiss—Yes.

Senator CARR—Have you been briefing people around the country, trying to draw attention to the work that your task force is undertaking?

Mr Hadgkiss—Yes.

Senator CARR—You have briefed members of parliament; I acknowledge that you have briefed me. You have briefed unions, I take it?

Mr Hadgkiss—Yes.

Senator CARR—You have briefed employer organisations?

Mr Hadgkiss—That is correct.

Senator CARR—So I expect you have briefed a broad range of people. Is that right?

Mr Hadgkiss—That is correct.

Senator CARR—And in all of these briefings have you asserted your independence?

Mr Hadgkiss—Yes.

Senator CARR—I would like to ask you a few questions about one particular briefing. I take it as a core of your briefing that you have a series of slides which go to what the organisation does, who does it, how it does it—you know the ones that I'm talking about—where the offices are located, when the offices opened, how to contact the office and so on and so forth. They are all consistent in your briefings? They are the ones you have shown me so I take it they are consistent. I take it they are not confidential, because they are consistent with the slide show you have done all over the country. I am interested to know about the briefing that you have undertaken with some employer organisations. Given that you have asserted your independence, I was somewhat surprised to hear that—

Senator SHERRY—Just before you go on, Senator Carr, can I ask this: do believe you bring fairness and impartiality to the position, Mr Hadgkiss?

Mr Hadgkiss—Yes, I do.

Senator SHERRY—Thank you.

Senator CARR—Have you ever publicly compared the CFMEU or the Australian Council of Trade Unions to the recently deposed Iraqi regime?

Mr Hadgkiss—Never.

Senator CARR—Has any officer compared the CFMEU or the ACTU to the recently deposed Iraqi regime?

Mr Hadgkiss—Never.

Senator CARR—Have you or any other officer ever stated, ‘Saddam Hussein is alive and well and living in Swanston Street’?

Mr Hadgkiss—Not in words to that effect, no.

Senator CARR—No words to that effect at all?

Mr Hadgkiss—In a briefing to employers I was warning employers that the task force was gearing up to go to city sites and there would be more vigilance on the part of the task force in hitting CBD sites. It was about the time of the second Gulf War and I made mention—in a moment of levity—that tanks would be entering the city and we would be hitting their sites.

Senator CARR—That moment of levity was at the Clayton Utz presentation on 8 and 9 April?

Mr Hadgkiss—I have said the same thing in Melbourne a number of times to warn employers that we were intending to be more vigilant.

Senator CARR—This is what I want you to address, Mr Hadgkiss. I am advised that on Tuesday, 8 April, you gave a presentation to Clayton Utz. Do you recall that presentation?

Mr Hadgkiss—Around that time I gave a number of presentations to law firms in the Melbourne CBD, yes.

Senator CARR—You gave a presentation called ‘The Cole royal commission: how will it impact on you’.

Mr Hadgkiss—From memory, that would have been a member of the ACTU and me. There could have been a member of the royal commission there as well. From memory, there were three of us on the panel.

Senator CARR—At that presentation, did you say that you were offering a service to protect people?

Mr Hadgkiss—That is part of our mandate—to ensure retribution does not take place.

Senator CARR—Did you say it was a bit like rape victims who got to go to someone to hold their hands?

Mr Hadgkiss—Yes, that is correct. That is my experience. We have a lot of very frightened people in this industry.

Senator CARR—Did you say that, with regard to the site visits, you were circling the city, a bit like Baghdad?

Mr Hadgkiss—That is correct. I think I said we were about to cross the Yarra, which is like the equivalent river—I cannot remember the name—in Baghdad.

Senator CARR—But you did not say that Saddam Hussein is alive and well in Swanston Street?

Mr Hadgkiss—Not words to that effect, no.

Senator WONG—Did you say words that might have been—

Mr Hadgkiss—As I said, it was a moment of levity and laughter. Someone asked, ‘Where are you going to finish up?’ and I said something like, ‘In the city.’

Senator WONG—Could you clarify that? I do not understand that answer.

Mr Hadgkiss—We were talking about moving through the city, going from site to site, in terms of being more vigilant in our policing of the Workplace Relations Act.

Senator WONG—Did you make reference to Saddam Hussein being alive and well and living in Swanston Street?

Mr Hadgkiss—Saddam Hussein could have come up, but I do not recall saying he was alive and well and living in Swanston Street.

Senator CARR—Did you mention Saddam Hussein?

Mr Hadgkiss—I could have mentioned him.

Senator WONG—To whom were you referring when you mentioned that?

Mr Hadgkiss—No-one in particular. As I say, the context was in getting tough with employers.

Senator CARR—Employers?

Mr Hadgkiss—Employers, yes.

Senator CARR—Which employers are based on Swanston Street?

Mr Hadgkiss—There are a number of building sites on Swanston Street.

Senator Alston—I do not think he conceded that point.

Senator CARR—Sorry?

Senator Wong—I think he just did, Minister.

Senator Alston—I do not think he conceded that he made a reference to Swanston Street.

Senator CARR—I thought he just did. At this address, did you speak of investigating unions and unionists in the building industry as akin to investigating ‘drug traffickers’ and ‘purveyors of child pornography’?

Mr Hadgkiss—No. I said I was drawing on my experience from 25 years of organised crime. I think that was in the context of the kind of investigator that I was trying to attract to the task force.

Senator SHERRY—So you did make a reference to those two descriptions that Senator Carr has just mentioned?

Mr Hadgkiss—I said that had been my background, but I do not recall that being in the context of going after union people.

Senator SHERRY—Did you use the words ‘drug traffickers’ and ‘purveyors of child pornography’?

Mr Hadgkiss—I said that has been my background. I said, from memory—and I have said this before—that I have come from a world of organised crime and that sometimes this industry never ceases to amaze me.

Senator WONG—It is akin to organised crime, you say?

Mr Hadgkiss—It has certain similar characteristics. Certainly the culture does, yes.

Senator WONG—Employers culture?

Mr Hadgkiss—Employers and employees alike.

Senator CARR—In this address—this is to lawyers—you specifically were referring to employers.

Mr Hadgkiss—It was not to lawyers, Senator; it was to a mixture of IR people, clients and—from memory—a member of the ACTU. Mr Combet was unable to attend.

Senator CARR—When you referred to ‘drug traffickers’ and ‘purveyors of child pornography’, who did you have in mind?

Mr Hadgkiss—That is my background. That is what I have been doing for a quarter of a century.

CHAIR—He answered that question, Senator.

Senator CARR—I just wanted to be clear about this.

CHAIR—He said it twice.

Senator CARR—You are saying you were not referring to unions.

Mr Hadgkiss—Nor employers. It is the culture that I am confronting.

Senator CARR—So when you referred to victims of rape, were you referring to employers as if they were victims of rape?

Mr Hadgkiss—I am talking about all people. They are people who are extremely frightened. People who will not come forward and need to have their hands held to go through the fairly traumatic experience known as the justice system.

Senator CARR—Did you say that your officers could be effective—and it was put to me that these were the words used—even if they had the IQ of a plant?

Mr Hadgkiss—No. My officers?

Senator CARR—Yes, your officers.

Mr Hadgkiss—No.

Senator CARR—I would just be surprised if you had referred to your own officers as having the IQ of a plant, particularly if they are being paid such generous amounts of money. That was obviously a misunderstanding as well, was it?

Mr Hadgkiss—I did not say those words.

Senator CARR—You did not use the term ‘IQ of a plant’ at all?

Mr Hadgkiss—I think it was in relation to an analogy of how to secure shopping centres.

Senator CARR—Sorry?

Mr Hadgkiss—I think I was—from memory—saying that, if you were an owner of a shopping centre and you had a problem with crime, a good strategy is to employ people just to wander around in a security role.

Senator CARR—I see. So you were referring to police officers in that respect, were you?

Mr Hadgkiss—Or security people. Whatever I said, they do not have to have a high IQ.

Senator CARR—It is just the context of it, so you did think—

Mr Hadgkiss—The context was, Senator, that I was talking about the task force becoming more active on building sites—their presence being more active on building sites.

Senator CARR—Yes.

Senator SHERRY—So you did make reference to an ‘IQ of a plant’?

Mr Hadgkiss—I said if necessary, yes.

Senator SHERRY—It is just, Mr Hadgkiss, when Senator Carr on this occasion—and on the two previous occasions—has raised the quote, you did not recall the quote—

Mr Hadgkiss—Not in the context—

Senator SHERRY—at all. And when Senator Carr persists, you recognise the words that he has used and you give us some sort of context from your point of view—

Mr Hadgkiss—Indeed—

Senator SHERRY—having initially denied using the words.

Mr Hadgkiss—It is in a completely different context and different words than Senator Carr has used.

Senator CARR—I understand that, Mr Hadgkiss. You are agreeing that you did use these expressions, or many of these expressions that I have referred to. You are saying I have got the context wrong.

Mr Hadgkiss—And the exact wording wrong, Senator.

Senator CARR—So can we just go back. Did you refer to the ‘Iraqi regime’?

Mr Hadgkiss—No, I did not refer to the Iraqi regime.

Senator WONG—Mr Hadgkiss, can I just interrupt for a minute there. I thought, in terms of previous answers to questions, you did make reference, you say, to Baghdad, to the crossing of the river and to Saddam Hussein. Are you now saying you did not make those references?

Mr Hadgkiss—I did not use the—

Senator Alston—They are not words that would be replaced by ‘Iraqi regime’. Talking about a bridge or a river or Saddam Hussein is not—

Senator WONG—Baghdad. The crossing of the river encircling Baghdad—

Senator Alston—Baghdad is a city, not a regime!

Senator WONG—His evidence was he talked about encircling Baghdad.

Senator Alston—Baghdad is a city. You are trying to get him to admit that he used those words synonymously with ‘regime’.

Senator WONG—Mr Hadgkiss has indicated he talked about circling Baghdad. That was my understanding of his evidence.

Senator Alston—But not when you asked him if he had mentioned ‘regime’.

Senator WONG—So did you mention Saddam Hussein at all in this talk to Clayton Utz?

Mr Hadgkiss—I do not recall, Senator. It was said in a moment of levity.

Senator WONG—You do not recall, but something was said.

Mr Hadgkiss—The context was that I was putting employers on notice that the task force had its intention ready to move in on building sites. It was about the eve of the Iraq war or the invasion of Baghdad.

Senator CARR—It was actually before. It was 8 and 9 April, wasn’t it?

Mr Hadgkiss—Again, the context would certainly be—

Senator CARR—I just draw to your attention that I have a copy of your slides.

Senator Alston—He told you that he has attended a number of meetings, so I do not think he should have to take your word for it that it was a particular date.

Senator CARR—I appreciate that, Senator Alston. I am quite happy to table these slides, if that helps.

Senator Alston—It does not prove anything.

Senator CARR—It does not prove what?

Senator Alston—It does not prove anything. You are asking him about his recollection. If he does not have a perfect recollection, then your proving that he was at a place on a particular date does not mean that everything that you are saying was said on that occasion.

Senator CARR—No, it does not, but I think, Mr Hadgkiss, you have agreed that you have used a number of these expressions. There is a dispute as to whether or not you ever referred to the Iraqi regime.

Mr Hadgkiss—I certainly did not. Those are not my words—the Iraqi regime.

Senator CARR—That is fair enough. We do not need to go too far on this. We have agreement that a number of these words were used. The problem is that, while you are asserting your independence, Mr Hadgkiss—and you sincerely believe that to be the case, in all your briefings you have said that—

Mr Hadgkiss—Yes.

Senator CARR—there will be many people in the industry who are familiar with these allegations who would take the view that the address you gave to Clayton Utz on 8 April 2003 is not consistent with your claims of independence.

Senator Alston—That is not a question. You cannot ask him to respond to what you think other people in the industry might think.

Senator CARR—No, but you can understand the context in which I am asking these questions.

Senator Alston—I can understand you wanting to use this material as a basis for you making a speech on the subject subsequently, but, if you are asking him questions, you cannot ask him to respond to what you think other people might think.

Senator CARR—Well, Mr Hadgkiss, what are you going to do to try to persuade people that you are genuinely independent?

Mr Hadgkiss—During that presentation, as indeed during all presentations I have made and talks to the media, I have said time and time again that we are not about bashing unions and that the number of investigations we have at the moment are not against unions; they are against employers. That is the point I have been trying to make. I cannot recall that particular presentation to that law firm, but I would most definitely have said that we were not on a union bashing exercise and employers should be put on notice that we were targeting them for unlawful conduct.

Senator SHERRY—Mr Hadgkiss, I just want to be sure about this: did you say earlier that you had made a reference to some employers in respect of Saddam Hussein?

Mr Hadgkiss—It was in that context. I was putting employers on notice that it was the intention of the task force to be more vigilant on CBD sites in the Melbourne area.

Senator SHERRY—But you used this comparison with Saddam Hussein, as I understood it. I have been involved in industrial relations to varying degrees, and I must admit that I have had my fair share of disagreements with some employers, but I have to say that comparing them to Saddam Hussein never entered my mind.

Mr Hadgkiss—It certainly befitted the occasion because, as I say, it was levity, there was lots of laughter and I do not think anybody took the connotations about Baghdad too seriously.

Senator CARR—Really? You are in for a bit of a surprise, Mr Hadgkiss. If you think that, you are in for a hell of a surprise because people are taking great offence at these remarks, particularly the reference to Swanston Street, which as you well know is the head office for the CFMEU in Victoria.

Mr Hadgkiss—It is also the town hall, but I was not trying to offend the mayor of Melbourne.

Senator WONG—So what was the purpose of the reference to Swanston Street?

Mr Hadgkiss—I cannot recall. Probably because it is the centre of the city.

Senator WONG—And what was the purpose of the reference to Saddam Hussein?

Mr Hadgkiss—I do not recall whether I said Saddam Hussein. If I did, it was in the context, as I say, again, of getting tough with employers.

Senator CARR—So you were not referring to town hall. Is that what you are telling me? We can definitely rule out the town hall in this regard.

Mr Hadgkiss—It could be the town hall, it could be a number of building sites. But the fact is that Swanston Street is the middle of the city.

Senator CARR—I know. There are a lot of building sites.

Senator SHERRY—Given your background and the job you have got to do, I do not think people seriously would believe you were alluding to the town hall.

Senator Alston—Again, it is not proper to ask him a question like that.

Senator SHERRY—We are asking him what he alluded to, Minister.

Senator Alston—You can ask him that, but you cannot ask him whether he is seriously thinking other people will accept his answers.

Senator CARR—No. I am putting to you, Mr Hadgkiss, that people might reasonably interpret from your remarks that you were referring to the CFMEU.

Senator Alston—Again, that is not a reasonable question to ask him. You can ask him from his knowledge but not what he thinks other people might think.

Senator CARR—Has anyone raised this with you before, Mr Hadgkiss?

Mr Hadgkiss—Not from recollection, no.

Senator SHERRY—You see, Mr Hadgkiss, you said earlier that morale is good in the unit, but it is reported to us that you have used the words that your officers could be effective even if they had the ‘IQ of a plant’. I do not—

Mr Hadgkiss—No, I have not said that. I have denied it.

Senator WONG—Sorry, what you did say—or what you suggested—is that some security officer functions could be adequately performed by someone with the IQ of a plant. Is that a more accurate—

Mr Hadgkiss—No, I was talking about a shopping centre—

Senator WONG—Okay. The duties of a security officer in a shopping centre—

Mr Hadgkiss—I said you do not need—

Senator WONG—I have not finished the question, Mr Hadgkiss—can be adequately performed by someone with the IQ of a plant. Is that an adequate representation of what you said?

Mr Hadgkiss—I did not. It is not an accurate representation of what I said, Senator.

Senator WONG—Perhaps you could explain the reference to the IQ of a plant.

Mr Hadgkiss—I said that we were trying to get a physical presence on building sites and then I likened it to, if you had a shopping centre, you would have security officers wandering around and that would have a deterrent effect, and they did not have to be—

Senator WONG—They did not have to be particularly smart. Is that right?

Senator Alston—You do not have to be a Rhodes scholar. I think that is the usual colloquialism—

Senator WONG—They are not the words he used, Minister. I understand you want to come in and save him here, but they are not actually the words he used.

Senator Alston—It sounds like a variation on a theme to me.

Senator SHERRY—So you used the words ‘IQ of a plant’.

Mr Hadgkiss—I do not recall my exact words, Senator, no. I have given somewhere in the region of 100 presentations—

Senator CARR—Maybe this is one that you should not have given.

Mr Hadgkiss—Sorry, Senator?

Senator Alston—You do not have to answer that either.

Senator SHERRY—It is just that in the reports we have had of your references to the IQ of a plant—whether it is the staff or not—investigating drug traffickers and purveyors of child pornography, and comparing some employers to Saddam Hussein and the CFMEU and the ACTU to the recently deposed Iraqi regime, they are all—

Senator CARR—I do not think he is acknowledging that.

Mr Hadgkiss—I am not acknowledging anything.

Senator SHERRY—They are all fairly strong statements, Mr Hadgkiss, that, in my public life, I have rarely seen given by anyone.

Senator Alston—Again, we are not interested in your sheltered upbringing. You can ask him about what he said—

Senator CARR—It sounds like you on the ABC, doesn’t it? That is the sort of comment you would make about the ABC.

Senator WONG—You would just say that about anybody.

CHAIR—Order! Can we have the one—

Senator Alston—I think you are a few days late for those estimates. We are on employment now.

CHAIR—Are there any further questions on building and construction?

Senator CARR—There are a few more.

Senator WONG—Yes, of course.

CHAIR—Senator Carr, ask your questions.

Senator CARR—In terms of the prosecutions that you have now launched, how many are against employers?

Mr Hadgkiss—There are four matters before the court at the moment. They are all against unions.

Senator CARR—I take it you have some against employers pending, do you?

Mr Hadgkiss—Correct, Senator.

Senator CARR—In what industries?

Mr Hadgkiss—I will have to take that on notice. It would have to be the building and construction industry, but what in particular, I do not know.

Senator CARR—It would be, wouldn't it? What aspects of the building industry?

Mr Hadgkiss—It would be conduct contrary to the Workplace Relations Act, Senator.

Senator CARR—I am sure that would be right, but is it in general construction, home building, sit-outs—which is it? Which area?

Mr Hadgkiss—I do not know if I can go into those intimate—

Senator Alston—I am not sure that he should be foreshadowing that in any event.

Senator CARR—He is at these task force briefings—aren't you, Mr Hadgkiss? They are fairly detailed briefings.

Mr Hadgkiss—But these matters are sub judice, Senator—

Senator CARR—Oh no, that is right!

Senator SHERRY—The old sub judice trick, eh? We've had that one pulled here before!

Senator CARR—The next thing I will hear is 'commercial-in-confidence', followed by 'advice to the minister'!

Senator Alston—Funny how you never took the same view in government.

Senator CARR—We will see.

Senator Alston—You were always very serious in defending Labor.

Senator WONG—I do not think the senator is asking any questions about the actual parties. That would not be appropriate for the reasons the minister has kindly reminded us of—

Senator Alston—No, anything that might tend to identify—

Senator WONG—but I would have thought at least particular areas of the industry or possibly states—

Senator Alston—I think he should take that on notice, because it may well be on legal advice that he does tend to indicate a particular area, which could lead to other people wanting to intervene.

Senator CARR—This could be a bit awkward. I might ask you this, Mr Hadgkiss: are you familiar with the speech that was delivered to the HR Nicholls Society on 2 May?

Mr Hadgkiss—I was not present.

Senator CARR—You were not present at this one?

Mr Hadgkiss—No.

Senator CARR—Are you familiar with the speech by a Mr Buckeridge?

Mr Hadgkiss—No, I am not, Senator.

Senator CARR—This is a speech in which it was alleged that he had paid to have 30 union officials murdered.

Mr Hadgkiss—I know nothing of that.

Senator CARR—You are not familiar with that? That has not come across your desk yet?

Mr Hadgkiss—About 30 union people being murdered?

Senator CARR—No. He admitted paying to have 30 union officials murdered.

Mr Hadgkiss—No, I am not familiar with that. I may have seen it in the newspaper, but I am not familiar with it.

Senator CARR—You have seen it in the newspaper. Have you seen a report in the *West Australian* of Saturday, 3 May 2003, with the headline, 'Boss traded kill threats'?

Mr Hadgkiss—No, I am not familiar with it.

Senator CARR—Are you aware that this matter was raised in the Western Australian parliament by Mr John Quigley MP?

Mr Hadgkiss—No.

Senator CARR—I take it that you are not taking any action on this matter?

Mr Hadgkiss—Conspiracy to murder is not within the Workplace Relations Act.

Senator CARR—I see! That covers all the answers, doesn't it? Let me be clear about this. The only crimes you are interested in are matters covered by the Workplace Relations Act. Is that right?

Mr Hadgkiss—Predominantly, yes.

Senator CARR—So threats to kill are not matters that you would deal with.

Mr Hadgkiss—We would refer them fairly promptly to the appropriate authorities.

Senator CARR—So an allegation raised in a public place concerning a building industry employer would not be something you would have a look at?

Mr Hadgkiss—I would imagine the Western Australian police would do that if they saw it in the newspaper.

Senator CARR—Do you have any officers in Western Australia?

Mr Hadgkiss—Yes.

Senator CARR—How many officers do you have in Western Australia?

Mr Hadgkiss—A handful.

Senator CARR—None of them thought it necessary to draw this to your attention?

Mr Hadgkiss—From recollection, I think I saw it in the daily press clippings. But, again, it is a matter more befitting the Western Australian police, the South Australian police or the police wherever the speech was made.

Senator CARR—Am I clear about this: matters of violence are not matters that you would cover?

Mr Hadgkiss—Intimidation and coercion are, yes.

Senator CARR—But you do not regard threats to kill as intimidation and coercion.

Mr Hadgkiss—That would be a matter most definitely lying within the crimes act of the relevant jurisdiction.

Senator CARR—But it would not be a matter under your purview?

Mr Hadgkiss—We do not investigate murders, no.

Senator CARR—Would an affray on a picket line be something that you would deal with?

Mr Hadgkiss—Pickets are ordinarily the purview of the state police.

Senator CARR—But that would not be something you would deal with on your task force?

Mr Hadgkiss—It would most definitely be a matter if it had ramifications in the Workplace Relations Act.

Senator CARR—The matters that you are dealing with do not go to anywhere near violence?

Mr Hadgkiss—Intimidation, yes; threats, yes.

Senator CARR—But threats to kill are not intimidation?

Mr Hadgkiss—Threats to kill are a lot more serious than the Workplace Relations Act.

Senator CARR—So you have to threaten only a little bit. Is that the way it works?

Mr Hadgkiss—Coercion, intimidation and threats along those lines would be covered, but threats to murder are most definitely outside the Workplace Relations Act.

Senator CARR—I am quite staggered that you can draw the distinction.

Senator SHERRY—What level of threat is in the Workplace Relations Act?

Mr Hadgkiss—It is whatever the relevant law is covering the sections within the Workplace Relations Act. Had a matter like this been referred to the task force, obviously we would in turn have immediately gone to the relevant state police agency.

Senator CARR—The trouble is that this event actually occurred in Victoria. The speech was actually delivered in Victoria. Would that be a matter for you to take an interest in?

Mr Hadgkiss—It depends where it was intended that the murders would take place. Ordinarily, murderers do not go on a public stage and announce they are going to murder people. That is why I am not sure—

Senator SHERRY—Saddam Hussein did! You got that analogy right.

Senator CARR—This is an employer making these claims in a public speech at the HR Nicholls Society and this is not a matter of interest to you?

Mr Hadgkiss—I would have read it and it would have been filed, but in terms of further action it is not a matter for the task force, no.

Senator WONG—I am staggered at that. You have indicated yourself that you read newspaper reports of a suggestion of plans to murder people in relation to the construction

industry and you do not regard it as something about which you should take any action whatsoever.

Senator Alston—I think a better way of putting it would be that, if these reports had any credibility, you would expect that the police would be all over it by now and in those circumstances there would not be a role to be played by others with more specific responsibilities.

Senator WONG—Surprisingly—

CHAIR—Order! Mr Hadgkiss has said that about three times. Could we move on?

Senator WONG—No, we are not going to move on. Surprisingly, Minister, I agree with you. It is an issue that perhaps should have been referred to the police, but the fact is you took no action whatsoever to check whether or not it had been referred to the police, did you? In fact, you took no action at all.

Mr Hadgkiss—Every time someone says they are going to murder people, it is not really the responsibility of the task force.

Senator WONG—But threats, intimidation and coercion in the industry are, and you do not regard a threat to murder as a threat, intimidation or coercion?

Mr Hadgkiss—It lies outside the Workplace Relations Act. It was not a matter referred to the task force; it was a matter of public knowledge. I would imagine the Commissioner of the Victoria Police or the Commissioner of the Western Australia Police Service would be the most appropriate people to make a decision in that respect.

Senator WONG—Do I take it that, if there is an allegation on a picket line that a union official has made a suggestion that she or he intends to kill someone, you would regard that as being outside of your jurisdiction?

Mr Hadgkiss—That would be a matter that we would most quickly bring to the attention of the state police.

Senator WONG—What is the difference with this?

Senator Alston—Let us be clear, Senator Wong: if the matter is brought to his attention, I think he is saying, he would take the appropriate action. But you are not suggesting this was brought to his attention other than by reading something in the newspaper. That is not what you would expect to be classified as bringing it to his attention.

Senator WONG—So if the scenario outlined is only reported in the paper and no-one actually comes to you and says, 'I overheard X making this threat,' you would not be taking any action in that regard?

Mr Hadgkiss—If that came to us as a source, we would refer it to the appropriate agency, which would be the crime squad of the relevant state police.

Senator WONG—But you have not done that on this occasion, have you?

Mr Hadgkiss—No, we have not had a referral in respect of this matter.

Senator WONG—Do I take it from that that you will only act on referrals—is that right?

Mr Hadgkiss—Someone gets on a stage in a public area and says—from recollection, I do not think they said that they were going to kill 10 people—they have the names of 10 people and, in the event that they are murdered, then these 10 people would be noted. I think they were words to that effect, from my recollection. I do not think Mr Buckeridge or whatever his name is actually said he was going to kill 10 union officials.

Senator CARR—The article says:

You are going to kill me but I have pre-paid for 30 of you to get rubbed out and you are number eight.

Mr Hadgkiss—But the person who made that should go to the relevant police force if they took it seriously.

Senator Alston—You might as well say, ‘If you read the article, why didn’t you report it to the police?’

Senator WONG—We are not the head of the building industry task force.

Senator Alston—He is not dealing with a complaint brought to him.

Senator WONG—No, he is dealing with the industry that you say you want to clean up.

Senator CARR—You have indicated that you have had nearly 500 inquiries in these briefings, of which three are before the court. Is that three of the 500 or is that three additional ones?

Mr Hadgkiss—The figures now are that we have had 622 inquiries as of 29 May, we have four matters before the court and four matters where action is probably imminent. They are with our external legal service providers. Half of those involve employers.

Senator CARR—Did the 622 you referred to include the matter that we referred to? That was not one of the 620, was it?

Mr Hadgkiss—I think that came in two days later on a bunch of newspaper clippings.

Senator CARR—What is the form of the 622 inquiries that you have had? Is it 622 telephone calls?

Mr Hadgkiss—Yes, the majority are, through the 1800 number.

Senator CARR—So, basically, someone rings up with a complaint and that becomes one of your inquiries, does it?

Mr Hadgkiss—Of that 622, 540 were actual reports—people wishing to make a report.

Senator CARR—What sort of things do they report?

Mr Hadgkiss—The majority come from subcontractors.

Senator CARR—But only four end up before a court.

Mr Hadgkiss—At the moment, but somewhere in the region of 97 investigations are under way.

Senator CARR—But only four are before a court at the moment.

Mr Hadgkiss—Yes, at the moment.

Senator CARR—And they are all unions?

Mr Hadgkiss—Yes, at the moment.

Senator CARR—With regard to the matters that you have referred off, you have referred 11 to external agencies. What is the up-to-date figure on that?

Mr Hadgkiss—There are 13 now.

Senator CARR—What sort of agencies are they referred to?

Mr Hadgkiss—The state police, Tax, the Australian Securities and Investments Commission, the New South Wales Independent Commission Against Corruption, the ACCC, and state departments—that is, WorkSafe, WorkCover kind of departments.

Senator CARR—Have you had any advice from the referring agencies as to what action they have taken?

Mr Hadgkiss—Yes.

Senator CARR—How many of those 13 have been proceeded with?

Mr Hadgkiss—I would have to take that on notice.

Senator CARR—Thank you.

Mr Hadgkiss—We are certainly following through on all referrals to those agencies.

Senator CARR—To date, how many of those have ended up before a court?

Mr Hadgkiss—I do not know. Because of the time it takes to get matters before the court, I would doubt any of those matters are yet before the court.

Senator CARR—In the slideshow you were showing, you indicated that the legislation that will be used to make a permanent task force as distinct from an interim task force will be presented in August and passed in December.

Mr Hadgkiss—That is public knowledge. I think that has come from the minister in press clippings.

Senator CARR—So you drew that information from press clippings?

Mr Hadgkiss—Yes.

Senator CARR—You have no inside advice that you could tender to us, to tell us what we are going to do?

Mr Hadgkiss—I think that was confirmed again in the *Financial Review* of last week.

Senator CARR—Did you get advice from the minister's office on that?

Mr Hadgkiss—No, I read it in the newspaper.

Senator CARR—I see. Do you have a habit of drawing up your briefs based on newspaper reports?

Mr Hadgkiss—If it comes from the minister's office and it goes to the media and the public, I extrapolate from that and put it, as you see, on a—

Senator CARR—That is fair enough. I am just trying to understand how you do it.

Mr Hadgkiss—But I have no inside knowledge.

Senator CARR—So the minister's office did advise you that this was the time line?

Mr Hadgkiss—No, I got it from a newspaper.

Senator CARR—I see.

Senator SHERRY—Don't you think it is a touch unreliable to put out a publication—in this case, a slide—indicating a time line based on a newspaper report, allegedly from the minister's office? This is a fairly important issue. Surely you would confirm something like that with the minister's office?

Mr Hadgkiss—But we all know, as Senator Carr said so eloquently earlier on, that it depends on the passage of the bill through the parliament. This is only speculation.

Senator SHERRY—We know that.

Senator CARR—So your slides are speculation, are they?

Mr Hadgkiss—Absolutely. What is happening in the future about this body is the most asked question in the industry at the moment.

Senator CARR—Fair enough. Are the rest of these slides speculation as well, or is it just this one?

Ms Bennett—Senator, Nigel Hadgkiss is not involved in progressing the recommendations of the royal commission. That is being done in my area, so he can do no more than draw from what he has seen on the press clippings.

Senator CARR—Thank you very much, Ms Bennett. Would you put out a slide telling the Senate when it is going to pass legislation?

Ms Bennett—No, I would not.

Senator CARR—It does say here that the bill will be passed in December 2003.

Ms Bennett—The minister, as you pointed out, was reported on 26 May in the *Financial Review* saying that he is expecting that timetable.

Senator CARR—That the Senate would pass the bill.

Ms Bennett—Is that a question?

Senator CARR—It is a big call.

Ms Bennett—Sorry, is that a question, Senator?

Senator CARR—Yes. Was that part of the briefing?

Ms Bennett—The press release detailed his timetable. You were quoting from it earlier. I can read it out, but he was looking at that sort of timetable for it to be brought before the Senate and he envisaged it would be passed.

Senator CARR—And he is confident that the Senate will agree to the passage of this bill, is he?

Ms Bennett—That is what the minister has said.

Senator CARR—Very good. At least you put in the budget estimates there. That was not speculation. You have here ‘November budget estimates’. You are obviously looking forward to those as well.

Mr Hadgkiss—That is why that was put in there, Senator.

Senator SHERRY—Going to the issue of the timetable, I can understand you putting in a slide an indicated time frame based on a statement from a press release direct from the minister, which you have received or that Ms Bennett has referred to you. I do find it a bit odd that you would base it on a press report without checking.

Mr Hadgkiss—From memory, it was a ministerial spokesman who gave it to the *Financial Review*.

Senator CARR—That is the most unreliable source.

Senator SHERRY—Even Senator Alston might be a bit guarded about relying—

Senator CARR—On a press secretary.

Senator SHERRY—on press reports, particularly if they come from the ABC.

Ms Bennett—I think that the minister, both in the House and in the press, has made it clear that what he would like to see is quick action on implementing the royal commission recommendations.

Senator CARR—You should say that in your briefings. You should say, ‘The minister would like us to see this happen.’

Ms Bennett—Perhaps he should have said that.

Mr Hadgkiss—I think I said ‘this is speculation’—you are probably all aware of this from your readings of the newspaper. It is the most frequently asked question I receive.

Senator SHERRY—Fine, Mr Hadgkiss, and fine, Ms Bennett. I understand that it is the most frequent question you are asked and that you saw a reference in a press clipping in the *Financial Review*, but I just find it odd that you would not at least verify or check such a critical piece of information with the minister’s office directly or through Ms Bennett to the minister’s office or that Ms Bennett did not communicate that to you.

Mr Hadgkiss—I failed to do it but I took it—

Senator SHERRY—Okay, leave it there then.

Mr Hadgkiss—as an accurate release to the media.

Senator CARR—In terms of that briefing itself, you said before that the ACTU were present at the briefing.

Mr Hadgkiss—From memory—if it is the one I am thinking of, Senator—there was me, and it was to be Greg Combet and Richard Tracey, I think, from the royal commission.

Senator CARR—And you will check for me whether or not they were there? My advice is they were not there.

Mr Hadgkiss—It was around that time that I was doing many presentations. That is to the best of my memory. If it was not, it could have been somebody else I was with. Law firms tend to invite two people from—

Senator CARR—It is just that I am not certain that the ACTU were there. Was the CFMEU there?

Mr Hadgkiss—No, I did one recently in Perth with the CFMEU.

Senator CARR—Yes, but they were not in Melbourne.

Mr Hadgkiss—The CFMEU could have been members of the audience.

Senator CARR—I would be surprised, at Clayton Utz.

Mr Hadgkiss—I do not think so, Senator.

Senator CARR—I would be very surprised.

Mr Hadgkiss—I do not think so, Senator.

Senator WONG—You do not think so, what?

Mr Hadgkiss—It is because of my knowledge and my experience that members of the audience are there from all the unions, and I welcome that. There is no secret club if you go to a law firm. There is an expectation that whatever I say will filter back to the union industry and employers alike.

Senator CARR—That is right. That is why these statements seem so strange; you have an expectation that they would become widely known.

Mr Hadgkiss—Again, it is the context, Senator. It is the context in which you are trying to make out that it was more sinister than it was.

Senator CARR—Can I just move on to another matter. With regard to the new commission that is being established, Mr Hadgkiss, have you been consulted about that?

Mr Hadgkiss—No.

Senator CARR—Ms Bennett, in terms of the new commission, can you confirm that the proposal is that the new commission will have the capacity to automatically deregister industrial organisations in certain circumstances?

Ms Bennett—That is a recommendation by the royal commission. The government, at the moment, is considering its detailed response to those recommendations.

Senator CARR—You cannot tell me that that is—

Ms Bennett—No.

Senator CARR—All right. Are you able to tell me when that information will be available?

Ms Bennett—When the government has finalised the detailed package of implementing the royal commission recommendations.

Senator CARR—I presume you would say the same with regard to seek and enforce injunctions and seek and enforce orders under provisions—

Ms Bennett—It is the same answer. They are recommendations of the royal commission's report and decisions have not been made in that level of detail yet.

Senator CARR—Can I ask you this, Mr Hadgkiss. Do you have the right of access to records and materials, including evidence and submissions, presented to the royal commission?

Mr Hadgkiss—No.

Senator CARR—You have not been provided with any additional documentation from the royal commission other than the published documents?

Mr Hadgkiss—I have received a number of disseminations direct from the royal commission in January and, in more recent times, via Prime Minister and Cabinet and the Attorney-General's office.

Senator CARR—What is the nature of those disseminations?

Mr Hadgkiss—They are matters to be investigated by the task force involving unlawful conduct under the Workplace Relations Act.

Senator CARR—So they are referrals?

Mr Hadgkiss—They are disseminations, yes.

Senator WONG—Do they relate to specific allegations?

Mr Hadgkiss—They were matters that I understand were raised before the royal commission—in the course of hearings.

Senator CARR—Were they arising from the so-called confidential volume?

Mr Hadgkiss—Yes, volume 23 as I understand.

Senator CARR—Are they all out of volume 23?

Mr Hadgkiss—I have not seen volume 23, but I assumed that these were the matters referred to in volume 23.

Senator CARR—These were not matters in the other volumes that were matters for findings of fact?

Mr Hadgkiss—As I understand it, they could be both. They could be referred to in the public chapters; likewise in 23 they are more specific in terms of culpability.

Senator CARR—How many did you say? What was the total number of referrals?

Mr Hadgkiss—During the month of May I received 52 matters. Prior to that I received 30 or 40—I cannot remember the exact number—disseminations.

Senator WONG—These are all via the PM&C and—

Mr Hadgkiss—They went from the Department of the Prime Minister and Cabinet, then to the Attorney-General's Department and then to the task force. I understand other agencies have received other material.

Senator CARR—What other agencies have received material?

Mr Hadgkiss—I have no knowledge of that.

Senator WONG—You just said that you understand that they had.

Mr Hadgkiss—I do not know the specifics of which departments. I can imagine, but it would be speculation on my part.

Senator CARR—So there were some 92 referral matters?

Mr Hadgkiss—There could be, yes.

Senator CARR—These are all issues that were canvassed at the royal commission?

Mr Hadgkiss—Absolutely, yes.

Senator CARR—Were the matters which you say have arisen through the Department of the Prime Minister and Cabinet from the royal commission as well?

Mr Hadgkiss—I had better clarify: the latest were most definitely handled by the royal commission and were the subject of hearings; as I understand it, the royal commission may not have been able to get around to the matters I received earlier owing to insufficient resources.

Senator CARR—I see. So they were not matters they had actually put to the royal commission?

Mr Hadgkiss—Yes, they were. They went to the royal commission.

Senator CARR—They were put to the royal commission but they were not investigated by the royal commission?

Ms Bennett—The matters referred to Nigel just after the establishment of the task force are referred to in the royal commission's first report. They were part of the reasons why he asked that the interim task force be established—to maintain some law and order in the industry pending the establishment of a permanent body and to investigate matters that at that time he felt he could not progress. They are set out in the first report, which you have seen. They were the matters that were referred to Nigel last year. Matters that he has received this year are a result of the royal commissioner's recommendations, which the minister announced when he tabled the documents. There were 66 case studies that revealed possible unlawful conduct, including breaches of the Workplace Relations Act, and there were some 26 case studies involving 31 individuals who had breached criminal law. They were referred to the Attorney-General to distribute.

Senator CARR—So we have 66 cases and 26 cases; two separate categories. Since you were so keen to enter this affray, Ms Bennett—and I am sure Mr Hadgkiss will be delighted that you have done so—what was the nature of the 26 cases?

Ms Bennett—I do not have that information. They are in a confidential volume, which the government has chosen not to table.

Senator CARR—What about the 66 cases?

Ms Bennett—As I explained to you, I also do not have that information. But they revealed, as the minister announced in his tabling, possible unlawful conduct, including in such areas as breach of the Workplace Relations Act.

Senator CARR—There were 31 individuals sought in those terms?

Ms Bennett—In those 26 cases referred to as possible contraventions of criminal law, which the Attorney-General has to—

Senator CARR—Of the 66 cases, how many individuals were there?

Ms Bennett—I do not have that information. That information was not provided.

Senator CARR—You do not have it or you are just not going to provide it?

Ms Bennett—It is in the confidential volume.

Senator CARR—If the 31 figure is available for the 26 cases, why don't we know the number of persons who are alleged to have committed offences with regard to the 66 case studies?

Ms Bennett—I do not know.

Senator CARR—You do not know?

Ms Bennett—The royal commissioner identified 26 cases of criminal law with 31 individuals; he did not do the same thing in the 66 cases.

Senator CARR—What is the maximum penalty under the Workplace Relations Act for breaches of the act?

Ms Bennett—It depends on what aspect you are talking about.

Senator CARR—What is the maximum penalty? There is a maximum penalty.

Ms Bennett—For anything?

Mr Hadgkiss—I think it is six months imprisonment.

Senator CARR—Six months imprisonment. That is the maximum?

Mr Hadgkiss—From my knowledge.

Senator CARR—Mr Hadgkiss, I appreciate straight answers. You will get through this a lot more quickly if you give those. Six months imprisonment?

Mr Hadgkiss—That is on each count.

Senator CARR—Yes, it could be accumulative—that is if they are found guilty of anything. How many people have been convicted and sentenced to imprisonment under the Workplace Relations Act since 1996? You would do this all the time, wouldn't you? You would be running people into jail all the time, trade union officials and the like?

Mr Hoy—No, I do not.

Senator CARR—How many?

Mr Hoy—I do not know.

Senator CARR—Ms Bennett, do you know? Do you recall any cases?

Ms Bennett—It is not my area.

Senator CARR—Whose area is it?

Ms Bennett—The courts'.

Senator CARR—Which officer in the department would have this information?

Mr Hoy—We do not have that information.

Senator CARR—I do not recall too many—and I am perhaps not as familiar with this as you—but you have suddenly found 31 people you want to run in.

Ms Bennett—Senator, the royal commissioner made findings that there were 31 individuals who have possibly contravened acts of the criminal law. That is now up to the Attorney-General to send to an appropriate organisation.

Senator CARR—But which criminal law? It was the Workplace Relations Act, was it not?

Ms Bennett—No, there were 66 case studies that revealed possible unlawful conduct, and the individuals were not tallied up.

Senator CARR—But which acts are they alleged to have broken?

Ms Bennett—It is in a confidential volume, Senator. The details are not available.

Senator CARR—Mr Hadgkiss, have you had all of these cases referred to you now?

Mr Hadgkiss—Only those that pertain to the Workplace Relations Act.

Senator CARR—How many additional matters are there outside the Workplace Relations Act, Ms Bennett?

Ms Bennett—I do not know. It is a confidential volume; the details are not available.

Senator SHERRY—Sorry, you say you do not know. Do you know the contents of the confidential volume?

Ms Bennett—It is a confidential volume—

Senator SHERRY—I know that; do you know the contents of the confidential volume?

Ms Bennett—The royal commissioner recommended that that information be not publicly available, and the government has taken that decision.

Senator SHERRY—Yes, I accept that, but you are not answering the question—

Ms Bennett—I do not want to answer that question, Senator.

CHAIR—Order, Senator!

Senator SHERRY—Would you just say—

CHAIR—Order, Senator! Would you let the officer finish the answer before you ask any questions?

Ms Bennett—I do not want to answer that question, Senator.

Senator SHERRY—You do not want to answer. Fine.

Ms Bennett—The government made a decision—

Senator SHERRY—That is fine. You just have to say, ‘I don’t want to answer.’ You do not have to give me irrelevant information, which is not what I asked.

Ms Bennett—I do not want to answer. Thank you.

Senator CARR—You have answered, though, haven’t you? By giving that answer, you have answered it.

Senator Alston—It is a matter for you and your conspiracy theories, Senator Carr.

Senator CARR—That is right.

Senator SHERRY—I would be very surprised if Ms Bennett has not read the confidential volume. Really, do not kid us that you have not! Come on!

Senator Alston—You are not obliged to answer that.

CHAIR—Can we move on to questions?

Senator CARR—Mr Hadgkiss, of the original group of cases, how many of them have ended up with prosecutions?

Mr Hadgkiss—To my knowledge, none of them have.

Senator CARR—Of the second lot, the 52 matters you only received a month ago—

Mr Hadgkiss—That was in the last few weeks.

Senator CARR—you would not have completed your investigations on those.

Mr Hadgkiss—No.

Senator CARR—Of the earlier ones that you referred to in January, how many have you now been able to process?

Mr Hadgkiss—I think the majority have been processed, as I understand it.

Senator CARR—And how many of those have you referred for prosecution?

Mr Hadgkiss—I am not sure. Very few, if any.

Senator CARR—You have only got four currently before the courts. How many of those were raised from this group?

Mr Hadgkiss—From memory, I do not think they were.

Senator CARR—Of that initial group, how many are you able to say will not be referred for prosecution?

Mr Hadgkiss—As I say, the majority, to my knowledge, and no further action will be taken.

Senator CARR—This is the basis on which your task force has been established. If I understand what Ms Bennett was saying before, it was to maintain law and order.

Ms Bennett—The royal commission had matters that they could not fully investigate and asked that these matters be referred to this body. He had not conducted or made a recommendation; he just asked that these matters be referred.

Senator CARR—Did you not say it was the basis to maintain law and order—

Ms Bennett—I said that it was part of the first report which requested that an interim task force be established.

Senator CARR—‘To maintain law and order in the industry’ was the term you used.

Ms Bennett—Yes. You have seen the report, Senator—

Senator CARR—I am only too well aware of the report.

Ms Bennett—and I am just quoting what is in the report.

Senator CARR—All I am saying, Ms Bennett, is that, of those cases, Mr Hadgkiss is now telling us that a majority have been investigated and no further action has been taken.

Senator SHERRY—Zero.

Ms Bennett—Page 3 of the first report says:

Constraints of time and resources will prevent such incomplete matters being further addressed by the Commission.

The royal commissioner asked that these matters be referred to the interim task force.

Senator CARR—Sorry I am so slow here, but how many cases were referred to you in January, Mr Hadgkiss?

Mr Hadgkiss—Since the task force was set up and up until several weeks ago—when 52 matters were referred—some 30 or 40 matters were referred.

Senator CARR—Of those original 30 or 40, the majority of which you have now investigated, you do not intend to take any further action?

Mr Hadgkiss—On the majority, no.

Senator CARR—Of the minority, how many do you anticipate are likely to lead to prosecutions?

Mr Hadgkiss—Very few.

Senator SHERRY—Any?

Mr Hadgkiss—I do not know; I am not familiar with them all. But you would appreciate these matters were very old and witnesses were reluctant to be involved anymore, had departed the industry, had gone overseas or were otherwise hard to track down.

Senator CARR—It seems like a pretty thin basis on which to establish your task force.

Mr Hadgkiss—No. As I understand it, the main function of the task force was to continue the investigative function of the royal commission and to monitor and conduct—

Senator CARR—Would it be fair to say that you are a bit like a permanent royal commission?

Mr Hadgkiss—I wish we were, but we have no powers.

Senator CARR—But did you say your function was to continue the functions of the royal commission?

Mr Hadgkiss—The investigative functions of the royal commission, yes.

Senator CARR—It is like a permanent royal commission in that regard.

Mr Hadgkiss—But royal commissions have coercive powers.

Senator CARR—That is, without coercive powers and the powers to do actually do the Star Chamber routine.

Mr Hadgkiss—Yes, without coercive powers and confined to the Workplace Relations Act.

Senator SHERRY—You said you wished you were, in reference to an ongoing royal commission. Why do you say that?

Mr Hadgkiss—Because of the impediments to our investigations.

Senator CARR—What—with all the Saddam Husseins running around out there? Can I ask you this: under what legal authority did the task force acquire the documents you referred to?

Mr Hadgkiss—Under the Workplace Relations Act.

Senator CARR—Under what legal authority do you continue to hold those documents?

Mr Hadgkiss—The Workplace Relations Act.

Senator CARR—You have had that checked, have you?

Mr Hadgkiss—With respect to retaining documents produced pursuant to the Workplace Relations Act, as I understand the law, there is a presumption that we can retain those documents until such time as they can be returned to the person from whom we took them.

Senator CARR—Have you made that presumption or have you had that checked?

Mr Hadgkiss—From my background, if you execute a search warrant, there is a presumption that you can hold onto the documents that you obtained pursuant to the search warrant, the subpoena or whatever. I have always taken it as a presumption in law that the authorised body could retain all those documents—or photocopies thereof, like tax officers would—as exhibits.

Senator CARR—But that is the presumption you are working on, based on your experience?

Mr Hadgkiss—Based on 34 years—

Senator CARR—as a police officer.

Mr Hadgkiss—Yes.

Senator CARR—Thank you very much, Mr Hadgkiss.

Senator SHERRY—I think Dr Boxall was going to come back to me about that EL1.

Dr Boxall—From the information I have, for next year the average salary plus on-costs is budgeted at \$86,300. This year on a full-year basis, bearing in mind that it has been operating for only nine months, it is \$71,900. So the figures are considerably lower than those from the mental arithmetic that was done earlier in the session.

Senator CARR—For the executive service the base salary is \$67,000, is it not? That is the salary component.

Dr Boxall—An EL1 on the certified agreement is paid \$64,723 up to \$69,700.

Senator SHERRY—So, with on-costs, that goes up to approximately \$86,000. Is that what you are saying?

Dr Boxall—No, the point is that we have to take into account the configuration of the staff because, as you would appreciate, it is a weighted average. In the discussion earlier we were assuming that the average was an EL1. It may well be that the average is below EL1. We have

had some work done which shows that for next year the average salary, including on-costs, is \$86,300. For this year the average salary, including on-costs on a full-year basis, is \$71,900.

Senator SHERRY—That is within this building industry group?

Dr Boxall—That is correct.

Senator SHERRY—Why the drop?

Dr Boxall—Sorry, from what?

Senator SHERRY—You said \$86,300, and for this year it is \$71,900.

Dr Boxall—No, sorry, in the budget for next year it is \$86,300; this year it is \$71,900.

Senator SHERRY—Why the increase?

Dr Boxall—The increase is probably related to the fact that there may be a change in the configuration of staffing; a salary increase may be expected. But one should not just take the difference between \$86,300 and \$71,900 and interpolate that that will be the average increase in salaries. The interim task force is still staffing up and it may well be that there is a difference in the average classification of staff.

Senator SHERRY—If we take the \$86,300 figure and multiply it by 41, we get approximately \$3,500,000 in staffing costs. How does that figure with your previous comments about staff as a proportion of the total allocation, Ms Bennett?

Ms Bennett—It was an estimate. It was about one-third. It was \$6.9 million. It is an estimate of how it split on last year's pattern. Clearly, on that more accurate summing, it is nearer 40 per cent or 45 per cent.

Senator SHERRY—So it is 40 per cent to 45 per cent in terms of other costs. What would those other costs be?

Ms Bennett—Where would the other money—

Senator SHERRY—Yes.

Ms Bennett—It would be supplier expenses, office accommodation, depreciation of assets, travel arrangements, costs of telephones, computers—those sorts of issues.

Senator SHERRY—Could you take on notice to give us an estimated breakdown of those costs?

Ms Bennett—Separating estimated employee and supplier costs?

Senator SHERRY—Employee wage/salary costs and other costs, broken down into the categories that you have just outlined.

Ms Bennett—They are estimates. I cannot—

Senator SHERRY—Estimates are fine. Take it on notice. This is what estimates are for.

Ms Bennett—Could I just confirm that you would like to know the wage and salary estimates?

Senator SHERRY—Yes, and other costs.

Ms Bennett—Supplier and other costs—

Senator SHERRY—Yes, broken down into rank, telephone, travel—those sorts of things. I am sure there is a budget available. I do not need it now.

Ms Bennett—We will take it on notice.

Senator CARR—Could I ask Mr Hadgkiss—this is what happens when you delay your departure—what role he has played with regard to the Australia Post mail screening centre in Tullamarine.

Mr Hadgkiss—None whatsoever.

Senator CARR—You have had no involvement at all in terms of preparing the guidelines for that?

Mr Hadgkiss—None, Senator.

Senator CARR—There was no discussion with the state government with regard to that?

Mr Hadgkiss—The state government—no, Senator.

Senator CARR—What about the Commonwealth government?

Mr Hadgkiss—Not me.

Senator CARR—Not your office?

Mr Hadgkiss—My office may have spoken to people at Australia Post in recent times about the code, but I am unsure whether they spoke specifically about the site you mentioned.

Senator CARR—What about the preferred tenderers? Have you had any discussion with them?

Mr Hadgkiss—The two tenderers—no.

Senator CARR—Who were the two tenderers again?

Mr Hadgkiss—I can only base that on the newspaper reports. I have no knowledge of that.

Senator CARR—That is a dangerous proposition, isn't it? But Baulderstone was one of them. Did you make inquiries into Baulderstone?

Mr Hadgkiss—No.

Senator CARR—So you have had no involvement whatsoever in the postal facility at Tullamarine?

Mr Hadgkiss—Absolutely not. The first I knew of it was when I read about it in the newspaper.

Senator CARR—Thank you very much.

[3.34 p.m.]

CHAIR—We will now move to cross-portfolio questions.

Senator CARR—Dr Boxall, the Australian Research Council is now putting on its web site that it prefers employees to undertake employment through Australian workplace agreements. Is that standard practice?

Dr Boxall—Is this cross-portfolio?

Senator CARR—Yes, it is. Is it standard practice? Are you advising other agencies about their web sites with regard to their employment policies?

Dr Boxall—This is an outcome 2 question, so I will ask the relevant officers to come to the table.

Senator CARR—Thank you.

Ms Bennett—Senator Carr, we do not provide advice on what agencies put on their web sites.

Senator CARR—Is a statement issued to other agencies about their use of AWAs?

Mr Kovacic—The policy parameters require agency heads to put in place arrangements that enable any employee to request to negotiate an AWA.

Senator CARR—Where in the policy does it say what is the preferred method of employment?

Mr Kovacic—It does not.

Senator CARR—So the Australian Research Council must be acting on its own authority in that regard?

Mr Kovacic—That is presumably a decision that they have made.

Senator CARR—Thank you. I am pleased that you could tell me that—and I am sure that Professor Sara will be as well. Have you had any discussion within the department on the proposals to have individual AWAs made compulsory for all new public servants?

Dr Boxall—Senator George Campbell asked a question on this at the last Senate estimates, and the department has nothing more to add to that answer.

Senator CARR—That is really good, Dr Boxall! I was not present then, so you will have to add to the answer for my benefit.

Dr Boxall—It is on pages 98 and 99 of *Hansard*. The transcript states:

Senator George Campbell—The minister recently took a proposal to cabinet containing a strategy to push more Commonwealth public servants on to AWAs and non-union agreements. Is that correct?

Dr Boxall—Are you referring to a report in the *Canberra Times* before Christmas?

Senator George Campbell—Yes.

Dr Boxall—No, that cannot be correct.

As far as I know, the government has not done anything on this matter since then.

Senator CARR—So is the report that appeared in the *Australian Financial Review* on 21 May, a little over a week ago, that the minister was ‘planning to renew his controversial plan to promote individual contracts in the federal public service’ equally inaccurate?

Dr Boxall—I cannot really comment on the veracity of newspaper reports which are purported based on an unauthorised disclosure of documents. The position is that the government’s policy parameters are as Mr Kovacic outlined. There has been no change to the government’s policy parameters in the last six to 12 months, and certainly no change to the policy parameters since the newspaper article before Christmas and the one in May.

Senator CARR—So you are not preparing legislation in regard to—

Dr Boxall—As far as I know, the government has not requested legislation on this matter to be drafted.

Senator CARR—And you are not aware of any policy change in regard to this at all?

Dr Boxall—No policy change has been announced by the government in the last 12 months.

Senator CARR—Dr Boxall, I appreciate your point about what the government has announced. If it had made an announcement, I would be asking you questions about the government's announcement. I am now asking you about press reports of the government's proposals.

Dr Boxall—And I have said that I am not going to speculate on press reports on what the government may or may not be contemplating. When the government is ready it will announce its policy change. It has not announced a policy change.

Senator CARR—So you are not commenting on the veracity of the statement.

Dr Boxall—I am not commenting on the veracity of a press report which is purportedly based on a document which has been disclosed in an authorised manner.

Senator CARR—Would you agree that proposals to actually force AWAs on the Public Service would in fact be a breach of the current act?

Dr Boxall—I would not agree to that and it is speculative because I am not aware that there is a proposal to do that.

Senator CARR—I am referring here to a press report which involves the assumption that there will be directions given to Public Service agencies to enforce the policy in certain ways. My question to you is: is it your understanding that for this to be enacted it would actually require changes to the current Workplace Relations Act.

Dr Boxall—I am not aware that it would require changes, in the event it were being contemplated.

Senator CARR—So as far as you are concerned the current act, section 170LK, would allow for direct negotiations of non-union agreements within the Public Service.

Dr Boxall—My understanding is that section 170LK deals with direct certified agreements between employees and employers without the union. Section 170LJ deals with those negotiated through the union.

Senator CARR—So in regard to the filling of vacancies, does the current act allow for persons to be employed only if they agree to an AWA?

Dr Boxall—I think this is a separate issue from LK. Section 170LK is to do with collective agreements—

Senator CARR—Yes, it is a separate issue. Is it not the case that the current act would have to be amended for persons to be obliged to take an AWA?

Dr Boxall—The Workplace Relations Act?

Senator CARR—Yes.

Dr Boxall—I have two points on that. It is not appropriate for me to give legal advice on interpretations of the Workplace Relations Act. The second thing is that I am not aware of any prohibition in the Workplace Relations Act which would stop somebody offering employment based on an AWA.

Senator CARR—Only.

Dr Boxall—I am not aware of any prohibition within the Workplace Relations Act.

Senator CARR—So in regard to promotions, is there any prohibition in the current act that would prevent persons being promoted only if they accepted an AWA.

Dr Boxall—The answer is the same.

Senator CARR—Did you say the answer is the same?

Dr Boxall—Yes; I cannot give legal advice on the interpretation of the Workplace Relations Act.

Senator CARR—But you are not aware of any prohibitions in the current act that would prevent that?

Dr Boxall—I am not aware of any. That does not mean to say there are none there; it is just that I am not aware of them.

Senator CARR—Do you have a legal officer here that can tell me whether or not that is the case.

Dr Boxall—That is the departmental position. I have just given you the departmental position.

Senator CARR—I see. So you now interpret it as well for the whole department? You said you were not aware—

Dr Boxall—No, I do not do that at all.

Senator CARR—Which officer here handles the legal branch?

Dr Boxall—We have a number of people here who—

Senator CARR—Who is the head of the legal branch?

Dr Boxall—We do not have a legal branch.

Senator CARR—Who is the senior lawyer in the department?

Dr Boxall—We have our general counsel, Mr Smythe.

Senator CARR—Is Mr Smythe here?

Dr Boxall—Yes, but if you ask a question and then we will work out who is going to attempt to answer it.

Senator CARR—I have asked you the question. Can Mr Smythe advise the committee whether or not the current Workplace Relations Act would prohibit persons being offered promotions in the Australian Public Service only if they accepted an AWA? That is the first question. The second question: is it a requirement of the—

CHAIR—Let's take one question at a time.

Senator Alston—If Senator Carr wants meaningful legal advice than I think the department should take it on notice and give him a considered response.

Senator CARR—Thank you very much for your persistence, Senator. Mr Smythe, are you able to tell me?

Mr Smythe—There is not a provision in the Workplace Relations Act which specifically says promotions in the Public Service on the basis of AWAs and AWAs alone are prohibited.

Senator CARR—So your reading of it is that it is consistent to offer that.

Mr Smythe—I did not say that. I cannot give a legal opinion. Firstly, it is not appropriate that I give a legal opinion to the committee and, secondly, it is difficult to give a legal opinion in the absence of a particular factual situation. The situation of promotions in the Public Service based on AWAs could be different in any circumstance.

Senator CARR—Mr Smythe, you have been in the business a while; I do take some note of your opinion. But your reading of the current act is that that would not be prohibitive. There are no provisions within the current act that prohibit that.

Mr Smythe—It would depend on circumstances. I cannot give a hypothetical opinion in the ether.

Senator CARR—In the case of there being an advertised vacancy in the Australian Public Service that was conditional upon a person accepting an AWA, would that be prohibited?

Mr Smythe—I cannot give an opinion on that. It is a hypothetical situation.

Senator CARR—Hypothetical?

Mr Smythe—Yes. It is not appropriate that I give an opinion. It is a hypothetical.

Senator CARR—Are there any clauses in the act that you are aware of that would prohibit that behaviour?

Mr Smythe—Not directly and specifically. There is a clause in the Workplace Relations Act which prohibits duress in the making of AWAs. What might constitute duress in any given circumstance will depend on the precise facts of that situation.

Senator CARR—Would it not fit into the same category as 'no ticket, no start'?

Mr Smythe—I could not offer an opinion on that.

Senator Alston—Are you against that now?

Senator CARR—I just asked the question.

Mr Smythe—That would involve me giving an opinion on a comparison between two quite disparate fact situations. I decline to give such an opinion.

Senator CARR—Has the department provided advice on this as part of the cabinet deliberations?

Mr Smythe—I have not provided any advice.

Senator CARR—Has the department?

Mr Smythe—Not that I am aware of.

Senator CARR—Thank you. We will obviously come back with a bills inquiry, won't we?

Mr Smythe—Sorry; is that a question?

Senator CARR—We will obviously come back with a bills inquiry, won't we? Thank you.

Committee suspended from 3.47 p.m. to 4.09 p.m.

CHAIR—The committee is considering cross-portfolio questions. Dr Boxall.

Dr Boxall—Senator Sherry asked a question just before the break about what would be the breakdown of the expenses for the interim task force. I am pleased to say that we have got that breakdown now.

Ms Golightly—The breakdown for the budget next year for the task force is: salaries, \$3.526 million; consultants, \$0.75 million; property, \$0.7 million; administration, \$0.548 million; depreciation, \$0.036 million; price adjustment outturning, \$0.17 million; and corporate overheads, \$1.163 million.

Senator SHERRY—What was that figure for consultants again?

Ms Golightly—\$0.750 million.

Senator SHERRY—I had understood from the response that we had that there were not any consultants being employed in that area.

Ms Bennett—Consultants can include the provision of external legal advice. It is money available to pay—those sorts of issues.

Senator SHERRY—Is that the only area of consultancy? Are there any other consultancies proposed?

Ms Bennett—It is an estimate for a year that is about to come.

Senator SHERRY—Within that consultancy figure, is there any provision for consultancies for promotion and public relations?

Ms Bennett—That could be used.

Senator SHERRY—But are there any plans at the present time?

Ms Bennett—No, not at the present time.

Senator SHERRY—That is the difference. That has lowered that salary figure, three-quarters of a million dollars. Thanks for that. I have a couple of cross-portfolio questions, and the first relates to the total staffing in the department. Dr Boxall, I have gone through the various outcomes and added together the average staffing level for estimated actual 2002-03 and budget estimate 2003-04, and I got 2,539 estimated actual for 2002-03 and 2,586 for 2003-04. I could not find an aggregate figure in the estimate papers. You might be able to assist.

Dr Boxall—That is correct. We just add the figures for outcome 1 and outcome 2. For 2003-04 we added 1,339 and 665 and we got 2,006. Last year, we added 1,437 and 534 and we got 1,971.

Senator SHERRY—So there is a slight staff increase.

Dr Boxall—A slight staff increase, yes.

Senator SHERRY—Of approximately 30.

Dr Boxall—Yes.

Senator SHERRY—Why is there an average staff increase?

Ms Golightly—There have been a number of new measures for the department. The average staffing level is based on an extrapolation of what those new measures might mean in terms of employee costs.

Senator SHERRY—In the area we were discussing earlier—the building industry working group or whatever the formal title is—I think there were 41 staff. Is that the major new area?

Ms Golightly—There were a number mentioned. The task force was one of them. There was the creation of the GEERS outcome. There was also a little bit of new money for some of the other measures announced in the budget. So there are quite a few things added into that.

Senator SHERRY—We will get to GEERS when we get to it, so thanks.

CHAIR—Are there any other cross-portfolio questions?

Senator SHERRY—Yes, I have one other issue. Dr Boxall, on your Internet addresses, is there any block or barrier to organisations outside the department being able to access individuals within the department?

Dr Boxall—To be honest, I am not quite sure I understand the question.

Senator SHERRY—If I wanted to send an email to someone in the department, are there individuals or a prescribed list of organisations that are blocked from accessing any individuals within the department?

Mr Symon—If you have the departmental employee's email address—in my case craig.symon@dewr.com.au—then the system will allow that through.

Senator SHERRY—So anyone from any outside organisation or an individual can email an individual, and there is no barrier or block to them doing that?

Mr Symon—To my knowledge, that is correct.

Senator SHERRY—That is not what I am told.

Mr Symon—That is why I say 'to my knowledge'. To the best of my knowledge, that is correct.

Senator WONG—Dr Boxall, has there been any decision in relation to any particular individuals to prevent persons from outside the department being able to email them?

Mr Symon—Not that I am aware of, Senator Wong. I get emails personally from people outside the organisation, solicited and unsolicited, and so do other people.

Senator WONG—We know about that, don't we!

Dr Boxall—Senator Wong and Senator Sherry, I am not aware that any block has been put up. If you have a specific instance that you want to give me after this session, please do so.

Mr Symon—It could be that there would be a block on content—in other words, if there was material communicated in the email that was offensive or against the law. I know that we have a system that blocks certain content.

Senator SHERRY—That could relate to content of a sexual nature?

Mr Symon—That is right. We do have a blocking system in place for that sort of material.

Senator SHERRY—Nothing that you are aware of that relates to political content?

Mr Symon—Not that I am aware of, no. Mind you, there are code of conduct things within the department.

Senator SHERRY—I understand that. I am informed to the contrary, so if you could double-check that for me?

Mr Symon—Yes, we can. If there is anything of particular concern, let us know and we will investigate that.

Senator SHERRY—Okay. They are all the cross-portfolio issues that I have today. Thank you, Chair.

[4.16 p.m.]

CHAIR—We move to outcome 2.1, Workplace relations policy and analysis.

Senator KIRK—In relation to the unfair dismissal bill—that is, the [Workplace Relations Amendment \(Termination of Employment\) Bill 2002](#)—could you tell the committee how much was allocated in the budget to address this new legislation if and when it comes into effect?

Mr Smythe—As I understand it, \$17.1 million over four years.

Senator KIRK—What is the estimated increase in the unfair dismissal workload that the \$16.8 million or \$17 million is allocated for?

Mr Smythe—We did a fairly simple extrapolation of figures based on the notion that the number of employees who will be covered by the expanded regime would increase from around 50 per cent to around 85 per cent, and we took the current incidence of unfair dismissal applications, which is roughly 7½ thousand, and added the percentage increase in people covered to make an assumption that there would be about a 70 per cent increase in cases.

Senator KIRK—Are you able to provide the committee with a copy of those calculations that you did?

Mr Smythe—I will take that on notice. I am not sure what form my calculations are in.

Senator KIRK—In relation to the \$17-odd million that has been allocated, how is that money to be spent—additional commissioners, courtrooms? Have you done a breakdown of the \$17 million?

Mr Smythe—Of course it is subject to the passage of the legislation.

Senator KIRK—Have you done any forward estimates or any calculations along those lines? There has been no breakdown at all?

Mr Smythe—Nothing specific, no.

Senator WONG—How did you arrive at the figure of \$17 million then? What is that premised upon?

Mr Smythe—There was a series of discussions between the department and the Office of the Industrial Registrar to work out what the workload implications would be and the figure was derived from that.

Senator KIRK—You must have at least turned your attention to whether or not you would have to appoint additional commission members, provide additional courtrooms and employ additional reporting staff. There must have been some consideration of that in order to get to the \$17 million figure.

Mr Smythe—There was some consideration of additional appointments, but it would depend very much on the nature of those appointments and on whether other parts of the bill which will have an effect on the workload are also passed. There are initiatives that could potentially affect the workload. I believe the minister has also written to his state counterparts canvassing the possibility of dual appointees from state commissions taking up some of the workload. So those sorts of issues are not yet finalised, and they could impact upon the extent to which additional appointments would need to be made.

Senator KIRK—Again, I am still not quite sure how you came up with the \$17 million figure. How would you arrive at that sort of ballpark figure unless you had at least done some breakdown of the additional resources that will be necessary.

Mr Smythe—A number of scenarios were developed, and the figure was derived based on those scenarios.

Senator KIRK—So it was an average figure based on the various scenarios?

Mr Smythe—Roughly, yes.

Senator KIRK—Could you possibly provide the committee with these scenarios?

Mr Smythe—As I said before, I will take that question on notice to see what sort of information is available.

Senator KIRK—That would be helpful, thank you. You mentioned that there have been some discussions between the minister and his state counterparts in relation to dual appointments. Could you give us some further information as to how far down the track those discussions are?

Mr Smythe—I think I said that the minister has written to his state counterparts. I am not aware of how much further that has progressed.

Senator KIRK—So you do not know if there has been any response to the correspondence?

Mr Smythe—I do not know.

Senator KIRK—Do you have any time frame for when you would like to conclude those discussions, if and when this legislation is to go ahead?

Mr Smythe—That is a matter for the minister.

Senator KIRK—Is it proposed that the commissioner will travel to regional centres to hear cases?

Mr Smythe—The commissioner already does travel to regional centres to hear cases.

Senator KIRK—Yes, but is it intended to increase the number of locations to which the commissioner will travel?

Mr Smythe—That is a matter for the commission.

Senator KIRK—Has the department given any thought to that or is it purely a matter for the commission?

Mr Smythe—That is a matter for the commission in terms of its operating procedures.

Senator KIRK—If this legislation were to proceed, has the department thought about whether or not there would be any education program for workers, employers or unions as to the nature of the changes and how they will impact upon them?

Mr Smythe—Again, I would have thought that was largely a matter for the commission. I am not aware of any initiative at the present time to pursue an education program.

Senator KIRK—Is it ordinarily the case that there are such education programs when new legislation which will make fairly significant changes to the sector comes into place?

Mr Smythe—Yes. In the past, the department has been involved in the holding of seminars, focus groups and discussion sessions when significant pieces of legislation have been passed.

Senator KIRK—Would you envisage that the department would have a role in the future if this legislation comes into effect?

Mr Smythe—I do not think it is up to me to speculate on what the department might do, but it would not be unprecedented for us to do so.

Senator KIRK—So it would not work in conjunction with the commission, for example, in order to provide such education?

Mr Smythe—It might. It would not be inappropriate for us to work with the commission in that way.

Senator KIRK—Has the department turned its mind at all to the complicated legal issue of what is and what is not a constitutional corporation?

Mr Smythe—We have given some consideration to that.

Senator KIRK—What was the nature of your consideration?

Mr Smythe—Although there are some complications, they really are at the margin. The vast majority of corporations are clearly corporations, and both employers and employees know that they are corporations. The difficulties only occur in some areas of municipal corporations and with some charitable bodies, but they really make up a tiny percentage of the overall population employed by corporations.

Senator KIRK—But you said that there had been some consideration at the margins at least as to what is and is not.

Mr Smythe—There are some internal advices that we have.

Senator KIRK—Could you tell the committee the nature of the bodies that have been considered that may be at the margins?

Mr Smythe—We have not specifically gone to existing bodies and said, ‘They’re in, they’re out.’ We just have advices on the sorts of indicia that the courts have given as to whether corporations in municipal and charitable areas—and some hospital areas too, I believe—may or may not be constitutional corporations.

Senator KIRK—Did you say charitable organisations?

Mr Smythe—Yes, charitable. I think there are some sporting and some municipal, and I think in the health area there are some institutions which may be at the margin.

Senator KIRK—What sorts of health institutions do you have in mind?

Mr Smythe—I am sorry, I cannot be more specific than that; I am going on memory.

Senator KIRK—Do you think you could take on notice the corporations or the bodies that you have received advice on as to whether they may or may not be constitutional corporations?

Mr Smythe—I could take on notice the types of bodies, yes.

Senator KIRK—Has there been consideration as to whether or not councils would be considered constitutional corporations?

Mr Smythe—When I used the term ‘municipal corporations’ it was councils I had in mind.

Senator KIRK—Would state government employees be taken to be covered by this legislation or would the state be taken to be a corporation?

Mr Smythe—As I said before, I am loathe to give legal opinions to this committee because I do not think it is my job to do so.

Senator KIRK—Have you sought legal advice in relation to these matters?

Mr Smythe—No, not on the issue of whether state government employees are employed by corporations.

Senator KIRK—Has the department sought general legal advice in relation to the question of constitutional corporations?

Mr Smythe—We have a reasonable body of lawyers within the department who advise us on those sorts of things. The issue of what is or is not a corporation is something that has been considered within the department for many years. As you would appreciate, even the previous government used the corporations power for some aspects of its industrial relations agenda. So even in that context we were considering what sorts of bodies fell within the corporations power.

Senator KIRK—So you would say that it is a matter which is not finally settled by the courts.

Mr Smythe—At the margins there are some doubts but for the vast majority of employees of corporations the issue is pretty clear.

Senator KIRK—Given that there is some uncertainty in relation to the scope of constitutional corporations, do you have any concerns at all that this might add to the complexity of the legislation?

Mr Smythe—That would require me to give an opinion on the nature of the legislation and its effect.

Senator KIRK—So there has not been any consideration given to just how far the legislation will extend. What amounts to a constitutional corporation is going to effect its coverage, no doubt, so there must have been some consideration given to that.

Mr Smythe—I think my earlier answer, indicating that for the vast majority of cases it is very clear whether someone is or is not a corporation, is sufficient justification for the use of the power. It could be argued that there is more uncertainty about the extent to which something is conciliation and arbitration and can thus attract the C&A power. Any use of constitutional power, almost by definition, attracts a certain amount of uncertainty.

Senator KIRK—Given that there is this uncertainty, have you thought about whether or not there might be a High Court challenge to the constitutionality of this legislation?

Mr Smythe—I am aware of a number of commentators suggesting that there may be constitutional uncertainties. We are confident that, were such a challenge to be mounted, it would be unsuccessful.

Senator KIRK—Are you expecting the states to mount a challenge?

Mr Smythe—I do not think what I expect is relevant to the deliberations of this committee.

Senator KIRK—Have you come across anything that suggests that they may mount a challenge?

Mr Smythe—I do not recall. I do recall having seen articles suggesting that there may be challenges but I cannot recall whether they emanated from states or other quarters.

Senator KIRK—The article I have here is an article from the *Australian* from 15 May indicating that some Labor states, I think New South Wales and Queensland, have suggested they may mount a challenge. That is what I was referring to. Has this media coverage caused the department to give any further consideration to the constitutionality of the bill?

Mr Smythe—No; we are confident of the constitutional soundness of the bill.

Senator KIRK—Is that based on your own internal legal advice?

Mr Smythe—No. On the issue of the constitutional soundness of the bill we had external advice.

Senator KIRK—Can that advice be provided to the committee?

Mr Smythe—No, Senator.

Senator KIRK—So it is a matter of wait and see as to whether or not there is challenge, I guess. As I understand it, currently the Australian Industrial Registry contracts out some of its functions to the Queensland, South Australian and Western Australian registries—is that correct?

Mr Hoy—That is a matter for the AIR.

Senator KIRK—So the department has no involvement in that contracting out process?

Mr Hoy—That is a matter for the AIR. You should direct your questions to them when they are on.

Senator KIRK—Thank you. Going back again to the complexity of the bill that I was referring to earlier, can you tell me whether or not the department is familiar with the Queensland government's submission to the Senate committee on this bill?

Mr Smythe—Yes, someone in the department would be aware of that. I personally am not familiar with the submission.

Senator KIRK—Is there anyone to whom I can put various propositions and see whether or not they agree with them?

Dr Boxall—We would not be able to agree or disagree with propositions that you might put, because that would be asking for an opinion.

Senator KIRK—All I would be seeking is an opinion of you about how the legislation will operate, so I think I should be given the opportunity to at least put those propositions and see what people have to say.

Dr Boxall—Senator Kirk, if you have some questions, we are happy to try and answer them.

Senator KIRK—It was suggested in this Queensland government submission to the Senate inquiry that the effect of the legislation will be two different sets of federal laws and procedures governing unfair dismissal, dependent purely on the size of the body concerned. Do you have any concerns about that?

Mr Anderson—Yes, it is correct that the bill proposes specific procedures for small businesses, and that is government policy.

Senator KIRK—Approximately what percentage of small businesses will this legislation apply to?

Mr Anderson—What percentage of all Australian small businesses will become covered by it?

Senator KIRK—An approximate figure will do for the moment.

Mr Anderson—I am sorry, I do not recall a figure.

Senator KIRK—Could you take that on notice?

Mr Anderson—Yes.

Senator KIRK—Does the department have any concerns that there are going to be different federal and state unfair dismissal regimes for incorporated versus unincorporated entities?

Mr Anderson—I think it is not really a matter for the department to have concerns, but in terms of government policy, no, it is not an ideal situation.

Senator Kirk—What about in terms of its day-to-day operation? Could that lead to confusion and uncertainty in the sector?

Mr Smythe—Senator, you already know. Two different regimes already exist. This would bring the vast majority of unfair dismissal cases into the federal regime.

Senator KIRK—But there would still be a fair number in the state system as well. It is really just a shift.

Mr Hoy—It is also possible for the states to refer the powers in respect of the residual group to the federal parliament.

Senator KIRK—Have there been any discussions along those lines?

Mr Hoy—Yes, their minister raised that with his state colleagues.

Senator KIRK—And was there any enthusiasm shown by the other states to that?

Mr Hoy—No, not a lot.

Senator KIRK—I did not think so.

Senator SHERRY—Do you have an estimate of the number of businesses that are not incorporated and would therefore not be drawn in by this proposal?

Mr Anderson—Mr Smythe referred to the expansion of the federal unfair dismissal system to cover about 85 per cent of employees. The remaining 15 per cent are employed by employers which are not constitutional corporations, so that would include the—

Senator SHERRY—Was that employees or employers?

Mr Anderson—Employees.

Senator SHERRY—Do you have an approximate number of employers?

Mr Anderson—They vary in size greatly, from state governments—direct employment, state governments not being incorporations—down to unincorporated small businesses, sole traders. So there would be a large number of the latter, with typically a very small number of employees, and a small number of the former.

Senator SHERRY—You cannot give me an approximate figure, though?

Mr Anderson—I would prefer not to off the top of my head; it is safer not to.

Senator SHERRY—I am not going to hold you absolutely to a figure. I am just interested. Are we dealing here with tens of thousands or hundreds of thousands?

Mr Anderson—Perhaps we could take that on notice.

Senator SHERRY—Okay.

Senator KIRK—Perhaps I could ask whether or not you have considered the situation where in the context of one employee's claim there may be two quite distinct issues: an unfair dismissal claim, which could possibly be covered under the federal regime; together with, say, a claim for insufficient notice or unpaid entitlements, which would be covered by the state laws. Have you turned your mind to how that is going to work in practice, and the sort of confusion and uncertainty that is going to give rise to?

Mr Smythe—The bill does address, in part, issues of overlapping jurisdictions.

Senator KIRK—Could you outline that for me?

Mr Smythe—I would prefer not to at this stage, but I will provide you with something on notice about how the bill attempts to address that situation.

Senator KIRK—You have talked to us about the corporations power, on the basis that this legislation seeks to be supported by it. I wonder whether or not any consideration has been given to the external affairs power, as to whether or not the legislation could be supported by this. I recall that there was some mention of this in earlier estimates.

Mr Smythe—I do not think it is appropriate that I canvass what other internal deliberations might have been given to it. We can tell you about what is in this bill, and this bill is based on the corporations bill.

Senator KIRK—So the basis of this bill is seen to be supported by the corporations power only, exclusively?

Mr Smythe—Yes.

Senator WONG—I just want to ask some brief questions about the legislation which appears to have been proposed by the government as a result of the higher education reform paper.

CHAIR—Are you still on outcome 2.1, Senator?

Senator WONG—Yes. There is specific reference in Minister Brendan Nelson's report to amendments to the Workplace Relations Act to end or limit protected industrial action in certain sectors. Has drafting of that legislation commenced?

Mr Smythe—No.

Senator WONG—Have you received any instructions in relation to drafting that legislation?

Mr Smythe—I am sorry, I do not understand.

Senator WONG—Have you received instructions to draft such legislation?

Mr Smythe—From whom?

Senator WONG—From the minister.

Mr Smythe—No.

Senator WONG—Are you aware of this report?

Mr Smythe—I am aware of the statement that was made by Dr Nelson.

Senator WONG—And are you aware of today's statement by the minister that outlines a proposal to amend the Workplace Relations Act to enable the suspension of the bargaining period?

Mr Smythe—I have been told about a report in the *Sydney Morning Herald* of a statement attributed to the minister.

Senator WONG—Is that something you had prior knowledge of?

Mr Smythe—The minister's statement? No.

Senator WONG—No, that particular issue—the proposal to amend legislation to suspend the bargaining period in particular industries.

Mr Smythe—I do not think I can add anything to what the minister said. I do not think it is my job to second-guess or expand on any statement the minister makes.

Senator WONG—I am not asking you to expand on what the minister has said. I am asking if that is something the department has already been asked to consider—that is, amendment to legislation to enable the suspension of a bargaining period in relation to certain industries.

Mr Smythe—The issue of the amendment announced by Dr Nelson is under consideration.

Senator WONG—By the department?

Mr Smythe—By the department.

Senator WONG—So you have received some instructions from the minister to investigate and consider the proposed amendments?

Mr Smythe—No. You asked me that before and I said that I had not received any instructions from the minister. Nevertheless, given that it is in the budget and it has been announced, we are considering how it might be progressed.

Senator WONG—Has the department, as a result of this work you are doing—that is, in considering this issue—looked at the record of industrial action in the higher education sector?

Mr Smythe—My area has not.

Senator WONG—Has anyone in the department looked at that issue?

Ms Bennett—No, we have not looked at the record of industrial action for the higher education sector.

Senator WONG—What about the health sector? That is another area where there was a reference to a suggestion that the act might be amended.

Ms Bennett—No, we have not looked at the record of industrial action in the health sector.

Senator WONG—What about the community services sector?

Ms Bennett—No.

Senator WONG—Do you have any knowledge of patterns of industrial action in those areas?

Ms Bennett—We regularly monitor developments of those sectors, so we are informed about changes and developments that are occurring in workplace relations.

Senator SHERRY—In the minister's announcement, he uses the description that in some cases this industrial action has taken the form of withholding student examination results. He says that this prevents students from providing results to potential employers, hinders the re-enrolment process and does not constitute fair and reasonable industrial action. Is the department aware of any assessment as to what constitutes fair and reasonable industrial action?

Mr Smythe—No.

Senator SHERRY—You are not aware of any research, either externally—

Mr Smythe—May I ask whose statement you are quoting from?

Senator SHERRY—Dr Nelson's.

Dr Boxall—We do not have a copy of Dr Nelson's statement in front of us.

Senator SHERRY—Here it comes. With respect to this issue of fair and reasonable industrial action, Dr Nelson has referred to the higher education sector but also to the health and community services sector, hence the question earlier from my colleague Senator Wong. Has the department done any study or studies internally or does it have any external research papers about what would be defined as fair and reasonable industrial action?

Mr Smythe—No.

Senator SHERRY—None whatsoever. Could you suggest to me or inform me as to where I could find—other than in the minister's statement—a definition of fair and reasonable industrial action?

Mr Smythe—No.

Senator SHERRY—So in this instance it is the call of the minister as to what constitutes fair and reasonable industrial action?

Mr Smythe—My recollection of the announcement made by Dr Nelson is that the intention was to give the Industrial Relations Commission an enhanced capacity in exercising its discretion to end industrial action—some powers in respect of these sorts of people. That does not involve the minister's call; it involves the Industrial Relations Commission's call.

Senator SHERRY—No, I do not agree with you. How can that possibly be the case? The minister is proposing—yes, you are right—to give the AIRC power, but power to end protected industrial action by requiring the AIRC to take particular account of the welfare of particular classes of people; that is, people who are clients of health or community services or education systems, including students.

Mr Smythe—As I said to Senator Wong, a bill has not been drafted and the details of what amendments have been proposed have not been finalised so I cannot speculate on how the regime might work.

Senator SHERRY—I am interested in finding out whether in fact there is anything within the department as to how this is defined, but apparently there is not.

Mr Smythe—It would not be appropriate for me to speculate on what our thinking might be in advance of the bill because ultimately it is a bill—

Senator SHERRY—I am not asking about the bill; I am asking about this in the context of Dr Nelson's statement of what is fair and reasonable industrial action.

Mr Smythe—I do not think it would be appropriate for us to expand on—

Senator SHERRY—You have not provided anything?

Mr Smythe—Dr Nelson's statement.

Senator SHERRY—The department has not published anything in recent times about what constitutes fair and reasonable industrial action?

Mr Smythe—No.

Senator SHERRY—Okay. Where protected industrial action is prohibited by the Industrial Relations Commission—if, in fact, it is the Industrial Relations Commission that does issue such a prohibition; if it had the power—what other tactic could employees use in order to press their industrial claim?

Mr Smythe—I cannot answer that. It is an entirely hypothetical question.

Senator SHERRY—I do not see that it is. Are there any circumstances at the present time under the act where protected industrial action is prohibited?

Mr Smythe—Protected industrial action? No.

Senator SHERRY—If protected industrial action were to end, what would employees do in those circumstances—if they had no right to exercise industrial action under the protected industrial action provisions?

Mr Smythe—The consequence of industrial action losing its protected status is that, if they continue to take industrial action, they expose themselves to potential sanctions under civil laws.

Senator SHERRY—So, if they have no right to protected industrial action and obviously they do not wish to expose themselves to being outside the law and the sanctions that you have mentioned, what do they do?

Mr Smythe—The present scheme of the act is that, if the commission terminates a bargaining period thus bringing protected action to an end, there is potential access to special arbitration.

Senator SHERRY—You say ‘potential access to special arbitration’. Will arbitration be available?

Mr Smythe—What are you talking about? In this—

Senator SHERRY—You said ‘protected action’ and that there is special access.

Mr Smythe—Under the act at present, if a bargaining period is terminated and protected action comes to an end then there is a process which can and usually does lead to special arbitration under section 170MX of the act.

Senator SHERRY—Would that be available in such circumstances as we have been discussing?

Mr Smythe—I could not say because, as I have said in relation to this announcement of Dr Nelson’s, the details have not been finalised.

Senator SHERRY—So at this point under the existing act, arbitration is not available if either party requests it?

Mr Smythe—I am sorry, I do not understand the question.

Senator SHERRY—If a group of workers cannot take protected industrial action, you said that arbitration can usually occur. Can that happen in all cases, if it is requested by either party under the current act?

Mr Smythe—It is not question of it being requested. If the commission terminates a bargaining period thus bringing protected action to an end then the commission is obliged to undertake certain processes—initially conciliation and then arbitration.

Senator SHERRY—But can the commission arbitrate? Does it have the absolute power to do that if it wishes?

Mr Smythe—Yes.

Senator SHERRY—Okay. But you cannot indicate to the committee that that may be the case in the circumstances of this announcement?

Mr Smythe—I do not know what the final result will be in this case.

Senator SHERRY—If legislation were to proceed in respect of the education system, the health system or the community services system, are there groups of workers under the current act who are prohibited from protected industrial action?

Mr Smythe—No.

Senator SHERRY—So they would be unique?

Mr Smythe—Yes.

Senator SHERRY—Would employers be precluded from locking out their staff in such circumstances?

Mr Smythe—I cannot answer the question. I cannot add to what is in Dr Nelson's announcement.

Senator SHERRY—You do not know.

Mr Smythe—I do not know.

Senator SHERRY—Do we have any definition of what constitutes education, health or community services?

Mr Smythe—In the context of this proposal, as I have said, the—

Senator SHERRY—In the industrial relations context. Can you point me to a definition of health, community services or education that exists at the present time within the industrial relations system?

Mr Smythe—I am not sure that I understand the question. In a number of contexts in the collection of data, there are definitions of those sectors, but there is no definition in the Workplace Relations Act of those.

Senator SHERRY—But are there any definitions within the scope coverage of awards, for example, state and federal, of education, health or community services?

Mr Smythe—I do not know.

Senator SHERRY—At the present time, you are being consulted about these proposals?

Mr Smythe—The department's job is to consider and develop legislative proposals which ultimately the minister signs off on, approves.

Senator SHERRY—So the department is having an input now into this matter?

Mr Smythe—The department is considering this matter, yes.

Senator SHERRY—Is that you specifically, Mr Smythe?

Mr Smythe—Not me specifically, no.

Senator SHERRY—Who is it?

Mr Smythe—I would prefer not to name officers who are working on particular issues.

Senator SHERRY—Which area of the department?

Mr Smythe—It is in the legal policy branches of the group that I am presently acting group manager of.

Senator SHERRY—How many officers are there in the legal policy branch?

Mr Smythe—There are two legal policy branches. The numbers fluctuate but there are approximately 15 in each branch.

Senator SHERRY—Which legal policy branch is it?

Mr Smythe—Legal policy branch No. 2.

Senator SHERRY—I am getting there. Is there anyone here from legal policy branch No. 2?

Mr Smythe—There is.

Dr Boxall—There is nobody who can add anything more, because we are not at the stage yet that we can say anything because we are still providing input to the minister on how to progress this.

Senator SHERRY—Is there any time frame?

Mr Hoy—No.

Senator SHERRY—Have there been any requests issued stipulating a time frame for development of legislation?

Mr Hoy—Not that I am aware of.

Senator SHERRY—What about the legal officer in legal policy branch No. 2?

Mr Hoy—They would not have anything to add to that.

Senator SHERRY—How do you know? If you are not aware, how do you know that he doesn't?

Mr Hoy—I have nothing further to add.

Mr Smythe—Senator, I have sufficient knowledge of the process to know that there is not a time frame stipulated.

Senator SHERRY—On the last occasion, my colleague Senator Wong asked about union affiliation legislation. I think it was to you, Mr Smythe.

Mr Smythe—It was.

Senator SHERRY—You said: ‘Drafting is continuing on that bill. The government has not yet introduced the bill, as you would be aware.’ That was in response to Senator Wong and there was some exchange about the drafting of the legislation. Do you have anything further to report on the progress of the drafting of this particular bill?

Mr Smythe—As you would be aware, such a bill still has not been introduced. I do not believe that the minister has made any more announcements about its introduction so, no, I have nothing to add.

Senator SHERRY—It still has not been introduced, but has drafting been completed?

Mr Smythe—As I think I said to Senator Wong last time, a bill can never be regarded as finalised until such time as it is introduced. It is always open to the government to change its policy or make minor refinements up until the point of introduction.

Senator SHERRY—A bill is never finalised until it goes through the Senate, either.

Mr Smythe—It becomes an act then, but it is a bill when it is introduced.

Senator SHERRY—That is right. Has a draft bill gone to the minister’s office?

Mr Smythe—No.

Senator SHERRY—Do you have any time frame on when the bill will go to the minister’s office?

Mr Smythe—I do not know.

Senator SHERRY—Is the drafting of the bill finished?

Mr Smythe—I thought I just answered that.

Senator SHERRY—In terms of the department’s drafting of the bill, is it finished, completed?

Mr Smythe—We have a draft bill, and I think I mentioned that last time, but it could be changed.

Senator SHERRY—Sure. It could go to the minister and his office could request changes and send it back to you, so it could go to and fro. That could happen, couldn’t it?

Mr Smythe—Yes. Or, alternatively, something could occur which might cause us to change the bill before it went to the minister.

Senator SHERRY—Mr Smythe, could you give me details of recent interventions by the Commonwealth?

Mr Smythe—It is a rather broad question. Are there particular interventions?

Senator SHERRY—Interventions in industrial cases in the courts or the tribunal.

Mr Smythe—As I was saying, it is a rather broad question. The minister has intervened in quite a number of cases before both the courts and the Industrial Relations Commission. Are there any particular cases you want to ask questions on?

Senator SHERRY—Yes, there are, but it is an overall question to start with.

Mr Smythe—What time frame?

Senator SHERRY—Let us take this current financial year.

Mr Smythe—The minister intervened in a matter before the Federal Court involving Electrolux Home Products. The minister is seeking prerogative relief in the High Court in a matter involving the Australian Sports Drug Agency and the Australian Fisheries Management Authority. The minister has been involved in a number of cases in the Federal Court involving the entitlements for Ansett employees. The minister has intervened in a matter in the Federal Court involving Gribbles Radiology Pty Ltd. The minister intervened in a matter before the Federal Court involving the Emwest Company.

Senator SHERRY—Sorry, which company?

Mr Smythe—Emwest. The minister has intervened in the matter before the court involving Woodside Energy Ltd in Western Australia. The minister intervened in the matter before the Federal Court involving the Amcor company. The minister intervened in the matter before the Industrial Relations Commission involving the Pilots' Supplementary Airlines Award—an award simplification matter. The minister intervened in a matter before the Industrial Relations Commission known as the higher education case.

Senator SHERRY—Sorry, what was that?

Mr Smythe—The higher education case. The minister has intervened in the federal TCR case, the Victorian child care case, a matter involving the CEPU, and the Nightcliff Post Office.

Senator SHERRY—Which post office?

Mr Smythe—Nightcliff Post Office—I believe it is in the Northern Territory. The case is about transmission of business. The minister intervened in a matter before the commission involving the AMOU and CSL Pacific shipping. The minister intervened in a matter in the commission involving the SDAEA and various retail employers in Victoria. The minister intervened in a matter involving the CPSU and the Australian Taxation Office. The minister sought a section 109 review of a decision of Vice-President Ross involving Grocon.

Senator SHERRY—Involving who?

Mr Smythe—Grocon.

Senator SHERRY—That is a construction company, isn't it?

Mr Smythe—Yes, that is right. The minister intervened in an appeal in the commission involving Chubb Security. The minister intervened in a matter before the commission involving Maintenance Resource Engineering and the CFMEU. The minister has also been involved in some matters before other courts. The minister intervened in a matter in the New South Wales Industrial Relations Commission in court session involving Mount Thorley, which is a mining company. The minister intervened in the Queensland TCR case before the Queensland Industrial Relations Commission. The minister intervened in a number of matters in state courts relating to employee entitlements of the failed Ansett company. That is the end of my list. There may be some other cases, but that is a reasonable representative sample.

Senator SHERRY—Having read out that—

Mr Smythe—Senator, I will just correct the record. I have just been informed that the minister did not intervene in the Nightcliff Post Office case.

Senator SHERRY—He did not?

Mr Smythe—No, he did not. That was a case where intervention was considered but did not happen.

Senator SHERRY—That was about transmission of business?

Mr Smythe—Yes.

Senator SHERRY—In the cases you have just given me you have specifically mentioned, but not detailed, I think, some state courts. Could you provide us with a list—I do not want it now, other than some of the cases I am going to go to individually—of the objective of the intervention, the position of the Commonwealth, and the estimated costs involved in each of the interventions.

Mr Smythe—Is that just for the state courts or the whole list I have just given you?

Senator SHERRY—No, the whole list you have just given me.

Mr Smythe—Yes.

Senator SHERRY—Take that on notice, obviously. Has intervention occurred, or is it proposed in the New South Wales IRC full bench appeal set down for 7 July this year?

Mr Smythe—What is the matter?

Senator SHERRY—It apparently relates to clauses in the ETU pattern agreements and whether they breach the Trade Practices Act.

Mr Smythe—Not that I am aware of. I have just turned to my colleagues in the legal policy branches, and they are not aware of any proposed intervention either.

Senator SHERRY—Did you mention the Amcor case on your list? Yes, you did.

Mr Smythe—I did, yes.

Senator SHERRY—It was the sixth or seventh. Is Amcor a straightforward case of agreement interpretation?

Mr Smythe—I can only tell you the minister's reason for getting involved in the case, and that is that the minister intervenes in cases before the courts and the commission in the public interest. The minister believes that the public interest is being served because, as Judge Finkelstein said, at first instance it is rather curious that employees should be entitled to severance payments, and employers liable to pay them, in circumstances where the employees retain their employment with no loss of conditions of any sort.

Senator SHERRY—I do not necessarily accept what you have said in terms of the outline of the facts. But isn't it the case that the document signed by the employer requires the payments to be made?

Mr Smythe—I think that is a matter that will be ventilated in the High Court, and the Commonwealth's position will be adequately argued at that point.

Senator SHERRY—So the matter has been determined at another level?

Mr Smythe—The matter has been determined in the Federal Court, and special leave is being sought to have the matter considered in the High Court.

Senator SHERRY—The matter was determined in the Federal Court—in whose favour was it determined?

Mr Smythe—In favour of the union.

Senator SHERRY—So we now have the Commonwealth government intervening on the side of the corporation—in this case, Amcor—don't we?

Mr Smythe—The Commonwealth government intervened in the proceedings before the full Federal Court and, as I said before, the minister's right to intervene is there.

Senator SHERRY—I am not arguing that. He is intervening, and it is his call. No-one is arguing that he cannot make the call.

Mr Smythe—I think you said that he intervened on the side of someone. He does not intervene on the side of anyone; he intervenes in the public interest.

Senator SHERRY—Okay, he is intervening in the public interest. Who is he supporting in the case?

Mr Smythe—He is supporting a fair and equitable interpretation of the law.

Senator SHERRY—In supporting a fair and equitable interpretation of the law, as you term it, is he supporting arguments put by the employer against the decision of the Federal Court?

Mr Smythe—He is putting his own arguments.

Senator SHERRY—And what are they?

Mr Smythe—As I said before, his arguments will be adequately ventilated in the High Court proceedings. I do not think it is up to me to foreshadow them in this forum.

Senator SHERRY—What position is the intervention? The intervention has to indicate what is being argued.

Mr Smythe—He is actually not intervening in the High Court. He is a party in the High Court in his own right because he was a party in the Federal Court proceedings.

Senator SHERRY—What did they argue in the Federal Court proceedings?

Mr Smythe—In the Federal Court proceedings the minister argued, in general compass, that it was not reasonable to expect the employer to bear the cost of severance payments when all the employees had retained employment with no loss of conditions.

Senator SHERRY—So he was supporting the employer contentions in that case, wasn't he?

Mr Smythe—I have told you what he was arguing. Whether—

Senator SHERRY—Broadly, he was supporting the employer contentions.

Mr Smythe—If you wish to characterise it that way, Senator; I am just telling you that he—

Senator SHERRY—Come on. To anyone reasonably knowledgeable of the case, he was supporting the employer arguments in the Federal Court, wasn't he?

Mr Smythe—As I said before, he intervened in the public interest to put arguments about the proper interpretation of the law. He did not go in to say, 'I support the employer.'

Senator SHERRY—Did the union agree with the minister's intervention in that case in the Federal Court? Did the union welcome and agree with the Commonwealth government's—

Dr Boxall—Senator Sherry, Mr Smythe has answered this question on behalf of the department, and the answer to the question is that the minister intervened in the public interest and put his arguments.

Senator SHERRY—Okay. Now you obviously have some knowledge of the case, Mr Smythe: was there some conjunction or some level of agreement with the employer in terms of the arguments that were put in the public interest, as you call it.

Dr Boxall—These are questions of the public record about what arguments were put by various parties. What we can do is answer from the department's point of view regarding what the minister was doing, and we have done that.

Senator SHERRY—No, you have not.

Dr Boxall—We have, with respect.

Senator SHERRY—I put a question; can Mr Smythe answer it?

Dr Boxall—With respect, Senator Sherry, we have answered the question, and the answer to the question, to paraphrase Mr Smythe, is that the minister was intervening in the public interest and putting an argument in the public interest, and he is now seeking special leave—

Senator SHERRY—And supporting—

Dr Boxall—to intervene in the High Court.

Senator SHERRY—Now, Mr Smythe, you indicated that the union was successful in that Federal Court case. Why is the Commonwealth intervening? What is it seeking to do—to overturn the decision in the federal court?

Dr Boxall—No, the Commonwealth, through the minister, is seeking, as Mr Smythe said, to intervene in the public interest and to try to get a decision which the minister believes is a fair interpretation of the law.

Senator SHERRY—So is the minister seeking to have the Federal Court decision reversed?

Mr Smythe—Yes.

Senator SHERRY—Thank you. Regarding the list of cases you read out, Mr Smythe, how many of the approximately 27 there involved an intervention by the Commonwealth in support of a union?

Mr Smythe—As I have said before, the minister does not intervene to support anyone; he intervenes to put arguments in the public interest.

Senator SHERRY—So he does not take one side or the other?

Dr Boxall—No, he does not. He intervenes in the public interest.

Senator SHERRY—I see. These are totally benevolent interventions. Regarding the list of cases I have read out, could you indicate to me where the Commonwealth intervention by the minister has been sought or supported by the trade union involved?

Mr Smythe—I will take that question on notice.

Senator SHERRY—Okay. Could you also indicate to me where, when the minister has intervened in the list of cases, he has had the support of the employers? Do you have to take that on notice as well?

Mr Smythe—Yes.

Senator SHERRY—I would put it to you, Mr Smythe, that there is not one case where the minister has intervened—broadly, in terms of the public interest argument—where his argument coincides with the argument being put by the particular trade union in any of these cases. There is not one.

Dr Boxall—That may well be the case, Senator Sherry, but there are a number of conclusions one can draw from that observation.

Senator SHERRY—I am not seeking to draw a conclusion at the moment; I am just seeking to establish the facts as to whose side the intervention is supporting.

Dr Boxall—Well, just to repeat the department's position, the minister does not take sides; he intervenes in the public interest.

Senator SHERRY—And he takes sides.

Dr Boxall—No, Senator Sherry. This is to clarify the record: the department's position is that the minister intervenes in the public interest, and that has been Mr Smythe's answer.

Senator SHERRY—Yes, and he takes sides.

Dr Boxall—He only takes sides because he is intervening in the public interest.

Senator SHERRY—Yes.

Dr Boxall—If somebody intervened not in the public interest then they might well be on the other side.

Senator SHERRY—And he takes one side or the other in the disputes.

Dr Boxall—No, Senator Sherry: the department's position, just so the record is clear, is that the minister intervenes in the public interest.

Senator SHERRY—Look, let us just say that you have your position and I have stated what mine is, and let us leave it at that.

Dr Boxall—That is true. You ask the questions and we answer them, and we have given you our answer.

CHAIR—I think we should move on, Senator.

Senator SHERRY—I think we should too. I think you referred in the list you read, Mr Smythe, to the Gribbles Pathology case. What is being argued by the minister in respect of the intervention in this case? What is the matter of contention?

Mr Smythe—The minister intervened in the matter before the full Federal Court and, as in Amcor, the minister is seeking special leave in the High Court to have the Federal Court's decision overturned.

Senator SHERRY—Yes. And the Federal Court's decision related to an entitlement for severance pay for workers?

Mr Smythe—The issue was more importantly in terms of the legal principle about transmission of business being challenged.

Senator SHERRY—Yes. I understand it was about the transmission of a medical imaging operation, taken over by Gribbles. But the employees concerned were seeking severance pay, weren't they?

Mr Smythe—I believe that is the case, but the point on which the minister has been involved in the public interest was the broader matter of principle, involving what is and is not a transmission of business.

Senator SHERRY—Yes, and the issue relates specifically to the severance pay for workers.

Mr Smythe—That is not the issue.

Senator SHERRY—That is what the case is about.

Mr Smythe—Yes, but it is not the issue in relation to which this minister—

Senator SHERRY—Okay, we understand your position.

Mr Smythe—You asked me what—

Senator SHERRY—The case is about severance pay for workers, isn't it?

Mr Smythe—But I thought you asked me the nature of the minister's involvement, and the minister's involvement relates to transmission of business.

Senator SHERRY—Okay, and if the minister's argument about transmission of business is successful, there will be no severance pay for workers, will there?

Mr Smythe—I do not know.

Senator SHERRY—Come off it, Mr Smythe. Really!

Mr Smythe—It would be quite conceivable that the High Court could make a declaration—

Senator SHERRY—So—

CHAIR—Order! The officer has not finished speaking.

Mr Smythe—It is quite conceivable that the High Court could make a declaration that the principles of transmission of business are X, while choosing not to overturn a particular situation relating to that case. That is possible.

Senator SHERRY—It is very unlikely, isn't it?

Mr Smythe—It is possible.

Senator SHERRY—It is possible, but is it likely?

Mr Smythe—I do not know.

Senator SHERRY—Come on. You are putting the spin on it that it is possible, when you know damn well that it is next to impossible that that will be the outcome. If there is no transmission of business, then there is no severance pay entitlement.

Mr Smythe—I am sorry, Senator. I was just receiving some advice.

Senator SHERRY—If there is no transmission of business, there is no severance pay entitlement. That is the most likely outcome, isn't it? You have given an opinion. I am putting to you the most likely outcome of this.

Mr Smythe—No.

Senator SHERRY—Yes, you have. You have given an opinion that the High Court may still—

Mr Smythe—No, sorry, Senator, I did not say that at all. I said, 'It is possible.' I did not give an opinion about what the High Court might do.

Senator SHERRY—Given that you have just said it is possible, isn't it highly likely that, if the High Court agrees with the Commonwealth submission, there will be no severance payments made?

Mr Smythe—I cannot speculate on what the High Court may do.

Senator SHERRY—You just speculated.

Mr Smythe—No, I did not; I said what was possible.

Senator SHERRY—Yes, you did.

CHAIR—Order! Stop badgering the witness, Senator.

Senator SHERRY—The medical imaging company is arguing that there is no transmission of business, isn't it?

Mr Smythe—Yes.

Senator SHERRY—And the Commonwealth is arguing that there is no transmission of business, isn't it?

Mr Smythe—The Commonwealth is arguing that the transmission of business provisions have a certain meaning. It is the issue of principle. Again, I am loath to go through what the Commonwealth's position is going to be in a case before the court, but in general compass the Commonwealth takes the position that, for transmission to occur, there should be some direct relationship between the gaining and the losing business.

Senator SHERRY—Yes, and this is yet another case of the Commonwealth intervening on the side that supports the employer.

Dr Boxall—No, Senator Sherry, it is not.

Senator SHERRY—Yes, it is.

Dr Boxall—No, it is not.

Senator SHERRY—You do not agree?

Dr Boxall—You asked the question, and I am answering it. The department's position is that this is not 'yet another case'. You said, 'This is yet another case'; our answer is, 'No, it is not.'

Senator SHERRY—So you do not agree that the interests of the employer in this case are effectively being supported by Commonwealth government intervention?

Dr Boxall—I do not agree or disagree with anything. The department—

Senator SHERRY—I am just asking you.

CHAIR—Order, Senator Sherry! Let Dr Boxall finish his answers.

Dr Boxall—You cannot direct questions individually. The answer to the question is that the department's position is—as Mr Smythe has outlined—that the minister is intervening on a point of law in the public interest.

Senator SHERRY—In support of the employer?

Dr Boxall—No.

Senator SHERRY—Come on. Even the minister would—

CHAIR—Order, Senator Sherry! Dr Boxall is still thinking—

Dr Boxall—You asked a question, Senator Sherry; the answer is that the minister is intervening in the public interest.

Senator SHERRY—And I am putting it to you that he is intervening on the side of the employer.

Dr Boxall—Is that a question?

Senator SHERRY—Yes.

Dr Boxall—The answer is no; that is not the department's position.

Senator SHERRY—You are wrong; he is intervening on the side of the employer.

CHAIR—Senator, that is your position, so perhaps you should agree to disagree.

Senator SHERRY—Yes, it is. And I am sure it's the employer's position, too.

CHAIR—Can we move on?

Senator SHERRY—Mr Smythe, do you know who owns Gribbles?

Mr Smythe—No, I do not.

Senator SHERRY—You are not aware that a corporate law barrister called Wallace Cameron—who is also a millionaire—owns Gribbles?

Mr Smythe—No.

Senator SHERRY—You are not aware of that?

Mr Smythe—I am now, but I was not until you mentioned it.

Senator SHERRY—Are you aware that Mr Gribbles owns other pathology businesses in Victoria?

Mr Smythe—No.

Senator SHERRY—Are you aware that Mr Gribbles has been described as a ‘corporate raider’?

Mr Smythe—No.

Senator SHERRY—Why should people like Mr Gribbles be supported by the Commonwealth government in order to avoid the legitimate legal severance payments to workers, as determined by the Federal Court?

Dr Boxall—That is not the issue, Senator Sherry.

Senator SHERRY—Yes, it is.

CHAIR—Order, Senator. Again you are interrupting an answer.

Senator SHERRY—I put my question; can Dr Boxall answer it?

CHAIR—You put your question.

Dr Boxall—I am just about to answer it.

CHAIR—Dr Boxall is answering it. He is halfway through.

Dr Boxall—You said you put that proposition. I am saying that is not the issue; the issue is what Mr Smythe outlined—that is, the department’s position— that the Commonwealth is intervening in the public interest on a point of law.

Senator SHERRY—Mr Smythe, do you know how Mr Wallace Cameron achieved structural control of Gribbles?

Mr Smythe—Until a few minutes ago, I had never heard of Mr Wallace Cameron.

Senator SHERRY—So you are not aware?

Mr Smythe—I am not aware.

Senator SHERRY—So you would not be aware how Mr Wallace Cameron’s control and ownership of Gribbles is viewed in terms of tax minimisation?

Mr Smythe—I do not know.

Senator SHERRY—You are not aware of that?

Mr Smythe—No.

Senator SHERRY—But you are aware that the Commonwealth is intervening to support Mr Cameron in this case?

Mr Smythe—No, as I have said a number of times before, the Commonwealth is not in there supporting anyone. It is intervening in the public interest to have some points of law clarified.

Senator SHERRY—When the Commonwealth intervenes in private litigation, in support of a particular party, does the Commonwealth take into consideration the party’s record in relation to tax avoidance?

Mr Smythe—The Commonwealth does not intervene in support of a particular party.

Senator SHERRY—So you are unaware of the tax minimisation arrangements of Mr Wallace Cameron?

Dr Boxall—Mr Smythe has just answered that.

Senator SHERRY—You are not aware of them.

Dr Boxall—We are not aware of Mr Wallace Cameron.

Senator SHERRY—You are not aware of him, but you are willing to intervene to support him against his workers so they will not get their redundancy—

Dr Boxall—I am not intervening in support of anybody.

CHAIR—Order, Senator. The officers have already explained the reasons.

Dr Boxall—We have explained this a number of times—

CHAIR—Several times.

Dr Boxall—that the department's position is that the minister intervenes in the public interest to clarify a point of law.

Senator SHERRY—It is as simple as that, is it?

Dr Boxall—That is the answer to your question; that is the departmental answer.

CHAIR—Perhaps we should move on.

Senator SHERRY—Mr Smythe, I think you mentioned the company Grocon?

Mr Smythe—I did.

Senator SHERRY—Grocon Pty Ltd has—I think it is a section 170LK agreement—with employees. Are you aware of the specifics at all?

Mr Smythe—I have some knowledge of them.

Senator SHERRY—Is it a review of a full bench decision by Vice-President Ross?

Mr Smythe—It is a review of a decision by Vice-President Ross. I do not think it was a full bench decision. No, it was a decision by Vice-President Ross.

Senator SHERRY—Yes; it is to be reviewed?

Mr Smythe—That is right.

Senator SHERRY—What was the reason for the intervention in this case?

Mr Smythe—The review has been applied for by the minister under section 109 of the Workplace Relations Act, which gives the minister the right to apply to the president to have a full bench review, a decision, if the minister believes that the decision is contrary to the public interest.

Senator SHERRY—Back to the old public interest again, are we?

Mr Smythe—The legislation gives the minister rights to do these things in the public interest.

Senator SHERRY—The public interest of the employer but not the employees in every case we have talked about so far. Was the so-called public interest intervention supported by any of the parties to the proceedings?

Mr Smythe—I do not recall. Would you allow me to just check with my colleagues? The answer is no, Senator.

CHAIR—Are there any further questions on output 2.1?

Senator SHERRY—Sorry, there is just one other matter in relation to Gribbles.

Mr Smythe—To Gribbles or Grocon?

Senator SHERRY—Gribbles—we have to go back to Gribbles. Has the federal government provided any financial or other assistance to Gribbles?

Mr Smythe—I do not know.

Senator SHERRY—Can anyone help me at all in respect of industrial relations matters?

Dr Boxall—We do not know, Senator Sherry.

Senator SHERRY—Is anyone else here who can help me on this?

Dr Boxall—No, the departmental position is that we do not know.

Senator SHERRY—How do you not know if you have not asked?

Dr Boxall—Because I looked around and nobody indicated that they do know.

CHAIR—So you have the answer.

Senator SHERRY—Are you going to take it on notice?

Dr Boxall—If you ask us to take it on notice, we will.

Senator SHERRY—Okay, I have asked you to take it on notice.

Dr Boxall—We will take it on notice.

Senator KIRK—I have a question in relation to the Commonwealth's intervention in the safety net review wages case. Could you perhaps briefly outline for the committee what the Commonwealth's argument was in relation to wage adjustments and how they may impact upon pricing workers out of a job?

Mr Smythe—I would have to ask my colleague Mr Cole to take those questions.

Mr Cole—Senator, you will be aware that the Commonwealth supported an increase up to the level of tradesperson in the metal industries award—an increase that should not exceed, on the Commonwealth's submission, \$12 per week. Part of the Commonwealth's submission was to bring to the commission's notice, as we have done in previous cases, the results of a wide range of academic studies that on the whole attest to a negative relationship between minimum wage increases and employment. Indeed, in terms of a lengthy list of such studies that has been compiled and analysed by the department, which is incorporated in the Commonwealth's submission, about 70 per cent of the major published studies support the view that such a negative relationship exists.

Senator KIRK—You said that someone in the department did an analysis of the academic material that is out there.

Mr Cole—The Commonwealth's submissions to the safety net review have for a number of years included similar material that is updated from year to year to endeavour to take

account of any significant new academic studies of which the department and the government become aware.

Senator KIRK—Have any significant new studies come about in the last 12 months?

Mr Cole—There were about two additional studies referred to in this year's Commonwealth submission. I am not in a position to identify the names of the authors of those studies at this moment.

Senator KIRK—So is it the case that you have the summary, as it were, of what the position is and then you just update it every year with any additional material that becomes available? Have I understood you correctly?

Mr Cole—If we became aware of any work, through qualifications over previous published work, we would also for the sake of completeness—in my view—include that.

Senator KIRK—No doubt you have a copy of the judgment from the commission in relation to this case, and there were a number of observations made by the commission in relation to whether or not there was any relationship between safety net wage increases and putting workers out of a job. Can you tell me whether or not the commission broadly supported the position put by the Commonwealth or otherwise in its reasons for judgment?

Mr Cole—The commission takes the view that what it describes as modest increases do not have a significant impact on jobs, but the commission also acknowledges that there is some impact even arising from what it regards as modest increases in some sectors—that is, sectors that are more heavily award dependent. It is also a fact that the commission has not supported adjustments as high as those proposed consistently by the ACTU. Presumably the commission does not regard increases at that level as modest and the commission may well have been influenced in reaching its decision—that is, of not supporting increases at those levels—by material of the nature that has been presented by the Commonwealth.

Senator KIRK—Are you saying that the submissions made by the Commonwealth did not relate to modest increases in wages and only to significant increases of wages?

Mr Cole—As I indicated at the outset, the commission was not opposed to increases of up to an amount of \$12. That was overall the government's view as to what was appropriate in all the circumstances. The commission, as it has done in previous years, has seen fit to award increases at a higher level. They have typically been at levels above what the Commonwealth, from its perspective, regards as modest.

Senator KIRK—Do you acknowledge that the commission in its judgment indicated that there remains a continuing controversy amongst academics and researchers as to the employment effects of minimum wages improvements?

Mr Cole—The commission did say something to that effect. I have already acknowledged that not all the published studies support the view that there is a negative relationship; the overwhelming majority do.

Senator KIRK—When you come next year to revise the submission that you make in this regard, will you have regard to the studies that were referred to by the commission and update your submission accordingly?

Mr Hoy—That is a hypothetical question.

Senator KIRK—Have you taken on board the comments made by the commission in this regard?

Mr Hoy—We always take on board the commission's decision.

Senator KIRK—Perhaps we can expect to see some of that incorporated into your future submissions.

Mr Hoy—As I said, it is a hypothetical question.

Senator KIRK—But there will be an occasion in the future, won't there, when you have to consider this matter? Mr Cole indicated there is an updating on a yearly basis.

Mr Hoy—There may be.

Senator KIRK—I believe also there was comment made by the full bench in this judgment that an AWIRS would be useful. Is that your understanding of the judgment as well?

Mr Hoy—The commission made some comments about how it might be assisted by the conduct of a survey.

Senator KIRK—Sorry, what was your understanding of the commission's comments?

Mr Hoy—That they may be assisted by the undertaking of a survey.

Senator KIRK—Has the department taken that on board?

Mr Hoy—It is under consideration by the government.

Senator KIRK—Is it under consideration as to whether or not there may be an AWIRS in future?

Mr Hoy—The comments the commission made are under consideration by the government.

Senator KIRK—So there is no timetable as to when this may occur?

Mr Hoy—As to when what might occur?

Senator KIRK—As to whether or not there may be such a survey conducted.

Mr Hoy—I cannot add anything to what I said.

Senator KIRK—When was the last time such a survey was conducted?

Mr Hoy—In 1995.

Senator KIRK—And before that?

Mr Hoy—1990.

Senator KIRK—And before that?

Mr Hoy—I think there have been only two.

Senator KIRK—So in the past they have been conducted approximately every five years?

Mr Hoy—No, there was no set time frame. Two have been conducted, as I have outlined.

Senator KIRK—Was there any consideration given in 2000 or thereabouts as to whether or not a further survey ought to be conducted?

Mr Hoy—There has been consideration given in a number of years, yes.

Senator KIRK—And rejected?

Mr Hoy—The government has decided not to fund the conduct of a survey.

Senator KIRK—On how many occasions has it been considered by the government and rejected?

Mr Hoy—The government has decided, I think, on two or three occasions. I will just need to check that.

Senator WONG—Dr Boxall, I am sorry I have been away on another committee, but I understand there were some questions asked about intervention into various matters.

CHAIR—We have trawled through that extensively.

Senator WONG—I have some more questions. I understand that the answers given were that the basis of intervention is public interest, not taking any particular side between employers and employees—am I right?

Mr Smythe—That is correct.

CHAIR—We have covered all this.

Senator WONG—I am about to come to something, Chair.

CHAIR—Something new, I hope.

Senator WONG—Can you explain, therefore, a press release—which we have been provided with—from your minister, dated 24 February 2003, headed *Minister intervenes on behalf of business*. It refers to the Gribbles and Amcor cases.

CHAIR—We have covered that case.

Senator WONG—I am asking about the press release, Chair.

Mr Smythe—All I can tell you, Senator, is that the legislation gives the minister the right to intervene, and it gives him the right to intervene in the public interest.

Senator WONG—Doesn't the press release fly in the face of the answers you gave earlier? It is clearly on behalf of business.

Dr Boxall—No.

CHAIR—Senator, we have been through all this.

Dr Boxall—The answers are the same as before.

CHAIR—And that case—we have been through the lot, for about half an hour.

Senator WONG—I am asking these questions.

CHAIR—Ask a new question, please.

Senator WONG—I am asking these questions. I do not think the chair can indicate what—

CHAIR—These questions we have already done. If you had been here, you would have heard it and you could have participated in the debate.

Senator WONG—I was in another committee.

CHAIR—Order! We do not want to go through a debate a second time, because we are here for about five days.

Senator WONG—I am asking about a press release. I do not believe that was covered in the previous questions.

CHAIR—You are asking about the same case and the same principle of law.

Senator WONG—I am asking about the press release.

Senator SHERRY—I did not ask about the press release.

Senator WONG—The press release states, *Minister intervenes on behalf of business*. Is that your understanding of the position of the department in relation to interventions?

Dr Boxall—We do not have a copy of that particular press release.

Senator SHERRY—We will give it to you—

CHAIR—Order!

Dr Boxall—The departmental position is as stated before, that the minister intervenes in the public interest.

Senator SHERRY—That is not what the press release from the minister says.

Dr Boxall—Senator Sherry, I have not got the press release.

Senator SHERRY—We are just going to give it to you.

Dr Boxall—All right; let us wait for it.

Senator SHERRY—Okay.

CHAIR—Could we perhaps go on to something else while we are waiting? Are there further questions on outcome 2.1?

Senator KIRK—I had some questions in relation to appointments. As I understand it, under this output the department advises the minister on candidates for appointment to tribunals. Could you tell the committee to which bodies does the department give advice to the minister on appointments?

Mr Hoy—All the statutory appointments within his portfolio.

Senator KIRK—Could you list those for us, please?

Mr Hoy—The Australian Industrial Relations Commission, the Remuneration Tribunal, the Defence Force Remuneration Tribunal, the National Occupational Health and Safety Commission, Comcare Australia, the Employment Advocate.

Senator KIRK—The Australian Industrial Registry?

Mr Hoy—Yes. The Equal Opportunity for Women in the Workplace Agency.

Senator KIRK—Could you advise the committee of the gender breakdown of appointments to the AIRC and AIR in particular in, say, the last five-year period?

Mr Hoy—I could not give you that precise information, but I can tell you that, of the 51 primary appointments of the AIRC, 39 are men and 12 are women.

Senator KIRK—That is in what time frame?

Mr Hoy—They are the current members.

Senator KIRK—Have there been any recent appointments to either body?

Mr Hoy—To the AIRC?

Senator KIRK—Yes.

Mr Hoy—Yes, there have. I will need to get that detail.

Senator KIRK—While you are at it, I would like the appointments to the AIR as well, the Australian Industrial Registry.

Mr Hoy—There was a recent appointment as registrar; that was Mr Wilson. That was late last year.

Senator KIRK—Could you perhaps take on notice the breakdown of appointments over the last five years.

Mr Hoy—So you want the gender breakdown of appointments to the AIRC in the last five years?

Senator KIRK—That is correct. In the past 12 months, how many appointments in total have there been to the AIRC? Did you mention that?

Mr Hoy—I think it is three.

Senator KIRK—Could you inform the committee about the background of those recent appointees?

Mr Hoy—Yes. One was a former trade union official, and I think the other two were from the employer side.

Senator KIRK—You may need to take this on notice, but could you also tell us the breakdown of appointees over the last five years as to whether they were trade union or employer representatives.

Mr Hoy—You want the information over the last five years of the background of the appointments?

Senator KIRK—Precisely. Can you give us some idea of how the department ensures some sort of, shall we call it, balance on the commission in relation to employer and trade union representatives?

Mr Hoy—The department provides advice to the minister and government.

Senator KIRK—What is the nature of that advice? Is it some sort of written guidance as to what has happened in the past or what happens in other countries?

Mr Hoy—The department provides oral and written advice on various appointments.

Senator KIRK—So there is no criteria listed? What is the nature of this advice? What does it cover? Does it just list the names of individuals, or does it list criteria and qualifications?

Mr Hoy—I cannot provide you with information on what advice we give to government.

Senator WONG—Is there a government policy in relation to the backgrounds of persons appointed to the AIRC? Does the government have a policy or guidelines on this?

Mr Hoy—Not that I know of.

Senator WONG—There was previously a reasonable convention around ensuring that appointments were reasonably balanced as between those with an employer background and those with an employee background. Is that still the case?

Mr Hoy—I can tell you the current composition of the AIRC—39 per cent are former trade union, 15.7 per cent are former legal, 15.7 are former government, 29.4 per cent are employer and one appointee was a former academic.

Senator WONG—This is the current composition of the AIRC, so this would include previous appointments presumably.

Mr Hoy—Yes, that is the current composition by background of the AIRC—

Senator WONG—And ‘legal’ does not discriminate between those lawyers who primarily acted for one side or the other, obviously.

Mr Hoy—I do not know.

Senator WONG—I will move back to the press release that you have been provided with. Do you have that now, Dr Boxall?

Dr Boxall—Yes, we do.

Senator WONG—Does the text of that press release represent departmental policy?

Mr Smythe—The minister intervened in both the cases referred to in that press release under section 471 of the Workplace Relations Act which gives him the right to intervene in the public interest in a proceeding before the court in a matter arising under the act. So the only way he can be there is by intervening in the public interest.

Senator WONG—I understand the statutory basis on which he intervenes, Mr Smythe. I am just asking whether the intervention is on behalf of business—and the term is used in the press release broadly, not specifically, not two businesses—

Mr Smythe—It is very broad.

Senator WONG—Is that the policy of the department—to intervene on behalf of business?

Dr Boxall—No. The policy of the department is, as Mr Smythe just set out, that the grounds for the minister’s interventions are in the public interest, and that is the departmental response. If you want to go to this press release—not that it is our job to interpret press releases—it says in a very broad sense ‘Minister intervenes on behalf of business’.

Mr Smythe—And then in the first line it explains what he is doing—and I believe it says ‘clarifying’.

Senator WONG—So it is intervening on behalf of employers?

Dr Boxall—No, it does not say that.

Mr Smythe—It does not say on behalf of employers. It says ‘business’. It goes on to say, if I might read from it:

The Commonwealth Government will intervene in two Federal Court appeals to clarify transmission of business law.

Senator WONG—Yes, I can read.

Mr Smythe—And that is the public interest—clarifying what the law should be.

Senator WONG—Whose public interest, Mr Smythe? Who is going to be advantaged by the transmission of business law?

Dr Boxall—It is the public interest which has emerged in a democratic process, where a government has been elected, a minister has been appointed and the minister, under an act passed by parliament, is intervening in the public interest. That is the department’s position which has been enunciated and, as it turns out, that position is consistent with the minister’s press release.

Senator WONG—Is there anywhere in the release where there is any reference to the public interest?

Dr Boxall—I do not know. Why don’t you read it and let us know. I do not know because we do not draft the press releases.

Senator SHERRY—You put a lot of emphasis on public interest. We have heard nothing but public interest, frankly, from Mr Smythe in particular.

Dr Boxall—The reason we have done that, Senator Sherry, is that it is in the act.

Senator SHERRY—Where does ‘public interest’—

CHAIR—Order, Senator Sherry! You are getting an answer; just wait for the answer.

Senator SHERRY—Where does ‘public interest’ appear?

Mr Smythe—As I said before, the minister can only intervene in these Federal Court cases in the public interest. That is what the act allows him to do.

Senator SHERRY—My question went to the press release headed ‘Minister intervenes on behalf of business’. Does it appear there? You have got it.

CHAIR—Senator, the officers are not responsible for drafting a press release.

Senator SHERRY—I know that. I am not suggesting they are. But where does it say that in the press release?

Dr Boxall—What it says, Senator Sherry, is—

Senator SHERRY—Where does it say ‘intervention in the public interest’, Dr Boxall? Is it there?

Dr Boxall—I do not know whether it uses those words because I have not got past the first paragraph.

Senator SHERRY—Well, look at it.

Dr Boxall—No. You ask the questions, Senator Sherry; I answer them.

Senator SHERRY—And I am waiting for your answer.

Dr Boxall—And the answer is that the Commonwealth government will intervene in two Federal Court appeals to clarify transmission of business law.

Senator SHERRY—Yes.

Dr Boxall—And the heading is ‘Minister intervenes on behalf of business’. It is completely consistent and that is the minister’s reason for intervening, which also is the public interest, because he is attempting to clarify transmission of business law.

Senator SHERRY—Dr Boxall, I asked you where in this press release does it refer to ‘public interest’, and I will stop there and give you a couple of minutes to read it. Can you point out to me where it says—

CHAIR—Order, Senator!

Dr Boxall—The question of whether it is in there or not is beside the point.

Senator SHERRY—No, that is not my question. My question is: as a matter of fact in this media release, do the words ‘public interest’ appear? Yes or no?

Dr Boxall—It is not the job of the department to read the minister’s press releases and identify what words are in there. If you tell me, having read the press release, that the minister has not used the words ‘public interest’, it does not mean to say that he was not intervening in the public interest, because indeed the only way he can intervene in the public interest according to the act, as read out by Mr Smythe, is in the public interest.

CHAIR—Senator, you have got your answer on this. You have been around the mulberry bush for far too long on this issue.

Senator SHERRY—No. Chair, I have asked quite specifically: do the words ‘public interest’ appear in this media release? I would just like an answer from Dr Boxall or Mr Smythe. Do the words appear?

CHAIR—If it is the underpinning principle of law, there is no need for it to be in the press release.

Senator SHERRY—Come off it!

CHAIR—Of course it does not. Who drafts your press releases?

Senator SHERRY—I do. I am asking a straight question to Dr Boxall or Mr Smythe: do the words ‘public interest’ appear in the minister’s press release? Do they appear?

Dr Boxall—The question is, Senator Sherry—

Senator SHERRY—No, my question to you is: do they appear?

Dr Boxall—The answer to your question, Senator Sherry, is that the department is not going to read through a press release and make comment on it. We are just not going to do it.

Senator SHERRY—You have already done that.

Dr Boxall—We have not.

Senator SHERRY—Yes, you have—you referred to the headline: ‘Minister intervenes on behalf of business’—

Dr Boxall—That is because you asked—

CHAIR—Senator, you are wasting time.

Senator SHERRY—and you have read the first—

CHAIR—You are wasting the time of this committee.

Senator SHERRY—No, it is Dr Boxall who is wasting the time of this committee.

CHAIR—You are nit-picking on an issue that is incredibly minor.

Senator SHERRY—It is not incredibly minor.

CHAIR—It is incredibly minor.

Senator SHERRY—It is not incredibly minor to the employees. You ought to go out and ask the employees whether this is an incredibly minor issue. Where do the words ‘public interest’ appear in this press release? Do they appear, Dr Boxall—yes or no?

CHAIR—You have had an answer from the officer on this. Could we move on to something else.

Senator SHERRY—I put it to you: they do not appear in the press release, do they?

Dr Boxall—They may well not, Senator Sherry—

Senator SHERRY—Thank you, Dr Boxall.

Dr Boxall—but that is because you have put it there.

Senator SHERRY—Thank you, Dr Boxall. We will leave it there, Chair. He has finally accepted that they do not appear.

CHAIR—It is a great moment in the history of the Senate!

Senator SHERRY—A straight answer at last.

Dr Boxall—No, I did not accept it.

Senator SHERRY—A straight answer at last, Dr Boxall.

Senator MASON—He did not say that, Mr Chairman.

Senator SHERRY—Yes, he did: ‘They may not appear.’ Thank you, Dr Boxall. A straight answer at last. We can now move on, Chair. As a matter of fact, we have clarified the matter and I am very happy to move on.

Senator MASON—Chair, Senator Sherry is way out of line and I would ask him to fall into line.

CHAIR—Order, Senator Sherry! You have proven virtually nothing, so let us move on.

Senator MASON—You are way out of line.

Senator SHERRY—We are ready to move on, Chair.

CHAIR—Yes, move on. You are wasting time.

Senator SHERRY—Thanks, Dr Boxall.

CHAIR—Are there any more questions on output 2.1?

Senator WONG—Is it a policy of the government to give primacy to outsourcing, contracting and labour hire arrangements, in the sense of what one is seeking in terms of interventions?

Dr Boxall—I am not aware of any specific policy of the government to do that.

Senator WONG—Mr Cole, was it the Commonwealth's argument that these transmission of business provisions would hinder outsourcing, contracting or labour arrangements? Was that intended to be the Commonwealth's position in relation to both Amcor and Gribbles?

Mr Cole—I think that is a matter for Mr Smythe. That was not a case handled by advocacy.

Senator WONG—I am sorry, I should be asking Mr Smythe.

Mr Smythe—Could you repeat the question, please?

Senator WONG—Regarding the interventions that we are discussing—Gribbles and Amcor—is it the Commonwealth's position that the provisions of the act should not be allowed to hinder outsourcing, contracting or labour hire arrangements?

Mr Smythe—That was not the position in relation to either of those cases. I outlined for Senator Sherry earlier, in very broad compass, what the Commonwealth's position is in relation to those cases.

Senator WONG—I am a bit confused then. I wonder if I could refer you to the last paragraph of the first page of the press release, where the minister says:

The Commonwealth will argue that the Workplace Relations Act should not be allowed to hinder outsourcing, contracting or labour hire arrangements.

Was that the Commonwealth's position or was that not the Commonwealth's position in those cases?

Mr Smythe—I think I said that both matters will come before the High Court before too long, and I do not think it is appropriate for me to foreshadow what the Commonwealth's argument is going to be.

Senator WONG—I am not asking you what it will be before the High Court. It has already been before the Federal Court, has it not?

Mr Smythe—Yes.

Senator WONG—What was the Commonwealth's position before the Federal Court? Was it that the act should not be allowed to hinder outsourcing, contracting or labour hire arrangements?

Mr Smythe—I will ask one of my colleagues, who was more involved in that case than I was, to answer the question.

Mr Bennett—Senator, I believe you are referring to the press release which was issued prior to the decision in the full Federal Court, not in relation to the High Court. My understanding is that one of the Commonwealth's concerns—not necessarily its primary concern in relation to intervention—was that one interpretation given to the single judge's decision in relation to Gribbles would be that this would have an effect on some labour hire arrangements and some contracting arrangements. The Commonwealth's concern there was that business, generically speaking, may be concerned about that particular decision of Justice Gray in the Federal Court. As I said, that was not the primary concern but it was one concern.

Senator WONG—So would it be an accurate description of the Commonwealth's submission before the Gribbles case that the Workplace Relations Act should not be allowed to hinder outsourcing, contracting or labour hire arrangements?

Mr Bennett—Obviously I cannot comment on the High Court submission because that submission has not been made, and there has been some rethinking of the Commonwealth's position since the decision was handed down in the full Federal Court. That press release was issued before the Commonwealth had actually argued its position, and there were further discussions involving counsel, before the Commonwealth argued its position. One of the issues, from my recollection—but you can check this by looking at the court transcript—is that the Commonwealth argued this. But, again, it was not the main argument that the Commonwealth put.

Senator WONG—And did the Commonwealth argue that the Workplace Relations Act should not be allowed to hinder outsourcing, contracting or labour hire arrangements in relation to the Amcor case?

Mr Bennett—I am not clear about the position in relation to Amcor. As I think has been ventilated earlier, Amcor turns on slightly different issues to Gribbles. So my recollection is that it was not an issue there, and if it was it would be a very minor issue.

Senator WONG—Thank you.

Senator KIRK—I have a few questions in relation to the Victorian child care case being brought by the ASU. Perhaps you could outline for the committee what the nature of the Commonwealth submissions are in this case, in particular in relation to the reclassification of childcare workers and their salaries?

Ms Sadauskas—The Commonwealth has actually lodged its contentions in this case. They are available on the commission's web site. The ASU has actually put another application in in this case, and that is being considered by the commission at the moment. It may alter the directions of the case, and so I do not want to be conclusive in what I say. But the Commonwealth is arguing that there needs to be a balance of public interests in this matter, and they range across the commission's role in applying its rules about work value, equal pay and enterprise bargaining, taking into account the nature of this industry and the availability of quality child care. That is a short assessment.

Senator KIRK—So is there any particular submission on the wages received by childcare workers?

Ms Sadauskas—There are no direct issues raised by the Commonwealth in the contentions, other than the appropriate application of the work value principles.

Senator KIRK—My understanding is that the ASU is seeking a considerable pay rise—in the vicinity of 60 per cent. Does the Commonwealth address that application in its submission?

Ms Sadauskas—I cannot comment on that. The case is in its very early stages. It has had some preliminary inspections, but the actual hearings have not fully been heard yet.

Senator KIRK—When are those hearings scheduled for?

Ms Sadauskas—They are scheduled for next week, although I am not quite sure of the date. I have just been told they start tomorrow.

Senator KIRK—Given that they are starting tomorrow, no doubt some attention has been paid to this question of salaries. Can you give the committee any idea about what the likely submissions are to be in this regard?

Ms Sadauskas—No, I cannot; they are not developed yet. We need to hear the evidence before the commission.

Senator KIRK—So you are going to wait to hear what the union puts first, and then develop your submissions on that basis?

Ms Sadauskas—That is correct. It is in its very early stages. As I mentioned, there is another application—an equal pay application—and that matter needs to be considered by the commission, to see whether the commission is actually going to receive that application.

Senator KIRK—Is there any policy or principle the department has—outside of the established minimum wage—to the effect that market power is the only method able to secure wage increases? Is there any principle or policy to that effect in the department?

Ms Sadauskas—Not that I am aware of.

Senator KIRK—What is the department's view in relation to the role of section 170MX—the arbitration provisions?

Ms Sadauskas—I cannot comment on that.

Senator SHERRY—Is the Commonwealth government supporting the arguments presented by the ASU in this case?

Ms Sadauskas—The Commonwealth has not put a position about the arguments of the ASU, because they have not been heard yet, Senator.

Senator SHERRY—Will it be doing so?

Ms Sadauskas—I cannot comment on that.

Senator SHERRY—Would it surprise you if they were not?

Ms Sadauskas—I cannot comment on that.

Senator SHERRY—Yet another case of the Commonwealth intervening on the side of the employer, rather than the employees?

Ms Sadauskas—I cannot comment on that.

Senator BARNETT—Mr Chairman, that question is totally out of line.

Senator SHERRY—Why? Why is the question out of line, Chair? I am just asking a question.

Senator BARNETT—You are making assertions with regard to the intentions of the department—

Senator SHERRY—You are not the chair. Chair, is my question out of line?

Senator BARNETT—which were totally out of line. I have made submission to the chair.

Senator SHERRY—My question went to the chair.

CHAIR—Just continue, Senator Sherry.

Senator SHERRY—Was my question out of line? Was it out of order?

CHAIR—Just continue your questions.

Senator SHERRY—Chair, was my question out of order?

CHAIR—Not in my view, Senator.

Senator SHERRY—Thank you. I have finished my questions on this matter.

Senator WONG—Dr Boxall, I have some questions regarding working women's centres. Where is that appropriately asked?

Dr Boxall—We can deal with that now.

Senator WONG—I am happy to wait. I just want to clarify it.

Dr Boxall—It is actually under 2.2.

Senator WONG—That is fine. We have some brief questions regarding the International Labour Organisation. That is under 2.1, isn't it?

Dr Boxall—Yes.

Senator KIRK—We seek a progress report on the ratification of ILO convention 182.

Mr Hoy—The government has that under active consideration.

Senator KIRK—What does that mean? How active? When did you begin this active consideration, and when is it likely to end?

Mr Hoy—The government is seeking the advice of relevant Commonwealth ministers as to whether Australian law and practice enables that convention to be ratified.

Senator KIRK—When was that advice sought from ministers?

Mr Hoy—Recently.

Senator KIRK—On what date?

Mr Hoy—I cannot tell you the date. I do not know.

Senator KIRK—Would you take that on notice for us.

Mr Hoy—Yes.

Senator KIRK—Perhaps you could tell us—you may have to take this on notice too—when the letter, or whatever the correspondence was, specified that they would like the response by, in relation to the advice.

Mr Hoy—I am not sure there was a particular date.

Senator KIRK—Some time frame must have been set in it.

Mr Hoy—The government is keen that action be taken expeditiously to ratify this convention.

Senator KIRK—What would be your definition of ‘expeditiously’?

Mr Hoy—As soon as possible.

Senator KIRK—What is the position of the government in relation to convention 155?

Mr Hoy—The position of the government is that it will give consideration to ratifying that convention if it remains substantially unchanged following the International Labour Conference which is currently under way in Geneva.

Senator KIRK—Did I hear you correctly, that at the conclusion of this Geneva conference further consideration will be given to whether or not there are any changes? Is that what you are saying?

Mr Hoy—The government position is that if it is substantially unchanged following this conference we will give consideration to its ratification.

Senator KIRK—Again, any sort of time frame?

Mr Hoy—The conference will conclude on 19 June.

Senator KIRK—So consideration will be given, following the conference?

Mr Hoy—Yes.

Senator KIRK—Is it the case that Australia recorded the only vote against recommendation 194, the list of occupational diseases, at the 2002 International Labour Conference?

Mr Hoy—My advice is yes.

Senator KIRK—Why was it the only country that voted against it?

Mr Hoy—I cannot answer why it was the only country that voted against it. I am saying the Australian government instructed the delegate to vote against it.

Senator KIRK—Why was the delegate instructed to vote against it?

Mr Hoy—The government did not make its reasons public at the time.

Senator KIRK—For the benefit of committee members who might not be aware of what recommendation 194 refers to, could you give us more information about the list of occupational diseases?

Mr Hoy—We do not have the list with us.

Senator KIRK—So you are not going to be able to shed any light whatsoever on why it was that it was decided that Australia would be the only country that would vote against this list. There must have been something quite exceptional.

Mr Hoy—I cannot answer as to why it was the only country. I do not know what was in the minds of other countries. All I can do is tell you what the government's position was.

Senator KIRK—Who gives the instructions to the delegate at the conference?

Mr Hoy—The minister.

Senator KIRK—Is that provided in a written or oral form? I am just trying to understand the process.

Mr Hoy—It varies.

Senator KIRK—And in this case?

Mr Hoy—I think it was oral advice.

Senator KIRK—So there would be nothing in writing as to why it was that the vote was recorded in this way?

Mr Hoy—I am advised that there was nothing in writing.

Senator KIRK—If there is nothing in writing, nobody is going to have any knowledge about why it was—the minister will be the only person with the knowledge, and the delegate. Is that correct?

Mr Hoy—It was the minister's decision to direct the delegate as to how the delegate should vote.

Senator SHERRY—There was not a media release on this occasion?

Mr Hoy—No.

Senator SHERRY—It was not in the public interest?

Mr Hoy—I have no comment on that.

Senator WONG—Given your answers to Senator Kirk, do I understand that we are the only country that voted against the listing of occupational diseases—recommendation 194—but there is nothing on the public record to indicate why?

Mr Hoy—I am not aware of anything.

Senator KIRK—What are the implications of our voting against this list—what follows from that? If we have not signed on to the list—

Mr Hoy—I am advised that there are no implications. It was not a vote on a treaty.

Senator KIRK—If there were no implications, why was it necessary to put it to a vote. If other countries had voted in favour—

Mr Hoy—I cannot answer as to why it was put to a vote. That is a matter for the ILO.

Senator KIRK—Perhaps I can ask the minister. I am sorry that you were not here before, Senator Alston. We are asking questions about a vote that was taken at the 2002 International Labour Conference in relation to recommendation 194, List of occupational diseases, and we

were told that Australia is the only country that voted against that. We are just trying to get some kind of idea as to the reason why that would have been the case.

Senator Alston—I will certainly relay your question to the minister and see whether he is able to enlighten you. I am not sure whether anything was said at the time of the vote that might be of interest but, in any event, I will get you what I can.

[6.08 p.m.]

CHAIR—Are there any further questions on 2.1, Workplace relations policy and analysis? There being no further questions, we will move to 2.2, Workplace relations implementation.

Senator WONG—At the outset, Dr Boxall, you could assist me in understanding exactly how these figures are arranged. There is a specific output under this outcome for advocacy, is there not?

Dr Boxall—That is correct.

Senator WONG—I am not going to open up the discussion we have already had, but there appears to have been quite extensive advocacy activity going on under output 2.1.

Dr Boxall—That is correct.

Senator WONG—Can you explain to me how that is organised and allocated?

Dr Boxall—The advocacy unit is an output under 2.2—you are probably reading from the same page, page 41—and the advocacy team sometimes does advocacy on cases of interventions; sometimes we hire outside assistance.

Senator WONG—We have had quite a bit of discussion about various interventions and so forth, which appear to come under output 2.1. What is the distinction? When does it come under 2.2.1 and when does it come under output 2.1?

Dr Boxall—Under output 2.1, as we have mentioned from time to time, we advise the minister or the minister requests advice on interventions in the public interest. We provide that advice, and the bulk of that advisory work is done under output group 2.1.

Senator WONG—What is 2.2.1?

Dr Boxall—That is the advocacy team, and that is outlined—

Mr Hoy—That team provides services across outcome 2.

Senator WONG—I appreciate that. I am not suggesting you are doing anything wrong; I am just trying to clarify what is the dividing line. Is it the case that, where it is interventions in the public interest that have a broader policy impact, it is costed under 2.1?

Mr Hoy—It is not as scientific as that. That advocacy, 2.2.1, covers the employee expenses for the advocacy team. It provides a service to the other output groups on page 41. If it relates to broader workplace relations policy framework matters, it is dealt with under output group 2.1. If it deals with matters in the public sector, it is covered under output 2.2.2.

Senator WONG—Let us start at the beginning: the \$730,000 is the salary and oncosts associated with Mr Cole's work; is that right?

Mr Hoy—Yes.

Senator WONG—They obviously did work across both 2.1 and 2.2.2?

Mr Hoy—Yes.

Senator WONG—Is that costed back to those two separate outputs?

Mr Hoy—What do you mean by ‘costed back’? What aspect?

Senator WONG—I am trying to clarify what of their work is costed to output 2.1?

Mr Hoy—We do not internally charge for services, if that is what you mean.

Senator WONG—I understand that. We have had that discussion before. But we still have an appropriation in relation to 2.1, and we have already had significant evidence today about advocacy work that is engaged in pursuant to that output. That is correct, isn’t it?

Mr Hoy—That is correct.

Senator WONG—How is that money in 2.1 allocated to that advocacy work?

Mr Hoy—It is not specifically allocated.

Senator WONG—What do the figures mean then?

Mr Hoy—Which figures are you talking about?

Senator WONG—The figures under 2.1, given that some of that money must relate to advocacy work and interventions, must it not?

Mr Hoy—Mr Cole’s unit provides a service to that output group, but it is not costed back in the way that you are suggesting. We do not internally charge each other for particular services.

Senator WONG—Is there any money in the estimates for 2.1 which is allocated to advocacy and associated work?

Dr Boxall—Not necessarily. The way the appropriation goes, as on page 43, is that there is \$17.856 million for output group 2.1, and that is to fund output group 2.1 to contribute to outcome 2.

Senator WONG—Is there a breakdown of that \$16 million et cetera or is that in the portfolio statement?

Dr Boxall—That is the amount of money which is allocated to that group, which covers wages and salaries, their share of property rent, overheads and things like that which are charged out.

Senator WONG—Is that only salary costs? Is that only those costs that you have referred to—operating costs, one would say?

Dr Boxall—No, it is similar to the answer we gave earlier, in the case of the interim task force. That is the total price which is paid to mobilise output group 2.1, which includes wages and salaries plus oncosts, plus their share of rent, computers, depreciation and other overheads like that. So it is the total cost of them.

Senator WONG—Is the advocacy which we have had an extensive discussion about under output 2.1 engaged in by Mr Coles’s group only?

Dr Boxall—No.

Senator WONG—So there are people, whose costs would be under this output, who would be engaged in this advocacy?

Dr Boxall—Yes. Part of this \$17.856 million for next financial year will cover the cost of legal services to conduct some of the advocacy that we have just been talking about.

Senator WONG—But that is a different issue. As I understand it, what you are talking about there is briefing people outside the department. Is that right?

Mr Hoy—That is correct.

Senator WONG—How much is actually budgeted for briefing outside counsel?

Mr Hoy—What I can do is to give you the average expenditure this year on that. It is approximately \$1.2 million to \$1.3 million.

Senator WONG—Between \$1.2 million and \$1.3 million?

Mr Hoy—Yes, because it is getting near the end of the financial year.

Senator WONG—That is for the financial year to date?

Mr Hoy—Yes.

Senator WONG—And that is across both—

Mr Hoy—That is across all of outcome 2.

Senator WONG—What is your projected estimate for expenditure for 2003-04?

Mr Hoy—On that matter?

Senator WONG—On that issue, in relation to that expenditure only.

Mr Hoy—It would be about the same thing.

Senator WONG—Over a million dollars?

Mr Hoy—Yes.

Senator SHERRY—Does the cost in 2.2.1, Advocacy, include any outsourced advocacy at all or is it all internal?

Mr Cole—That reflects the running costs of the advocacy team, which is handling some of the interventions in the commission and some of the—

Senator SHERRY—I understand that. Is any of this cost subcontracted outside the department?

Mr Cole—No. None of that expenditure relates to any outsourced activity.

Senator WONG—Just to clarify this, Dr Boxall or Mr Hoy: the \$1.3 million to which you have referred comes under 2.1?

Mr Hoy—Yes.

Senator WONG—Is there any allocation for that under 2.2?

Mr Hoy—No.

Senator WONG—With reference to output 2.2.1, Advocacy, what are the criteria for government interventions and appearances that you operate under?

Dr Boxall—In what respect, Senator?

Senator WONG—What criteria do you apply in order to determine whether or not you should intervene in a matter?

Dr Boxall—I think this goes to the issue we were discussing. If the minister considers it is an issue that requires intervention in the public interest, then it is carried forward.

Senator WONG—Mr Cole, do you have carriage of most of the interventions? I appreciate that you probably brief a number of them. That is not the question. Are you the person who has carriage of them?

Mr Cole—The interventions essentially fall into two categories. There are interventions which I think may fairly be described as of an intrinsically legal character: they go to matters of the legal interpretation of the Workplace Relations Act and how various courts and tribunals may themselves have interpreted the act. It is not the role of the advocacy team to handle those cases.

Other interventions go to the government's perception as to where the public interest lies in respect of broader workplace relations policy issues, and, over a period of time, the majority of those interventions are handled by departmental advocates on the government's behalf. As to who will handle a particular case—whether it will or will not be handled in-house, so to speak—that is a matter that is resolved as need be with the minister.

Senator WONG—I will go back to your two categories. The second category is the one on which there was some discussion under the other output—that is, interventions which the government considers are justified in the public interest. I think you said that, in most of those cases, a departmental advocate would be involved.

Mr Cole—I think all the cases relate to the public interest, but what I said was that the second category is where the government sees public interest issues involved from a broader workplace relations policy perspective, distinguishing that—in terms of my dichotomy—from cases that involve issues of an intrinsically legal character.

Senator WONG—But, again, that departmental advocate would come from your advocacy group?

Mr Cole—Not without exception. Handling advocacy on behalf of the government is not confined in-house to members of the advocacy team, but it is very unusual that significant matters would be handled by departmental officers outside the advocacy team in the second category that I look after.

Senator WONG—How often would it happen?

Mr Cole—A present case relates to a motion of change in redundancy—a test case. An officer is appearing as the advocate in that case. He is not a member of the advocacy team but is a person with reasonable—in fact, quite substantial—advocacy experience in his previous employment. It is somewhat exceptional for a major case in that category to be handled by a

departmental officer who is not on the advocacy team, but there is nothing unusual or unexpected about it happening now and then.

Senator WONG—With regard to the first category, to use your broad descriptions of the types of interventions—that is, interventions more of a legal character—by whom are they handled?

Mr Cole—The broad carriage of those matters rests with the Workplace Relations Policy and Legal Group. As you are aware, there are two so-called legal and policy branches, and one or other of those branches would have the broad responsibility for the carriage of the matter, including making arrangements for briefing counsel if counsel is engaged, which would normally be the case.

Senator WONG—Would that be Mr Hoy's group?

Mr Hoy—Yes.

Senator WONG—And which other group?

Mr Cole—There are two legal and policy branches within Mr Hoy's group, and Mr Smythe, as chief counsel, has a very important role in connection with these matters as well.

Senator WONG—I am a little confused here. You say that interventions of a legal character would go to one of the two legal branches within the Workplace Relations Policy and Legal Group. Is that right?

Mr Cole—Yes. One of those branches would tend to have carriage of the matter.

Senator WONG—In general, would outside counsel be briefed?

Mr Cole—Yes, generally that would be the case.

Senator WONG—What is the distinction between what goes to you in your group, Mr Cole, and what goes to Mr Hoy's group?

Mr Cole—The matters that are handled by the advocacy team are matters that may be handled by lay advocates and are matters that are not intrinsically of a legal nature, but they may at times involve certain legal issues. It is a rare case that does not raise some legal matter. Nevertheless, the broad dichotomy, I think, is correct that some cases are intrinsically legal and other cases are not intrinsically legal but relate to broader workplace relations policy issues.

Senator WONG—Remind me again: the intrinsically legal go to Mr Hoy and you keep the others. Is that how it works?

Mr Cole—That tends to be the—

Senator WONG—It is a shorthand way of describing the characterisations you used.

Mr Cole—That is a fair enough characterisation.

Senator WONG—Mr Hoy, in your 'intrinsically legal' category, how many referrals through to your group have there been this financial year?

Mr Hoy—Previously, we worked through the list—Mr Smythe read out all the items that we had been involved with this financial year.

Senator SHERRY—Who is one and who is two?

Mr Hoy—B1 and B2?

Senator SHERRY—That is your description, not ours!

Senator WONG—Which are you, Mr Hoy?

Mr Hoy—I am B1.

Senator SHERRY—Mr Cole, you are B2?

Mr Cole—B2.2.1.

Senator WONG—I think we should have a dinner break soon.

CHAIR—That may be a good point to end on.

Proceedings suspended from 6.26 p.m. to 7.42 p.m.

CHAIR—We will recommence.

Mr Symon—Senator Sherry asked me a question at about 4.15 p.m. regarding a departmental email. I can confirm that the answer that I gave you was essentially correct—that is, DEWR does not block incoming emails to nominated officers. There are, however, some specific exemptions covering emails which have coarse language in their titles, which are spam—I assume you know what spam is—or which contain certain types of attachments that we know are prone to viruses in the department and would therefore infect the departmental email system. In the event that a valid email is wrongly blocked, which happens very rarely, the email would subsequently be allowed through on request.

Senator SHERRY—Thank you.

CHAIR—We are considering output 2.2.

Senator KIRK—I have some questions in relation to 2.2.2, which I understand is now to be called ‘Industry and Australian Government employment advice’ and was formerly ‘Commonwealth public sector employment’. Is that correct?

Dr Boxall—Yes.

Senator KIRK—I understand that on 20 December last year the department had an agreement certified under section 170LJ of the act; is that correct?

Dr Boxall—That is correct.

Senator KIRK—Is that the department’s preferred mode of agreement making under section 170LJ, or does it not have a preference in that regard?

Mr Symon—The department put both options to the staff during the roughly six-month process of finally coming to a certified agreement.

Senator KIRK—You said ‘both options’. What was the other option?

Mr Symon—LK and LJ were both put to staff.

Senator KIRK—The staff expressed a preference for LJ then; is that correct?

Mr Symon—The staff voted for an LJ agreement, yes.

Senator KIRK—What was the vote?

Mr Symon—The vote as far as the LJ was concerned, off the top of my head, was 68 per cent, but I will confirm that figure.

Senator KIRK—If you could take that on notice, that would be fine. You said that both options were put to staff, so there was no preferred option put by the department and both were equally—

Mr Symon—Both options were put and the staff had the opportunity of voting, as it turns out, for both options.

Senator KIRK—And the department was happy enough with that outcome?

Mr Symon—The department put both the options forward.

Senator KIRK—Perhaps you could assist me. I am having some difficulty trying to understand these outputs here. I understand this output has taken over some functions that were formerly carried out under 2.2.4; is that correct? Could you just explain to me how that has come about? I do not quite follow that.

Ms Bennett—As explained on page 26, there were two areas: one was referred to as the ‘Commonwealth public sector employment’ and the other was an area called ‘Industry’. They are now referred to as ‘Industry and Australian Government employment advice’.

Senator KIRK—So the two have just been combined? Is that what has occurred?

Ms Bennett—Yes, as an output.

Senator KIRK—With output 2.2.4, just looking at the budget figures on page 41, I see that the budget has been reduced from \$23.473 million to \$19.876 million, so there has been a reduction of some \$3.6 million. But I also see that the budget for the output has gone from \$4.36 million to \$17.12 million.

Ms Bennett—I can explain 2.2.2. That also includes \$10.1 million, which is set out in the measures for the department to progress work on the implementation of the building industry royal commission.

Senator WONG—Was that \$10.1 million?

Ms Bennett—\$10.1 million.

Senator KIRK—Sorry, that is under which output? I am having difficulty following this.

Ms Bennett—Output 2.2.2 includes some money that was taken from 2.2.4 and a further \$10.1 million that was allocated in the budget that is set out in the measures on page 40.

Senator KIRK—I see. Whereabouts is it on page 40?

Ms Bennett—At the top, where it says ‘Royal Commission into the Building and Construction Industry: Initial response’.

Senator KIRK—So that accounts for that differential, then?

Ms Bennett—Yes.

Senator KIRK—Will output 2.2.4 take over the output formerly called 2.2.5, ‘Sectoral reform and facilitation’?

Ms Bennett—Yes.

Senator KIRK—So it just absorbs it and takes it over?

Ms Bennett—My colleague has confused me. Could I hear the question again?

Senator KIRK—Is it correct that output 2.2.4 is now absorbing what was 2.2.5, ‘Sectoral reform and facilitation’?

Ms Bennett—No.

Senator KIRK—So is it 2.2.2 which is absorbing that?

Ms Bennett—It is 2.2.2.

Senator KIRK—I had a few further questions in relation to the new ‘Industry and Australian Government employment advice’. I wonder if you could inform the committee what the department’s role is in Commonwealth employment. For example, does the department assign staff to monitor, advise on or participate in any way in the industrial relations activities of other departments or agencies?

Ms Bennett—Our department provides advice to other agencies on implementing the policy parameters for Australian government employment.

Senator KIRK—To all of the other agencies across government?

Ms Bennett—Yes.

Senator KIRK—So there is no point in my asking for a list, because it is all other agencies; is that correct?

Ms Bennett—They come to us for advice.

Senator KIRK—What sort of advice is provided?

Ms Bennett—If they are in the process of negotiating an agreement, they will come to us to assess that it conforms with the policy parameters.

Senator KIRK—What is the nature of the advice that you provide? Do you provide just verbal advice or written advice as well?

Ms Bennett—In most cases, we confirm that advice in writing. There may be follow-up telephone calls if further information is needed, but in most cases the advice is written.

Senator KIRK—I am just trying to work out which staff are involved in this. Are there staff who are specially allocated to provide this sort of advice?

Ms Bennett—There are staff that do this work, yes.

Senator KIRK—How many persons are involved in that? Is it a large component of the work force?

Ms Bennett—The area that looks after this looks after a number of other industry areas as well. In that whole area, there are 20 or 22 people. Government employment is one area with other activities. It is not clear exactly what the staff ratios are and who would work on what at any point in time.

Mr Symon—I would like to correct the previous answer I gave you. I said I thought there was a 68 per cent vote on the LJ. The figure was actually 69 per cent. That is the correct answer.

Senator KIRK—Thank you.

Senator WONG—Can we go back to the Commonwealth employment issue—that is, the work of DEWR staff in advising departments on the way those departments handle their industrial relations practices. You said there are 22 people in this particular section of the department; is that right?

Ms Bennett—In an area where this is one of the roles, the total number of staff is 22. They also look after some other issues.

Senator WONG—What is the name of this area?

Ms Bennett—The public sector team.

Senator WONG—What else do they do apart from public sector work?

Ms Bennett—Public sector work can include issues such as monitoring developments, as we discussed earlier, in health, education, community service and local government. They are publicly funded areas.

Senator WONG—Is this something they did prior to the release of Dr Nelson's review?

Ms Bennett—That was done in the output beforehand—

Senator WONG—How long have they been looking at those sectors which are the subject of public funding, such as health and community services?

Ms Bennett—As long as I have been there.

Senator WONG—Can we go back now to the Commonwealth public sector. Of the 22 people, are you able to give us an indication of how many of those persons work on Commonwealth public sector activities—that is, advising other departments about how they run their IR strategies?

Ms Bennett—It fluctuates depending on the cycle—

Senator WONG—Can you give a range?

Ms Bennett—It depends on the cycle of agreements, whether there are a lot that need attention coming in at the same time or whether there are just a few.

Senator WONG—Are we talking five of them, 10 of them or 20 of them?

Ms Bennett—Ten to 15.

Senator WONG—What do they do? If the agreements are pending negotiation, do they work with the relevant department to try and assist them?

Ms Bennett—Agencies contact our department as they develop their certified agreements and if there are issues that they would like advice on in relation to policy parameters. It is a requirement under the policy parameters that, before the agreements that they are proposing are finalised, they seek our advice to confirm that they meet the policy parameters.

Senator WONG—So these people have a proactive role as well?

Ms Bennett—I do not understand what you mean.

Senator WONG—The example you gave is that departments or agencies may contact you requesting advice. Do these people also go out and, without being asked by departments, offer their views about what a sensible industrial relations strategy might be for that department?

Ms Bennett—No.

Senator WONG—These people only act if there is a request from the agency or department for advice?

Ms Bennett—Yes.

Senator WONG—What about the building code of practice? Did this group have any involvement in developing that?

Ms Bennett—No.

Senator KIRK—Is there any policy advice that you give in relation to a preference between section 170LJ and LK agreements?

Ms Bennett—No.

Senator KIRK—So you are really just responding to whatever questions are being asked?

Ms Bennett—As initiated by the agencies, and when their agreement is nearing completion we assess that it meets the policy parameters.

Senator KIRK—Within the staff of 22, are those persons assigned to different specialist sectors or do they just answer whatever questions are asked of them when the advice is sought?

Ms Bennett—Work flows are managed within the unit as an issue arises, as you would expect.

Senator WONG—Are you suggesting there is no departmental position on whether an LJ or LK agreement is preferred; is that the case?

Ms Bennett—Am I suggesting it? I am saying that, no, we do not offer a view on whether there is a preference. Agencies come to us with their agreements. It is the content of the agreements themselves that we look at.

Senator WONG—So that decision is made at the agency level?

Ms Bennett—Yes.

Senator WONG—Dr Boxall, I now want to go to 2.2.4 and ‘Workplace relations services’, which I think on these budget estimates has been reduced by over \$4 million. Is that right or am I misreading that?

Dr Boxall—On page 41, it has moved from \$23.473 million to \$19.876 million. Your observation on page 41 that there has been a change in the order of \$3.5 million is correct but, as Ms Bennett was saying, on page 26 we note that some of the functions which were previously in 2.2.4 have now been moved to 2.2.2—

Ms Connell—Yes, that is part of the reason. There are a few reasons for the change in that.

Senator WONG—I wonder if you could clarify which functions have been moved from 2.2.4 elsewhere.

Ms Connell—Sorry, I will have to defer to Barbara Bennett.

Senator WONG—Ms Bennett, I do not think you should leave!

Ms Bennett—As for the neatness of the outputs, the functions still continued beforehand. It was the industry advice and general monitoring area that moved to put the private sector industries and the government sector as an industry together into the same output, because their work is very similar in the role of advising and monitoring what is happening.

Senator WONG—Workplace relations services has the funding for what I suppose you might call services that employees would have a particular interest in, such as WageLine and other such award enforcement issues; is that right?

Ms Connell—Yes, the WageLine service and education and state offices deliver those services.

Senator WONG—Does this budget involve a reduction in funding for those activities?

Ms Connell—No, there is no significant reduction in the activity budgets at all.

Senator WONG—In the context of a reduction of \$3.5 million to that output, is there a reduction in the funds to be applied to the delivery of the services that we have talked about—WageLine and analogous services for employees—for the purposes of enforcing awards?

Ms Bennett—I can assist you, Senator. If you take the \$3 million difference and you look at the fall for 2.2.4, you add three and then add 10 and it almost equals 17.

Senator WONG—I understand that, but that is for the building industry, isn't it? The \$10.1 million is for the building industry—

Ms Bennett—Yes, but with the combining of the functions that moved from 2.2.4 into 2.2.2 it almost equals the amount that is the gap.

Senator WONG—What I am asking is whether or not the disaggregated line item for 2.2.4 would show any reduction in budget allocation to WageLine and analogous services.

Ms Connell—The answer to your question is no; there has been no reduction.

Senator WONG—Ms Connell, you are from the OWS; is that right?

Ms Connell—No, I am from Workplace Relations Services.

Senator WONG—There is an Office of Workplace Services, isn't there?

Ms Connell—That relates to the state offices. There is a national office and there are state offices of workplace services, yes.

Senator WONG—They are state offices but funded by the department?

Ms Connell—Yes, that is correct. Mark Jasprizza runs that area.

Dr Boxall—If you want to ask a question on this area, Senator Wong, these are the people to ask.

Senator WONG—Yes, I am proceeding down that path, Dr Boxall. Is there any reduction in funding to any of the state offices under this budget?

Ms Connell—No, there is no reduction.

Senator WONG—Is there an increase?

Ms Connell—Not a significant increase, no.

Senator WONG—What is the budget allocation for OWS?

Ms Connell—The actual allocation for OWS has not been finalised as yet. It is part of this overall allocation within WRS.

Senator WONG—Then how can you indicate to me that there has been no reduction?

Ms Connell—There have been no plans to reduce the costing to the state offices.

Senator WONG—Is there a disaggregated breakdown of the \$19,876,000 for this outcome?

Ms Connell—It has not been finalised at this stage.

Senator WONG—When is that going to be finalised?

Ms Connell—It will be discussed with the branch and group managers and, as priorities are determined, the final costings will be arranged and allocated across the priorities.

Senator WONG—These are estimates for the 2003-04 year; is that right?

Dr Boxall—Yes. What is in the budget for 2.2.4 is the estimate of \$19.876 million, and that is disaggregated down to that level. There is no requirement in the budget papers to disaggregate below that.

Senator WONG—No, but this is estimates, and we are entitled to ask these questions about the budget estimates.

Dr Boxall—That is correct.

Senator WONG—I am asking when we are likely to know whether the Office of Workplace Services is going to be funded at the same level?

Dr Boxall—What Ms Connell said is that there are no plans to reduce funding for the Office of Workplace Services, and the final decision will be made in the next month or so.

Senator WONG—Presumably before the end of this month?

Dr Boxall—That is right. That is why I said ‘the next month or so’.

Senator WONG—But this might go beyond that?

Dr Boxall—It might be less than next month. It might be in the next three weeks.

Senator WONG—Who actually makes the decision as to the allocation within the output area of budgeting for particular activities? Is that the minister’s or the department’s decision?

Dr Boxall—The department makes the decision.

Senator WONG—So you make the decision?

Dr Boxall—Yes.

Senator WONG—There is no ministerial decision in relation to how that is allocated?

Dr Boxall—The department may or may not consult the minister, but basically this money has been appropriated at a disaggregated level and it is not appropriated at a level which is disaggregated further.

Senator WONG—In terms of considering the disaggregation of this particular area and how it might be divvied up between your various functions, have you had regard to what sorts of services and functions you think, for example, OWS will continue to offer in the forthcoming year?

Ms Connell—Yes, that would be part of the deliberations, of course.

Senator WONG—Is any change to the functions of OWS contemplated?

Ms Connell—We are looking at an educational service that would be provided through the states.

Mr Jasprizza—We are looking at enhancing some of our workplace advisory services, particularly the education function, by extending those to some extent to the states where we contracted our services.

Senator WONG—Is WageLine run through OWS?

Mr Jasprizza—Yes.

Senator WONG—Have you considered if there will be any changes to the nature of the service offered there?

Mr Jasprizza—No.

Senator WONG—There is unlikely to be any change?

Mr Jasprizza—No, apart from the usual ongoing ways of improving through efficiencies and so on. But no change is contemplated.

Senator WONG—Is there any reduction or downgrading of services being considered for OWS or your section of the department?

Mr Jasprizza—No.

Senator WONG—Obviously OWS works reasonably closely with the state departments, doesn't it?

Mr Jasprizza—Yes, we contract out some of our services to some state governments.

Senator WONG—In the context of that, has there been any discussion at the departmental level about the possible takeover of the unfair dismissal legislation?

Mr Jasprizza—No, not that I am aware of.

Senator WONG—Ms Connell, can we go back to your evidence about internal discussions regarding the allocation of that \$19-odd million. Are there documents setting out proposed allocations as between various aspects of your section?

Ms Connell—There are no finalised documents as yet, no.

Senator WONG—There are draft documents?

Ms Connell—There might be some draft documents, but they have not been compiled into any meaningful form as yet.

Senator WONG—What status are they?

Ms Connell—There will be some draft documents for some aspects of our activities, but they have not been finalised.

Senator WONG—They are not documents which are subject—I think on your evidence, Dr Boxall—to any necessary ministerial involvement, are they?

Dr Boxall—No. As I was explaining, Senator Wong, the money has been appropriated for outcome 2 and then the budget gives a breakdown to output level. The people within outcome 2.2.4, which is the subject of your questioning, will finalise the allocation of resources within that output. The whole idea is that they can produce the output. We are now in an outputs and outcomes budget regime, which the government has been in for about four or five years, where we focus on outputs and outcomes. It is up to managers to organise the resources to achieve those outputs and outcomes. What Ms Connell is saying is consistent with that.

Senator WONG—Are you prepared to provide any documents which can clarify the disaggregation of this particular component for us?

Dr Boxall—There are no documents to provide to you. If there were, they would be internal working documents which their managers would be using in order to allocate resources within output 2.2.4—in other words, to allocate the \$19.876 million.

Senator WONG—I can accept that you might not want to provide draft documents but, when they are finalised, surely it would be not unreasonable for those to be provided through the estimates process so we know exactly how much is being spent in each area?

Dr Boxall—That is right. That is what happens in the annual report: at the end of the year you report against your expenditure in the previous year. So we will report against that. We will report in our annual report to the effect of how the \$19.876 million was spent. That is the whole idea of this approach—

Senator WONG—Yes, I do understand. When are you likely to finalise these internal working documents for the purposes of this allocation?

Dr Boxall—As Ms Connell suggested, we are likely to finalise that within the next month or so.

Senator WONG—Perhaps we can deal with this again at the next estimates session?

Dr Boxall—Sure.

Senator WONG—Can I turn now to working women's centres. Could you provide us with the funding details for working women's centres in the budget?

Mr Jasprizza—Is this for next financial year or the current financial year?

Senator WONG—We will do the current one first.

Mr Jasprizza—In the current financial year, the department allocated \$839,000 to working women's centres.

Senator WONG—Is this allocation of funding to working women's centres done on an annual basis or on a six-monthly basis?

Mr Jasprizza—Generally it is done on an annual basis.

Senator WONG—What about this last financial year? Was it done on an annual or six-monthly basis?

Mr Jasprizza—A decision on the final funding had not been made until into the financial year, so there were funding arrangements put in place through to December and then for a further six months through to 30 June this year.

Senator WONG—But prior to that there had generally been an approach of 12-month contracts?

Mr Jasprizza—That is correct.

Senator WONG—Is it the case that, in relation to the current financial year, the centres were only given an initial assurance of six months of funding?

Mr Jasprizza—The initial assurance was for six months because a decision had not been made at that stage for the full 12 months.

Senator WONG—Could you advise me as to when they received that funding? When was the funding actually provided to them?

Mr Jasprizza—I cannot give you the exact date, but it was certainly prior to January 2003.

Senator WONG—Can no-one tell us the date when these centres were actually funded?

Mr Jasprizza—I cannot tell you the precise date.

Senator WONG—Can we get a month?

Mr Jasprizza—No, I cannot say for sure which month they were informed.

Senator WONG—Does anyone know here? Is there an officer here who could assist us?

Mr Jasprizza—No. I can give you an approximation. My recollection is that it would have been around October.

Senator WONG—So it was maybe three or four months into the financial year before they received what was only an initial funding allocation for six months taking them through to December?

Mr Jasprizza—Yes. It may have been marginally earlier than that, but I would have to confirm that.

Senator WONG—If you could. It obviously causes some operational difficulties for centres if they are only promised funding for a six-month period. Firstly, it creates some issues about long-term planning and, secondly, it creates difficulties if they do not receive that until four months into the six-month period. Was that a consideration that the department turned their minds to?

Mr Jasprizza—Yes.

Senator WONG—What was your view?

Mr Jasprizza—We do not give views, Senator. It was considered—

Senator WONG—Was this issue of the funding of the working women's centres the subject of advice to the minister?

Mr Jasprizza—Yes.

Senator WONG—In relation to the six-month period, when was that advice provided?

Mr Jasprizza—Again, I do not have that precise information with me.

Senator WONG—Generally, would you have provided the advice about the ongoing funding of the centres prior to the expiry of a particular funding period? Would that be the normal practice?

Mr Jasprizza—Generally speaking, yes, but I cannot be precise about last financial year.

Senator WONG—I appreciate we are talking in ballparks here because we do not have that information, but is it likely the minister was advised about the issue of working women's centres funding prior to July 2002?

Dr Boxall—Senator Wong, we cannot go to the nature of advice—

Senator WONG—I am not asking the nature of the advice.

Dr Boxall—I was just about to say that we cannot go to the nature and timing of advice to the minister.

Senator WONG—You can go to the timing.

Dr Boxall—These are issues between the minister and the department.

Senator WONG—Dr Boxall, I am not asking about the content of the advice. I think I am entitled to ask about the timing of the advice. I think Mr Jasprizza said he cannot recall the time at which this issue was first the subject of advice to the minister's office; is that right?

Mr Jasprizza—Yes, I cannot remember the date.

Senator WONG—Can you remember approximately when it was?

Mr Jasprizza—I would only be guessing.

Senator WONG—Do you think it was before or after 30 June 2002?

Mr Jasprizza—No, I cannot answer that.

Senator WONG—What do you mean by that?

Mr Jasprizza—Because I would be guessing, and I do not think that is wise.

Senator WONG—Perhaps you could take on notice the issue of when the minister was first advised about the expiry of funding and presumably the ongoing request for funding for the 2002-03 financial year. Has there been any increase in the net funding provided to the working women's centres in the last five years?

Mr Jasprizza—In the last three years there have been the same funding levels. Prior to that, it was slightly less but that was because of adjustments for the GST. The actual allocation in 1999-2000 was \$778,000.

Senator WONG—Sorry, what was it last year?

Mr Jasprizza—It was \$839,000—precisely, \$839,845.

Senator WONG—Can we go to the second lot of funding for this financial year, which was presumably for January to June 2003?

Mr Jasprizza—Yes.

Senator WONG—Are you able to let us know when the centres were advised of that bundle of funding?

Mr Jasprizza—I think I have already answered that.

Senator WONG—No, I asked you about the first six months. I am asking about the second six months now.

Mr Jasprizza—As I recall, you asked me when they found out about the last six months.

Senator WONG—Yes, I was referring to the six months July to December. If we have misunderstood each other, perhaps we will need to go back. When were the centres advised of the funding for July to December 2002?

Mr Jasprizza—My recollection was that it was prior to the end of the financial year.

Senator WONG—You have agreed they did not receive that funding until possibly around October 2002—

Mr Jasprizza—No, they actually received the funding immediately. In other words, they did not go at any stage without funding.

Senator WONG—Your answer about October or November relates, then, to the second six months of funding?

Mr Jasprizza—That is correct.

Senator WONG—Is there a standard contract associated with working women's centres funding?

Mr Jasprizza—Yes, there is.

Senator WONG—Is that the same across all centres?

Mr Jasprizza—Generally speaking, yes.

Senator WONG—Is there a clause in the standard contract that requires that the centres promote the government's workplace relations agenda?

Mr Jasprizza—I do not have a copy of the contract with me, but in a general sense, yes. For example, they would be promoting options under the Workplace Relations Act.

Senator WONG—Was this contract varied in this financial year?

Mr Jasprizza—Generally before we re-enter into the contracts, we run it past our legal area. It is quite likely that there were some changes to the previous year.

Senator WONG—Is it the case that there was a proposal in December 2002 to vary the contract to replace the words 'workplace reform as part of providing community education on federal workplace relations' with the words 'the government's general workplace relations agenda'?

Mr Jasprizza—I cannot answer that unless I have a look at the contracts.

Senator WONG—Does anyone here have copies of the contracts?

Mr Jasprizza—No.

Senator WONG—If the contract were altered, whose decision would that be?

Mr Jasprizza—It would be done in consultation with me and with the group manager.

Senator WONG—Do you have any recollection of an alteration being proposed to the working women's centres contracts in December?

Mr Jasprizza—I recall there were some changes made, because, as I said, we normally get our legal area's advice about the contract to ensure that it is updated as necessary. I recall there were some changes to it, but I cannot be precise about those changes.

Senator WONG—Was there any decision with the minister's office regarding alterations to the contracts?

Mr Jasprizza—No.

Senator WONG—Did the contracts in any way discuss federal unfair dismissal?

Mr Jasprizza—Not that I recall. It could be that this is some of the advice that the working women's centres may provide to employees or they may refer those matters on to the Industrial Relations Commission, so there could be some reference to it.

Senator WONG—Mr Jasprizza, are you telling me that if the contracts were varied that would have been your decision but you cannot recall any such variation?

Mr Jasprizza—I cannot be precise about the variation.

Senator WONG—Do the words that I read out before jog your memory?

Mr Jasprizza—I recall that there is something in there about promoting the workplace relations reforms—

Senator WONG—The government's workplace relations agenda. Do you recall that being inserted?

Mr Jasprizza—No, not the precise words. I have nothing further to add at this stage.

Senator WONG—Did you have any discussions with other personnel in the department regarding an alteration to the working women's centres contracts?

Mr Jasprizza—It may be that there were some discussions with people in my area but, other than that, no—apart from the legal area.

Senator WONG—Regarding the change that I outlined, is there a particular policy the department has regarding requiring recipients of Commonwealth funding to promote the government's workplace relations agenda?

Mr Jasprizza—Not that I am aware of.

Senator WONG—Is that a standard requirement that you put into your funding agreements, Dr Boxall?

Dr Boxall—Not that I know of.

Senator WONG—What does ‘promoting the government’s workplace relations agenda’ mean?

Mr Jasprizza—It would mean promoting the choices available under the Workplace Relations Act.

Senator WONG—For AWAs as a choice, over awards et cetera?

Mr Jasprizza—Not a choice over awards; simply a choice amongst a range of options.

Senator WONG—I do not think you have disagreed that what I have read is a clause in the contract: under that contract, therefore, you would be requiring working women’s centres to promote AWAs?

Mr Jasprizza—Yes, as part of the options available under the Workplace Relations Act.

Senator WONG—What about moving from the state to the federal system? That is part of the government’s agenda too, isn’t not?

Mr Jasprizza—It is certainly nothing that we have discussed with the working women’s centres.

Senator WONG—You have agreed that there is an addition in their contract now which requires them to promote the government’s workplace relations agenda. Isn’t part of that agenda encouraging people to move to the federal system?

Mr Jasprizza—I cannot answer that, because I do not work in the policy area.

Senator WONG—You do not know what the government’s workplace relations agenda is?

Mr Jasprizza—As I have indicated before, my interpretation of promoting the government’s agenda is to promote to—or at least make available to—employees the options available under the Workplace Relations Act.

Ms Connell—We encourage the centres to provide advice and information across the whole gamut of information in the act. There is no issue with them pushing one over the other.

Senator WONG—One of the AWA templates that we discussed earlier today involves the cashing out of annual leave. Is that part of the government’s workplace agenda?

Dr Boxall—Mr Jasprizza has answered that question on behalf of the department. He said that his interpretation of promoting the government’s workplace relations agenda is making available and promoting choice as under the Workplace Relations Act.

Senator WONG—I am asking whether that means you will require centres to promote options such as cashing out of annual leave?

Dr Boxall—The answer to that is no. Mr Jasprizza just outlined that it is promoting choice between AWAs and collective agreements. He did not make reference to promoting certain things within AWAs.

Senator WONG—I can accept that. Is there anything else that you say this funding now requires of working women’s centres in terms of promoting the government’s workplace relations agenda?

Dr Boxall—No. Mr Jasprizza has answered on behalf of the department.

Senator WONG—I am asking if that is the definitive response—

Dr Boxall—That is the departmental answer. He has just given the department's answer.

Senator WONG—Just to clarify, Dr Boxall, are you saying that the only string attached to the working women's centres funding, in terms of promoting the government's workplace relations agenda, is the one that stipulates that they ensure that they promote both AWAs and collective agreements?

Dr Boxall—No, I am saying that there are no strings attached. I am saying that in Mr Jasprizza's answer to the question about what the department's interpretation of working to promote the government's reform agenda is, he made reference to the issue of choice in agreement making, with AWAs and collective agreements.

Senator WONG—Dr Boxall, you say there are no strings attached: I invite you to consider the contracts that have been provided and I would suggest to you that they include this requirement to promote the government's workplace relations agenda. Surely that is a pretty big string.

Dr Boxall—I do not think it is a string.

Senator WONG—What do you call it then, Dr Boxall?

Dr Boxall—That is part of the contract. The government is distributing money and the government signs a contract. If that change were made, as you outlined, that is just one clause in a contract of a number of clauses.

Senator WONG—I agree with that, and the contract imposes certain obligations on the centres. So, as part of their obligations in return to the government—in return for receiving this funding—they are required to promote the government's workplace relations agenda. Is that right?

Dr Boxall—Yes—well, as you have described it.

Senator WONG—Now I am a bit confused. Maybe I do not understand what working women's centres do, but certainly in South Australia one of the things they would do would be to represent women who had been unfairly treated in their workplace, could not afford a lawyer and were not members of unions. I am a little confused as to how, for example, if someone was sexually harassed at work there would be any relevance in discussing having an AWA with them.

Mr Jasprizza—The contracts provide for a range of services to be offered by the working women's centres, including providing advice to women in disadvantaged positions about a whole range of matters. They act as a referral service for those cases where, as you provide an example, this might occur. So there are a whole range of services that, as part of the contract, are provided by the working women's centres. They do not just focus on promoting workplace reform.

Senator WONG—No. I am just wanting to clarify this. You would agree, would you not, that working women's centres would deal with complaints from women who have been underpaid, perhaps sexually harassed, dismissed unfairly—that is a reasonably typical profile of the sort of work they do. Would you agree with that?

Mr Jasprizza—Yes.

Senator WONG—How are AWAs relevant to that work?

Dr Boxall—What is the point of that question, Senator Wong? I do not understand it.

Senator WONG—The point of the question is that this is the requirement that the government has put in place—or the requirement that the department has put in place, on Mr Jasprizza's evidence; the minister has had no involvement according to his evidence—as a requirement to receive funding.

Dr Boxall—My understanding is that there is a contract with a large number of clauses in it, and there are a number of services that the working women's centres provide. You have outlined just some of them. It may well be that some woman approaches a working women's centre and asks for advice on a certified agreement or an AWA.

Senator WONG—Mr Jasprizza, in your experience of the work of working women's centres, how many of the sorts of inquiries that Dr Boxall has outlined do they deal with?

Mr Jasprizza—Sorry, I missed that.

Senator WONG—How often do women approach working women's centres, asking for advice about AWAs or certified agreements?

Mr Jasprizza—I cannot say precisely how many may do that. But I think the point here is that it is more about ensuring that there is no inconsistency with the workplace relations policy. For example, if there is an opportunity to offer some assistance about the choice of agreements, then those options should be offered.

Senator WONG—Can we turn now to the forthcoming financial year.

Senator SHERRY—I just have one point I want to ask about. You indicated that \$800,000 or \$8 million—I have forgotten the sum—was allocated in the last financial year?

Mr Jasprizza—It was \$800,000—\$839,845 precisely.

Senator SHERRY—You said that was allocated. What amount will be spent?

Mr Jasprizza—I would expect that that amount will be spent.

Senator SHERRY—Okay, thanks.

Senator WONG—These centres are meant to be independent of the government, aren't they, Mr Jasprizza?

Mr Jasprizza—Yes, they are not operating under the Public Service Act. Their employees are not employed under the Public Service Act. However, they are still providing a service for which we pay.

Senator WONG—And the price tag is promoting the government's workplace relations agenda?

Mr Jasprizza—No, there is a contract which provides for a range of services for them to provide.

Senator WONG—Okay, now, can we deal with the forthcoming year. What is the allocation to working women's centres?

Mr Jasprizza—The final allocations for next financial year have not been settled yet. They will be settled as part of the arrangements for this outcome.

Senator WONG—So it is 2 June today and you are not able to tell me how much money the government is going to provide, if any, to working women's centres for the coming financial year—is that right?

Mr Jasprizza—A decision has not been made one way or the other for funding for the next financial year.

Senator WONG—Is it possible they will not receive any funding?

Mr Jasprizza—That is a hypothetical question, Senator.

Senator WONG—Are there any plans to reduce the funding allocation to working women's centres?

Dr Boxall—We have yet to decide. We cannot speculate on what the thought process is—whether we are planning to recommend an increase, remain the same or reduce it.

Senator WONG—In 3½ or four weeks, the funding for these centres from the Commonwealth will run out.

Dr Boxall—We have just explained that the detailed allocation of the funding for this output, 2.2.4, will be settled in the next month or so.

Senator WONG—Yes, I understand that. How are the centres expected to operate when at this time you cannot even tell them if their funding is going to be extended beyond 30 June?

Dr Boxall—The decision is made in the budget to make the allocation and we will decide before 30 June.

Senator WONG—I would like to just go back to the contract clause issue. Do you monitor compliance with the contracts?

Mr Jasprizza—Yes, we have performance indicators and we get reports each quarter. We have telephone hook-ups and discussions with the working women's centres about their performance.

Senator WONG—Any problems with the performance of the centres?

Mr Jasprizza—Some of the centres meet the performance indicators that we set, but that is not the case in every single centre.

Senator WONG—Can you provide copies of those reports for the current financial year?

Mr Jasprizza—Yes. I would have to get some advice about whether they are commercial-in-confidence arrangements.

Senator WONG—I can appreciate that. Can I indicate that, if it assists, you might delete some aspects of which particular centres we are dealing with. But we are talking about Commonwealth funds here, and I would have thought that, in the interests of accountability, it is not unreasonable to provide reports about how those funds are being expended and whether the taxpayer is getting value for money in terms of the expenditure.

Mr Jasprizza—I will get some legal advice on that.

Senator WONG—Legal advice?

Senator SHERRY—When does the funding finish?

Mr Jasprizza—30 June.

Senator SHERRY—There must be some centres inquiring about whether there will be funding for the next financial year, surely?

Mr Jasprizza—I think we have already answered the question regarding funding next financial year.

Senator WONG—Yes, they have not decided.

Senator SHERRY—I know you have not decided, but the centres must be inquiring, surely, about whether they will be funded for the next year?

Mr Jasprizza—That is correct.

Senator SHERRY—It is a bit uncertain, isn't it?

Mr Jasprizza—I have nothing to add to the answer that I have already given.

Senator SHERRY—If your pay depended on funding coming through for the next financial year, you would not like to be in that position, would you—'We will let you know in three or four weeks whether we can afford to pay you.' It is a bit uncertain, isn't it?

Mr Jasprizza—I cannot add any more to the answer we have already given.

Senator WONG—Can I go back to these reports: on what basis are you suggesting that you may not be able to provide them? I am a bit confused.

Mr Jasprizza—I need to get some advice on whether the contractual arrangements we have are commercial in confidence.

Senator WONG—What! This is public funding to centres.

Senator SHERRY—It is in the public interest.

Dr Boxall—Mr Jasprizza has said that the department will take it on notice.

Senator WONG—If you could take it on notice, Dr Boxall, I would appreciate that. What are the performance indicators?

Mr Jasprizza—They go to the number of client inquiries that the services provide information for each quarter, they go to case work, the number of training information seminars they provide and the number of participants.

Senator WONG—Those are the three broad areas for the indicators?

Mr Jasprizza—Those are the broad areas.

Senator WONG—Is it suggested that there have been some less than satisfactory performances, based on those indicators, by some of the centres—one or any of them?

Mr Jasprizza—Yes.

Senator WONG—Has that been advised to them?

Mr Jasprizza—Yes.

Senator WONG—What is the performance indicator that relates to promoting the government's workplace agenda?

Mr Jasprizza—There is no specific performance indicator on that.

Senator WONG—You have no performance indicator that relates at all to it?

Mr Jasprizza—That is correct—not specifically.

Senator SHERRY—What is the approximate proportion of centres about which there is a question mark?

Mr Jasprizza—A very small number.

Senator SHERRY—What does 'very small' mean?

Mr Jasprizza—There is one in particular.

Senator SHERRY—Okay. Dr Boxall, I think you indicated earlier, in response to my colleague, that these details could be provided at the next estimates.

Dr Boxall—Sorry?

Senator SHERRY—You indicated that the detailed break-up of the funding in this area could be provided at the next estimates—

Dr Boxall—I do not think I did indicate that. I think I made the point that at the end of the financial year we are called to account about how we have spent the money that has been allocated, output by output.

Senator SHERRY—Well, you are going to finish your break-up in the next three or four weeks, so could I put on notice now that, once the break-up is concluded, you forward it to the committee?

Dr Boxall—Yes, indeed.

Senator SHERRY—Thank you.

Senator WONG—Is one of the targets or performance indicators related to work under federal awards, Mr Jasprizza?

Mr Jasprizza—No, Senator, not specifically.

Senator WONG—Do any of the performance indicators specify any activity in relation to federal awards?

Mr Jasprizza—Not that I recall. Obviously, these inquiries and so on can relate to clients who are covered by the federal jurisdiction.

Senator WONG—In determining the performance of a centre, would you have regard to the number of clients that they assist in relation to federal jurisdiction issues?

Mr Jasprizza—Broadly speaking, yes.

Senator WONG—How do you deal with a situation where, for reasons of coverage, substantial numbers of employees are under state awards as opposed to federal, so obviously the number of workers seeking assistance under a federal award would be proportionally less. Do you take that into account?

Mr Jasprizza—Senator, we are primarily concerned about those employees who would be covered by the federal jurisdiction.

Senator WONG—Given the government's stated agenda to increase substantially the federal dismissal jurisdiction, surely that would mean potentially more work for the working women's centres than currently exists?

Mr Jasprizza—That is hypothetical.

Senator WONG—Why is it hypothetical? We have already had evidence, and I think the minister has stood up and said it quite a number of times.

Mr Jasprizza—We are just dealing with the arrangements as they are at the moment.

Senator WONG—So, if there is a particular centre where by virtue of the pattern of federal award coverage the nature of the work force is such that there are proportionally fewer people under the federal system, potentially the Commonwealth would regard that as problematic in terms of providing them with ongoing funding?

Mr Jasprizza—We have taken into account the federal jurisdictions in the various states in setting the performance indicators, which have been longstanding now—for some time.

Senator WONG—Could you repeat that last part?

Mr Jasprizza—We have set those performance indicators to a realistic level. Each centre should be able to meet those performance indicators.

Senator WONG—Have any of the centres raised concerns about the level at which you have set these performance indicators?

Mr Jasprizza—They may have raised concerns in the context of the resourcing—the funding.

Senator WONG—Can I refer back to your answer that the unfair dismissal jurisdiction issue is hypothetical. Surely, if part of the government's agenda is to increase that jurisdiction quite significantly, that would be something that you would factor into your planning?

Mr Jasprizza—That would be up to the government, I would expect.?

Senator WONG—In the budget we are discussing, isn't there an allocation predicated upon an enhancement of the unfair dismissal jurisdiction?

Mr Hoy—There is a measure in the Industrial Relations Commission's budget, yes.

Senator WONG—How much was that again?

Mr Hoy—It was \$17.1 million.

Senator WONG—So it is quite a substantial allocation. Mr Jasprizza, I am a bit confused: the department is planning ahead sufficiently to allocate \$17 million to the Industrial Relations Commission, given what appears to be the government's decision to push ahead with those changes to the jurisdiction, but that is not something you factor into your funding of working women's centres. Is that right?

Mr Jasprizza—Not at this stage.

Senator WONG—It is a bit more than hypothetical, isn't it, given that there is \$17 million attached to it? Do you not think it is something that you might want to be turning your mind to?

Mr Jasprizza—I cannot add any more to what I have already explained.

Senator WONG—When are the working women's centres likely to be advised about funding beyond the end of this month? Do we have any timeframe for that?

Mr Jasprizza—It will be decided as part of the allocations within the output.

Senator WONG—Are they likely to be advised before the end of June?

Ms Connell—We hope so. As Dr Boxall indicated, we are hoping to finalise the budget for the outcome by the end of this month.

Senator WONG—I might move now to work-life balance: is that within your area?

Dr Boxall—What aspect of questions, Senator Wong, so we can get the right people.

Senator WONG—I am afraid I am not an expert in who is who in your department. I have some questions about funding and also about projects.

Dr Boxall—Why don't you ask the question and then we can get the people.

Senator WONG—Which outcome relates to work-life balance in the forward estimates? If there is more than one, please direct me to them.

Dr Boxall—There is a Work and Family Unit in output 2.2.4. That is another aspect of the output we have just been discussing.

Mr Hoy—But some of the policy aspects relating to those issues are dealt with in 2.1.

Senator WONG—Sure. I am happy to deal first with the Work and Family Unit. What was the allocation to that unit for the last financial year? I am sure it is in the report somewhere.

Mr Jasprizza—We had an ongoing staffing level of around four people for that unit—it was 4.5, as I recollect it.

Senator WONG—Was there any additional funding for particular projects?

Mr Jasprizza—This is for next financial year?

Senator WONG—No.

Mr Jasprizza—There was no additional funding that I recall in the current year.

Senator WONG—Perhaps you could refer me to where in the annual report the disaggregated allocation for this section is, Dr Boxall.

Dr Boxall—The discussion in last year's annual report, which refers to the year before last, is on page 108, where there is a discussion of output 2.2.4. It covers the Office of Workplace Services, working women's centres and work-life balance. Then there is a performance indicator for output 2.2.4. There is no disaggregation right down to different units, but that is the discussion that we have in the annual report. If you want more information, then we will need to see whether we can get it.

Senator WONG—So you are not able to tell me how much was spent last financial year in relation to the Work and Family Unit?

Mr Jasprizza—Are you referring to the current financial year or the last financial year?

Senator WONG—Last financial year and then this financial year.

Mr Jasprizza—I certainly cannot tell you how much was spent last financial year.

Senator WONG—All right, how much has been spent to date this financial year then. It is pretty close to being over.

Mr Jasprizza—I just need to do some arithmetic. Perhaps I can come back to that.

Senator WONG—I am happy to wait. That is fine.

Mr Jasprizza—Perhaps if we could come back to that a little later.

Senator WONG—No, I would prefer to deal with it now.

Mr Jasprizza—The reason is that the information that I have has the national office of the Office of Workplace Services and the Work and Family Unit together. I would have to work back through and disaggregate the information. What I am saying is that will take more than a minute.

Senator WONG—Are you suggesting that I keep asking you questions, which would mean that you would not be able to do it anyway?

Mr Jasprizza—No, I am suggesting that we continue on and then when you move on I can work on it and we can probably give you that information before we break tonight.

Senator WONG—Okay. Is the number currently employed in the unit still the same—4.5 full-time equivalents?

Mr Jasprizza—In terms of the number of people, we have 2.5 at the moment. We have had one who has just been promoted to another area of the department and a further person who is taking leave without pay to work elsewhere for a period.

Senator WONG—So it has essentially halved. Is that for this financial year?

Mr Jasprizza—Just at this point in time.

Senator WONG—Is it intended that those two positions would be refilled?

Mr Jasprizza—Part of that arrangement will again involve looking at the budget for the next financial year.

Senator WONG—What sorts of projects, functions and activities are planned for this section of the department over the coming financial year?

Mr Jasprizza—We will be running, in conjunction with other partners, the National Work and Family Awards, next financial year.

Senator WONG—Speaking of those, weren't they cancelled or postponed?

Mr Jasprizza—No, they were postponed from the first half of the financial year to the second half of the financial year.

Senator WONG—Why did that happen?

Mr Jasprizza—Because we reviewed the awards and we found that it would be more effective to move them away from some other awards that happened to be in that part of the financial year.

Senator WONG—What were these other awards?

Mr Jasprizza—The awards of the Equal Opportunity for Women in the Workplace Agency, for example, are in that part of the year.

Senator WONG—So you have pushed them back to the second half of the year. That is one thing you are doing. What else are you doing?

Mr Jasprizza—We also provide fact sheets on a range of work and family issues. We are also developing information for the web site, and we also produce a range of information that we market in terms of work and family.

Senator WONG—Any more postcards?

Mr Jasprizza—Just the one so far, Senator.

Senator WONG—Are we going to have a repeat of the postcard?

Mr Jasprizza—They are proving quite popular.

Senator WONG—What does this section of the department hope to achieve in the coming financial year?

Mr Jasprizza—The National Work and Family Awards is a major functional responsibility of the work and family area.

Senator WONG—Anything more?

Mr Jasprizza—Yes, as I say, we are always looking at marketing material and at improving the information on our web site—as part of general education about and promotion of work and family—and also at providing input to the policy area on work and family issues.

Senator WONG—What sort of input? Have you written any submissions?

Mr Jasprizza—No, we do not write the submissions, Senator. But, for example, we produce publications—one being as you mentioned the postcard and another is *Winning workplaces*, promoting best practice for work and family.

Senator WONG—Do you go out and talk to employers or industry groups about this?

Mr Jasprizza—Yes.

Senator WONG—How many industry groups have been the subject of these visits in the last financial year, for example?

Mr Jasprizza—One of our partners for the Work and Family Awards is ACCI and another is the Business Council of Australia. They are two examples.

Senator WONG—So you have had discussions with those two in the context of the awards. But I thought this was work over and above the awards.

Mr Jasprizza—That is part of the strategy. The awards are just a one time event, but there is a lot of marketing we do in promoting the outcomes of those awards. There is a lot of work

involved in the judging process—looking for best practice—and we use those as case examples in marketing to employers.

Senator WONG—For which year were the awards that were, on your evidence, postponed? Were they supposed to be for 2002?

Mr Jasprizza—We do not necessarily say that they are for 2001 or 2002 or whatever, but they will fall, obviously, in the year 2003-04.

Senator WONG—When were the last awards?

Mr Jasprizza—September last year.

Senator WONG—2002.

Mr Jasprizza—Yes.

Senator WONG—And they were originally scheduled to be when this year?

Mr Jasprizza—They were not scheduled. We made a decision, following the September awards, to hold them in the second half of the 2003-04 financial year.

Senator WONG—So that would mean they would be 2004?

Mr Jasprizza—Yes.

Senator WONG—What sort of signal do you think that sends?

Mr Jasprizza—As I say, we believe that postponing them until then will provide an opportunity for better marketing, because they will not clash with other awards.

Senator WONG—When are these other awards?

Dr Boxall—The other awards are, roughly, in September or October, and they are held by EOWWA, as Mr Jasprizza mentioned. EOWWA has a statutory obligation, so we thought it would be best for them to go ahead and continue on schedule, holding their awards between the end of the financial year and Christmas while we postponed the Work and Family Awards for six months. So instead of being in the latter half of the calendar year, they are now in the beginning of the calendar year. That is what Mr Jasprizza was outlining.

Senator WONG—I appreciate that. Mr Jasprizza, you would agree, wouldn't you, that, from your evidence, the Work and Family Awards appear to be probably the primary work of this unit? Is that right?

Mr Jasprizza—Yes.

Senator WONG—But on your evidence we will have a situation where we will not have awards for over 18 months?

Dr Boxall—It means rather than having them every 12 months, they will be postponed for six months. So we will have a gap of 18 months and then we will be back on a 12-month cycle.

Senator WONG—So after that they will be 12-monthly?

Dr Boxall—Yes.

Senator WONG—So did we get a budget allocation for this unit for the last financial year—was it just the 4.5 person salaries?

Mr Jasprizza—No, what we have is a budget that includes the national office of the Office of Workplace Services and the Work and Family Unit—

Senator WONG—All right. You are still calculating those, are you?

Mr Jasprizza—Yes.

Senator WONG—A number of my questions relate to that, so perhaps we will have to come back to you later. What about the building industry? One of the recommendations or observations of the Cole commission related to the under-representation of women in that industry. Is this issue something that your unit has turned its mind to, Mr Jasprizza?

Mr Jasprizza—Ms Bennett will address those questions.

Ms Bennett—Commissioner Cole made a recommendation and, as I explained earlier this afternoon, the government is still considering the details of those recommendations.

Senator WONG—In relation to the under-representation of women?

Ms Bennett—He made an observation, yes.

Senator WONG—He discussed a range of strategies which would be required to increase the levels of representation of women in the industry. That is right, isn't it?

Ms Bennett—Yes.

Senator WONG—The government does not have a response on that yet?

Ms Bennett—That is correct.

Senator WONG—There is a lot of money allocated to the building industry task force, but there is no response on the issue of affirmative action in the industry?

Ms Bennett—It will be considered, as part of the government's response, in that money that was allocated. It will be one of the 212 recommendations that we will be working on.

Senator WONG—The Prime Minister talked about the task force on work and family, Dr Boxall.

Dr Boxall—Yes.

Senator WONG—Which part of your department is involved in that?

Dr Boxall—Mr Hoy is involved in that.

Senator WONG—That is you, Mr Hoy, is it?

Mr Hoy—Yes, if it is 2.1.

Senator WONG—I am sorry to go backwards, but how many of your staff are involved in that process?

Mr Hoy—A number of people over a period of time, because we flexibly use resources.

Senator WONG—I am very pleased to hear that. Who is actually on the task force?

Mr Hoy—I attend task force meetings, but some other colleagues in the department also attend.

Senator WONG—Is it an interdepartmental task force?

Mr Hoy—Yes.

Senator WONG—Is it for departmental officers only?

Mr Hoy—It is chaired by the Department of Prime Minister and Cabinet.

Senator WONG—But there are no political representatives—no state politicians?

Mr Hoy—Not that I am aware of.

Senator WONG—When did the task force last meet, Mr Hoy?

Mr Hoy—I think it met on 22 May.

Senator WONG—And how often does it meet?

Mr Hoy—It has been meeting, I think, about every six weeks.

Senator WONG—What is it doing?

Mr Hoy—It is examining a range of issues from the government's perspective, to help balance work and family issues.

Senator WONG—Are any actual decisions taken by the task force?

Mr Hoy—That task force will prepare advice to government.

Senator WONG—When did it start these considerations? When was the task force first established? When was it first announced?

Mr Hoy—It was announced by the Prime Minister some time last year. I cannot recall the exact date.

Senator WONG—And how long after that announcement did the task force first meet?

Mr Hoy—I think you should direct those questions to the Department of Prime Minister and Cabinet, because they convened it.

Senator WONG—You were at the meeting, Mr Hoy. When was the first meeting you attended?

Mr Hoy—The first meeting I attended was some time this year. But there were meetings last year.

Senator WONG—So you did not attend as the DEWR representative on this task force until this year?

Mr Hoy—Correct.

Senator WONG—When was the first meeting you attended?

Mr Hoy—Some time earlier this year. I cannot recall.

Senator WONG—You cannot give me the approximate month?

Mr Hoy—No.

Senator WONG—The meeting in May was not the first one you attended?

Mr Hoy—No.

Senator WONG—So it is obviously giving these issues very careful consideration.

Mr Hoy—Yes.

Senator WONG—When would we anticipate some action?

Mr Hoy—That is a matter for that department and the Prime Minister.

Senator WONG—Are we able to go back to budget allocations for the Work and Family Unit or have those calculations not been done? Perhaps someone could assist him with a calculator.

Dr Boxall—My staff have been advised by the secretariat that we are unlikely to get to outcome 1 tonight. If that is the case, I wonder whether outcome 1 can go home?

Senator WONG—Yes. That was my indication to the secretariat some time ago.

Dr Boxall—Thank you very much.

Senator WONG—I am sorry, I thought that had been communicated to you some time ago, Dr Boxall.

ACTING CHAIR—Thank you, Dr Boxall. Further questions?

Senator WONG—Do you want me to come back to the work-life balance, after he has—

ACTING CHAIR—I think he is still doing some calculations.

Senator WONG—All right, I will move to something else. In your last annual report, I think there was—I am not sure how much of this was covered previously, I do not think it was—the information that a departmental official was seconded to DEST to advise on IR issues. Is that right?

Dr Boxall—It is correct that there was a departmental official seconded to DEST.

Senator WONG—Who was that?

Dr Boxall—No. We are not able to give the names of people below the SES. It was a departmental official that was seconded.

Senator WONG—Was this officer one of the people involved in the development of the proposals that we have already referred to tonight and that were set out in Dr Nelson's review—the IR aspects of that?

Ms Bennett—That officer went and worked with the Department of Education, Science and Training last year to develop some possible options. A series of papers was left with DEST to consider as they chose as part of the higher education package.

Senator WONG—Can you provide copies of those documents?

Ms Bennett—You would have to ask DEST. They were with DEST at the time. That officer was seconded to that department. You would have to ask DEST for those papers.

Dr Boxall—The officer who was seconded to DEST returned to our department approximately 12 months ago.

Senator WONG—Regarding the mail screening centre in Tullamarine, is it the case that Australia Post contacted the department in December last year to make inquiries about compliance with the national code of practice?

Ms Bennett—That was set out in our evidence at the last estimates, yes.

Senator WONG—Did you provide written advice?

Ms Bennett—As we explained at last Senate estimates, at the time they contacted us in December, we did not provide written advice.

Senator WONG—Verbal advice?

Ms Bennett—Yes.

Senator WONG—Which section of the department provided the advice?

Ms Bennett—In the last evidence that we provided, Mr Lloyd provided some advice and I provided some advice. I can refer you to the *Hansard* extract from the last hearing, if that is helpful.

Senator WONG—How influential is the code of practice in determining a tender for a federal project?

Ms Bennett—Agencies that are constructing buildings with Commonwealth funds are required to include in the tender arrangements compliance to the national code and implementation guidelines. It is a contractual requirement.

Senator WONG—Does that mean that, if there were three tenderers for a project—say, \$20 million, \$22 million and \$24 million—and the only tender that complied with the NCP was the most expensive, but in all other respects the tenders were identical—

Ms Bennett—We do not provide that advice, and it is not an issue for our consideration; it is for the client agency to make that decision.

Senator WONG—But your advice to them, if they asked you for advice, would be that, notwithstanding the fact that the tender was more expensive, they were required to—

Ms Bennett—They would not seek that advice from us.

Senator WONG—I have not finished the question. They would not discuss it with you at all?

Ms Bennett—We discuss compliance with the national code and the implementation guidelines.

Senator WONG—Would your advice be, regardless of cost, that it is a requirement that the NCP be included?

Ms Bennett—That issue would not take—

Dr Boxall—It is an absolute requirement.

Senator WONG—So price does not enter into it?

Dr Boxall—It is a requirement that agencies that are contracting are to comply with it. It is for the agency to ensure that the contracts comply with the code.

Senator SHERRY—What point are they up to with their tender process?

Dr Boxall—We do not know. You would have to check with Australia Post. They just refer issues to us from time to time, for advice on whether something may or may not comply with the code.

Senator SHERRY—Do you know whether there has been any delay in the construction date of the facility?

Dr Boxall—We do not get into that detail.

Senator SHERRY—I thought they might have indicated a start date—received your information and then gone back through a tender process?

Dr Boxall—This is an issue for Australia Post. They are in charge of this—or Australia Post and other agencies are in charge of this. They just check with us if they want advice on whether something does or does not comply with the code and the guidelines.

Senator SHERRY—Do you know whether they have let a tender yet—have they advertised, within the code?

Dr Boxall—It is not for us to answer those questions. They are simply not in our department. We cannot answer questions which are the responsibility of another agency.

Senator SHERRY—Surely, if they were advertising for a tender, you would check to ensure that there is a reference to the national code of practice within that, wouldn't you—that there is a referral to it?

Ms Bennett—It is the agency's responsibility. It is the government's decision that all agencies will include this requirement in their tender. It is government policy. It is not—

Senator SHERRY—I understand that, but do you check that that is in the advertisements for the tender process? Do you verify it?

Ms Bennett—It is a government decision that all agencies will include it. There is no need for us to check. It is a government policy.

Senator SHERRY—Just because it is a government decision does not mean that it is always included. You do not check?

Ms Bennett—No, we do not check through advertisements.

Senator SHERRY—Are you aware of any delays in the construction of the facility because of this national code of practice?

Ms Bennett—Those questions, as Dr Boxall said, should be directed to Australia Post. I understand that they appeared before the legislation committee and answered many of these questions earlier this week.

Senator SHERRY—Are you aware of the problem of the sniffer dogs?

Ms Bennett—No.

Senator SHERRY—You are not?

Ms Bennett—No.

Senator SHERRY—These poor dogs are out in the cold because of the delay in the construction of the facility. It is winter. You are not aware of the serious problem that has been caused to the dogs because of the national code of practice?

Ms Bennett—No.

Senator WONG—Has the department been asked to provide any advice in relation to any other tenderers for that project?

Ms Bennett—Yes.

Senator WONG—When was that advice provided?

Ms Bennett—It has not yet.

Senator WONG—Who was the advice requested by?

Ms Bennett—Australia Post.

Senator WONG—Was that advice in relation to the Boulderstone tender?

Ms Bennett—You need to ask Australia Post who it has short-listed for tendering. These are commercial activities that that organisation is undertaking. We discussed this at the last estimates. These questions should go to Australia Post on where it is up to with its tender process.

Senator WONG—I am asking you about advice that you are preparing. What does that advice go to?

Ms Bennett—At the request of Australia Post, we are looking at issues in relation to the code and possible tenderers.

Senator WONG—Essentially, you are being asked to check whether or not particular tenderers comply with the requirements?

Ms Bennett—Yes.

Senator WONG—And when was that advice requested?

Ms Bennett—Just recently.

Senator WONG—Are we talking weeks or months?

Ms Bennett—Weeks.

Senator WONG—So in May?

Ms Bennett—Yes.

Senator WONG—Is this normal process? All your evidence to date on this issue has been directing us to ask questions of Australia Post, but you obviously have a reasonable involvement, at least in relation to this project, in providing advice as to compliance with the NCP of various tenderers.

Ms Bennett—We provide advice to a range of agencies that are constructing projects with Commonwealth funds. Australia Post is one of them.

Senator WONG—I think your evidence earlier was that you agreed that you essentially check whether the tenders comply with the NCP.

Ms Bennett—When the agencies—

Senator WONG—I have not actually asked a question. I am clarifying that that was your evidence earlier. We agree on that, do we?

Ms Bennett—Yes.

Senator WONG—Is it your normal practice in relation to construction projects that you would be asked to effectively audit the tenders for compliance with the NCP?

Ms Bennett—The agencies come to us with information about compliance with the code. It is not other information relating to the tender. It is about compliance with the code. We have a look at what has been provided in that tender or what sits in those organisations' certified agreements. We make an assessment about the compliance with the code and the implementation guidelines. We provide that advice back to the agency.

Senator WONG—Anything further?

Dr Boxall—Indeed. In theory, Australia Post could do it itself. It does not have to ask us whether something complies with the code or not.

Senator WONG—I absolutely agree with that.

Dr Boxall—But they elect to ask our advice. They ask for our advice and we give it.

Senator WONG—Is there any directive from government or a requirement for agencies or departments to consult with you regarding compliance with the NCP?

Ms Bennett—No.

Senator WONG—How many other agencies or departments have sought the sort of advice that Australia Post has from you?

Ms Bennett—Several.

Senator WONG—So it is reasonably standard practice, is it?

Ms Bennett—Yes.

Senator WONG—Is the issue of the advice that we have been discussing, the request for advice from Australia Post, been communicated to the minister's office?

Ms Bennett—I do not understand the question.

Senator WONG—Has the fact of the request for advice as to compliance with the NCP by Australia Post that you are preparing been communicated to the minister's office?

Ms Bennett—Yes.

Senator WONG—When was it communicated?

Ms Bennett—Shortly after it was received.

Senator WONG—So some time last month?

Ms Bennett—Yes.

Senator WONG—And similarly the advice that you provided—was it in December? When was the first round of advice to Australia Post?

Ms Bennett—In December.

Senator WONG—That was also communicated to the minister's office?

Ms Bennett—Yes. I think it was in the new year.

Senator SHERRY—What is the time line for a response to Australia Post?

Ms Bennett—Shortly.

Senator SHERRY—What does that mean?

Ms Bennett—As soon as we all get back to the office to finish it.

Senator SHERRY—Does that mean you expect us to keep you here for weeks? Is it days or weeks?

Ms Bennett—It is—

Senator WONG—Is that advice currently with the minister's office?

Ms Bennett—No.

Senator WONG—Is it intended that it will be provided to the minister's office before it goes to Australia Post?

Ms Bennett—No.

Senator WONG—Will it be provided to the minister's office?

Ms Bennett—It is a very factual piece of information. You either meet the code, the requirements of the code and the implementation guidelines, or you do not. There is no need to refer it. It is in or it is out.

Senator WONG—I wish everything were that black and white.

Senator SHERRY—If it is that simple, how long—

Senator WONG—How long does it take you to prepare it, if it is that simple?

Ms Bennett—We have to look through what has been provided to us and at the agreements of those organisations.

Senator SHERRY—Just to clarify, you mentioned shortly. How long is shortly? Is it a matter of days or weeks?

Ms Bennett—Yes, I would hope it would be a matter of days.

Senator SHERRY—I am getting concerned about these dogs. It is the middle of winter. They, amongst others, want somewhere warm to be kept. There has been a delay. They cannot sniff properly when they are out in the cold.

Senator WONG—Remind me what the NCP says about agreements with unions regarding membership or industrial conditions.

Ms Bennett—I will just get the implementation code. Last time, I explained to you that it was on the web site. I will find the appropriate part.

Senator WONG—Thank you for that information. I appreciate it.

Ms Bennett—Section 6.5 of the code relates to freedom of association. It says:

All parties have the right to freedom of association.

... ..

Freedom of association (is) the choice to be or not to be in a union or employee association, and the choice of which the union or employer organisation;

... ..

Greater choice will encourage the development of registered organisations that are more competitive, providing a higher level of service ...

It goes into quite a lot of detail.

Senator WONG—In terms of your black-and-white analysis, the very simple and easy analysis is whether something complies or not. If a builder had an agreement with a particular union regarding industrial conditions, they would not comply with the NCP?

Ms Bennett—No, that is not true. It depends on what the agreement says.

Senator WONG—If the agreement had a preference for union employees, that would not comply with the NCP?

Ms Bennett—If the certified agreement has clauses that require union membership or that require union based induction or access to that person that is contrary to what is set out in the code, then no, it would not meet the requirements of the code.

Senator WONG—What about a preference clause?

Ms Bennett—I would need to see it to make the assessment.

Senator WONG—Is that black and white too?

Ms Bennett—I would need to see what the clause says.

Senator WONG—So when would a preference clause, in your opinion, transgress the NCP?

Ms Bennett—It depends what the words of it are.

Senator WONG—All other things being equal, preference should be given to members of the appropriate union. What about something like that? It is pretty standard.

Ms Bennett—Sorry?

Senator WONG—All other things being equal, preference will be given to the members of the appropriate union. Would that transgress?

Ms Bennett—I would need to see what the words are and to compare them against what is in the code.

ACTING CHAIR—Dr Boxall, did you want to say something?

Dr Boxall—I just note that it is past teatime.

Senator WONG—I will not be much longer on this. I will try to finish it.

ACTING CHAIR—Can we try to finish?

Senator WONG—I will try to finish this so we can move on. When you are doing your black-and-white analysis in relation to this area, presumably you would have regard to certified agreements that might be in place between the particular employer and the union?

Ms Bennett—Certified agreements are what set out the workplace relations, yes.

Senator WONG—Would you have regard to the documented history of the particular employer's industrial relations policies?

Ms Bennett—Agencies that want to tender for Commonwealth business are required to meet the clauses in that tender document in relation to the code. That is what we assess them against.

Senator WONG—I understand that. You have given evidence that you are preparing advice. What I am requesting is an understanding of what you look at in order to provide the advice that you indicated was pretty well black and white. What do you look at to determine whether or not a particular tenderer complies with the NCP?

Ms Bennett—At the last estimates hearing—

Senator WONG—I am asking you now.

Ms Bennett—Senator Carr asked about the types of things that are incompatible. I cited at that time the incompatibility between some certified agreements. For example, the national code includes that it establishes an industry-wide set of conditions and arrangements which displace individual contractual agreements. It provides an explicit combination—

Senator WONG—I will stop you there for a minute. I am not asking you actually for examples of what does and does not comply. I am asking what your source documents are.

Ms Bennett—The information provided—

Senator WONG—By Australia Post.

Ms Bennett—No. The information provided by the person, organisation, company wanting to tender for the business.

Senator WONG—Thank you. That would include not only minimum industrial arrangements, presumably, but might include employment policies?

Ms Bennett—It would include what is in the certified agreement.

Senator WONG—Is that all?

Ms Bennett—I cannot say hypothetically.

Senator WONG—In formulating the advice that you have given evidence about, are you referring to documents other than certified agreements?

Ms Bennett—If there is information that is alluded to in the certified agreement which might draw on other agreements, such as the Victorian building industry agreement, we would look at that. There might be policies and guidelines that are within the company that are referred to within the certified agreement. We would look at them.

Senator WONG—Is the preference of the department to have a builder that has non-standard conditions at Tullamarine?

Dr Boxall—We do not have a preference.

Ms Bennett—We do not have a preference.

Senator WONG—You did that very well, both of you in unison.

ACTING CHAIR—Senator Wong, are you nearly done?

Senator WONG—I have one last question. One thing does confuse me a little. The act does also confer a right not to be discriminated against because of an entitlement to the benefit of an industrial instrument, doesn't it?

Ms Bennett—The code is a contractual requirement with the Commonwealth. A company can choose whether they want to tender for Commonwealth business under these contractual obligations.

Senator WONG—I am not sure that I was the question I asked. I think I asked you to confirm that it is your understanding that the act does confer a right not to be discriminated against because of an entitlement to the benefit of an industrial instrument?

Ms Bennett—Yes.

Dr Boxall—Yes.

Senator WONG—It is a chorus of 'yes', so I am glad that we are at least agreed on this. How do you reconcile that with your stated position that, if there is a certified agreement that includes a preference to unions, the person under that agreement would be discriminated against in terms of their employer tendering for the work?

Ms Bennett—It is not for me to reconcile it. As I said, there is a contractual requirement. It is clear. If you want to do business with the Commonwealth, these are the rules that you do it by. It is a set of contractual clauses that are set out.

ACTING CHAIR—This is the last question, if you have one. Otherwise we should have a break.

Senator WONG—I am happy to have a break. I would like those figures. If you could give them to us, that would be good.

Proceedings suspended from 9.27 p.m. to 9.42 p.m.

CHAIR—The committee is considering program 2.2.

Dr Boxall—Mr Jasprizza has some information.

Mr Jasprizza—The budget for the Work and Family Unit is in the order of \$427,000 and includes salary and other direct costs.

Senator WONG—So that is salaries and on-costs for employees?

Mr Jasprizza—Salaries for employees and other direct costs associated with publications and so on.

Senator WONG—What proportion is salaries?

Mr Jasprizza—The salaries proportion is around \$305,000.

Senator WONG—For 2.5 staff?

Mr Jasprizza—No, 4.5 staff.

Senator WONG—I see.

Mr Jasprizza—It is around about that. We use resources reasonably flexibly, so that is an approximation.

Senator WONG—For the \$122,000 that you have identified as being on projects, have you done any planning as to what those projects will be?

Mr Jasprizza—No. This is for the current financial year.

Senator WONG—What other projects are there for the current financial year?

Mr Jasprizza—They range from costs associated with the work and family conference, the Work and Family Awards and publications.

Senator WONG—What were the publications, apart from the postcard?

Mr Jasprizza—There was a newsletter.

Senator WONG—Is that all?

Mr Jasprizza—There are other fact sheets and so on.

Senator WONG—How many fact sheets have been prepared?

Mr Jasprizza—Off the top of my head, I do not know exactly.

Senator WONG—Are we talking hundreds or tens?

Mr Jasprizza—The majority of that funding would have been for the newsletters, the awards and the conference.

Senator WONG—Thank you. I understand you have not finalised allocations yet in terms of the allocation under this budget, but are you envisaging a similar amount for the next financial year?

Mr Jasprizza—That will be worked out over the next few weeks.

Senator WONG—Is there any intention to reduce funding to this area?

Mr Jasprizza—The final budget allocations will be made—

Senator WONG—I understand that. Is there an intention to reduce funding?

Dr Boxall—It is difficult to comment. We have to look at what the priorities are within output 2.2.4. We are not in a position to indicate whether funds will go up, go down or remain constant.

Senator WONG—You did give an indication, in relation to workplace services such as WageLine, for example, that you would not envisage that that aspect of this output would be reduced in funding. You are not able to give that indication in relation to the work and family area?

Dr Boxall—No. We are not able to give an indication of where we are going on that. It might go up, it might go down, it might be constant.

Senator WONG—The two staff that you are down in this area: have you advertised for those positions?

Mr Jasprizza—No, not as yet.

Senator WONG—When are you proposing to do that?

Mr Jasprizza—As I say, what is critical for us is the allocations that will be decided over the next few weeks.

Senator WONG—So it could stay at 2.5?

Dr Boxall—The main thing in the new budget is outputs and outcomes rather than processing inputs. The issue is about what will be the required outputs in the work and family area over the year and what resourcing is required for that. That is yet to be determined.

Senator WONG—I understand that. I am saying that it is possible that these two positions won't be replaced?

Dr Boxall—It is possible that they may not be replaced. It is also possible that there could be two extra added and there might be 6.5. We have not made up our minds yet.

Senator SHERRY—I have some questions on the Employee Entitlements Support Scheme. I indicate to the department that these will be the last questions for this evening. There will not be questions in any other part of the area.

Dr Boxall—Thank you very much, Senator Sherry. In that case, everybody else can go home.

Senator WONG—They are entranced by the proceedings. They do not want to leave.

Dr Boxall—There is a work-life balance issue here.

Senator SHERRY—We are always mindful, Dr Boxall. I had a problem with the index. I looked up 'Employee Entitlements Support Scheme' under E on page 195. There are references to the scheme on pages 38 and page 185. I could not find anything on page 185 other than the title 'Acronyms and Glossary'. I have tried to find the other pages where it is referred to, other than page 38; I assume it is referred to elsewhere. I wonder whether you could help me.

Mr Maynard—You will find references to GEERS and EESS on pages 38 and 41 in reference to the new output 2.2.5. It is on page 42. There are specific references to the output on page 45, it is under 'Evaluations' on page 46, on page 47 there are references under the 'Statement of Financial Performance', and on page 49 it appears under 'Budgeted Assets and Liabilities'. I believe that, other than in the glossary, that is a reasonable coverage of the references within the PBS.

Senator SHERRY—The page reference numbers you have given me I have found. Given the problem with page 185, I thought it might have been some reference to another page that I could not identify. Thanks for that. Let us start with the \$9.5 million that is identified on page 45. What will the \$9.5 million be spent on?

Mr Maynard—I think it is worth noting that, with the output price of \$9.5 million, this is the first year we have had a specific output rather than having a specific administered item where all departmental costs were met from the administered amount. Consequently, we are now subject to the usual outcomes and outputs on-costs. What we will have is direct costs of \$7.7 million plus the on-costs, which take it up to the total price of \$9.5 million.

Senator SHERRY—What are the on-costs?

Mr Maynard—The on-costs would be the usual enabling costs of departmental expenses to support the program administration.

Senator SHERRY—How does that cost compare with previous years?

Mr Maynard—We must recognise that in all previous years it has been direct costs only, and we will be comparing the figure of \$7.7 million with previous years. In the annual report for 2001-02, it was \$4.6 million in expenditure. In the current financial year, we are looking at \$5.4 million for the salary component as well as expenditure on IPs and accounts in the order of, in round terms, \$800,000. We have already discussed, in the February sitting, the fact that we are doing a major re-engineering project. That comes with additional costs and additional resources which Malisa Golightly, the CFO, referred to earlier in today's session.

Senator SHERRY—I was going to get to some of the re-engineering. But that accounts for the increase in the costs and the changes to the scheme that are being implemented at the present time?

Mr Maynard—That is correct.

Senator SHERRY—With the changes that are being implemented, has the major change been completed? Are there significant elements still outstanding?

Mr Maynard—It is an ongoing process, and throughout this financial year we will be continuing the re-engineering process. As noted in the 'Evaluations' section of the PBS, we are looking at having a market test of some of the business functions performed in the administration of the scheme completed and implemented by March 2004.

Senator SHERRY—I will turn to the issue of staffing. Can you give me an indication of what the average staffing levels will be within the \$9.5 million?

Mr Maynard—For this financial year, we will be looking at having a staffing level in the order of 50 staff in the program branch and about 20 staff in the project branch. Parts of our re-engineering efforts have led to the creation of a separate project branch to manage IT development, business re-engineering and market testing.

Senator SHERRY—You have given a figure for this financial year of \$5.4 million plus \$0.8 million. There is a slow build-up, is there, of additional staff into the next financial year?

Mr Maynard—The staffing levels are already at 50 staff within the program branch and 16 within the project branch. We will continue to see that at that level for the remainder of the calendar year and for some component of the next calendar year.

Senator SHERRY—So there may be some additional staff within that \$9.5 million in the new calendar year?

Mr Maynard—There will be some additional staff in the new financial year, over and above the staff that we currently have on board.

Senator SHERRY—Do you have an approximate figure yet?

Mr Maynard—It is subject to the specific requirements at the time. It is going to be in the order of an additional half-a-dozen staff, over and above what we have at present.

Senator SHERRY—In what area: program or project, or both?

Mr Maynard—Principally project.

Senator SHERRY—Will the payment of the employee entitlements continue to come from a special account?

Mr Maynard—Yes. The only means of appropriation that we currently have available to us is the special account.

Senator SHERRY—There has been no re-engineering of the special account payment process?

Mr Maynard—Certainly, a significant change has been the creation of a specific output and the creation of the departmental allocation. We have sought advice from the Department of Finance and Administration, who manage all the special accounts, as to alternative mechanisms for funding the administered element. At this point in time, the special account remains. It remains the only source of funding we have available to us to meet payments to claimants.

Senator SHERRY—Are there administration costs coming from the special account as well?

Mr Maynard—When you say ‘administration costs’, do you mean departmental costs?

Senator SHERRY—Yes, the costs we were just discussing.

Mr Maynard—In the current financial year, yes; in the next financial year, no.

Senator SHERRY—Why the change?

Mr Maynard—It is part of our change to improve the transparency of the program and ensure that the price that is paid for the outputs that are achieved is clear.

Senator SHERRY—How is the estimate of \$74.365 million arrived at?

Mr Maynard—It is based on our current rate of claims and the current value of those claims. We work with the department of finance to ensure that our projection is going to be reasonable. They have accepted that, based on our current rate of payment per claim and the rate of claims, that would be the expected spend for the coming financial year.

Senator SHERRY—Just remind me: what is the likely outcome for this financial year?

Mr Maynard—In terms of the dollars spent?

Senator SHERRY—Yes.

Mr Maynard—In terms of dollars spent, we currently expect to have in the order of approximately \$69 million to \$70 million.

Senator SHERRY—Would you just remind me of the figure for the previous financial year?

Mr Maynard—Expenditure in the previous financial year for this scheme has been \$62 million.

Senator SHERRY—So there is about a 10 per cent increase this financial year compared with last financial year. By the look of it, there is almost 10 per cent again. Can you explain

why there is a relatively significant increase in the payments, year on year, over the last two years and for the projections for next year?

Mr Maynard—Certainly in the last two years the most significant factor has been the shift from EESS as the predominant scheme to GEERS, where EESS provided a relatively lower level of assistance and GEERS provides for all outstanding wages, annual leave, long service leave and up to eight weeks redundancy. GEERS had been capped at a lower level. Projected for future years, it is a difficult thing to project levels of expected expenditure, as you would appreciate. The relative time series available to the scheme is limited. Therefore, it is based on the best estimates available at the time, which we would obviously need to monitor and revise with the department of finance as needs be.

Senator SHERRY—In this financial year, can you advise me how much has been paid to employees state by state and industry by industry?

Mr Maynard—While we would have the figures on state by state, I do not have them with me. Industry by industry I do not have those figures and we do not have those figures in our computer system, so I could not provide you with that.

Senator SHERRY—Will you have the industry by industry figures in your new re-engineered section?

Mr Maynard—It certainly is a very strong expectation that we would have significantly more data available to do our analysis.

Senator SHERRY—Could you take on notice that state by state figure for me, please?

Mr Maynard—Certainly.

Senator SHERRY—How much money is being recouped from insolvency practitioners so far?

Mr Maynard—Over the life of the program, we have recouped, as of Thursday last week, \$6.6 million.

Senator SHERRY—What about this financial year and then the previous financial year?

Mr Maynard—For the previous financial years, we must recognise that there is quite a lag—on average, about two years, according to the Insolvency Practitioners Association of Australia—between outlay and recovery. In 2000-01, it was in the order of \$100,000; in 2001-02, it was in the order of \$1.5 million; in 2002-03, it was almost \$5 million.

Senator SHERRY—Given that two-year lag, the approximately \$5 million in this financial year that has been recouped would relate to payments made mainly in 2000-01?

Mr Maynard—It is a mixture. Certainly there are payments that relate to that period. There are payments that relate to last financial year. It really depends upon the speed at which insolvency practitioners can liquidate the available assets, collect the debts and therefore be in a position to make a distribution.

Senator SHERRY—On that issue, do you match the moneys paid by insolvency practitioners, the moneys you may collect, against the payout figure for the particular insolvency in the particular year it occurred?

Mr Maynard—Yes. We do have details on a case by case basis of the amounts outlaid and the amounts recovered.

Senator SHERRY—So what is the percentage recovery rate?

Mr Maynard—At the case level or at the dollar level?

Senator SHERRY—Both.

Mr Maynard—The recovery rate of \$6.6 million recovered to date compares with an outlay of \$122 million over the life of the scheme. Forgive me if I do not do the mathematics well.

Senator SHERRY—That is okay. We can work it out.

Mr Maynard—In terms of the numbers of recoveries, we have a total of 183 recoveries from a total of 2,200 advances. That is recognising that there is a lag between the advance and the recovery.

Senator SHERRY—You referred earlier to the re-engineering. At previous hearings, I am not sure whether it was you—

Mr Maynard—In February it was me.

Senator SHERRY—The ANAO's recommendations we touched on in February. I do not think we dealt with them in great detail; I think that was last year. Can you outline where there are areas of the ANAO's recommendations that you do not intend to implement. I assume you are implementing the bulk of them and that can be quite lengthy. I do not particularly want to go through all of that again. What are the areas where you do not believe you can recommend the ANAO's recommendations?

Mr Maynard—Is this in relation to recoveries or in all aspects?

Senator SHERRY—All aspects.

Mr Maynard—The department agreed with all of the recommendations put forward by the ANAO and has been putting in place steps to address all of the issues raised by the ANAO. There is no area that immediately comes to mind at the macro level that we have not sought to put in place.

Senator SHERRY—So how would you characterise the implementation so far? Have the recommendations been implemented in large part?

Mr Maynard—I note that many of the recommendations were in line with existing processes we are already putting in place. To date, we have addressed a significant proportion of the recommendations. We have, by way of budget estimates discussions, created a separate output to improve the transparency of the process. We have created a specialist recoveries unit. We have sought to improve the quality of the information available to insolvency practitioners and claimants. We are monitoring all unprocessed claims on a weekly basis. We are improving our performance and our process.

Senator SHERRY—On the issue of fraud protection measures, what has been implemented in that area?

Mr Maynard—In terms of fraud and concerns about inappropriate activities, we have created a specialist compliance and investigations unit within the program. That unit is responsible for investigating and collecting evidence which would then be referred to our corporate fraud prevention unit, which would conduct necessary fieldwork before referring the matter to appropriate authorities.

Senator SHERRY—How many staff are there in the specialist compliance unit?

Mr Maynard—In the compliance unit at the moment we have four staff.

Senator SHERRY—They refer material to the—

Mr Maynard—Where there is thought to be fraud, they refer it to the department's fraud prevention unit. Any concern that there are specific inappropriate activities of directors or insolvency practitioners, it would be referred to ASIC. If there is a taxation concern, it would be referred to the Taxation Office.

Senator SHERRY—Have any matters been referred to ASIC or the ATO to date?

Mr Maynard—Yes.

Senator SHERRY—Could you give me some detail?

Mr Maynard—There is a difficulty. Not being experts in insolvency or necessarily in the law, some of the issues that we raise are our concerns, which may prove to be unfounded. Consequently, I am concerned about providing you with specific examples that may actually allow people to identify specific insolvency practitioners.

Senator SHERRY—I obviously do not want names, but the types of possible fraud that are being referred.

Mr Maynard—I would need to be cautious in terms of the use of the term 'fraud'.

Senator SHERRY—I said 'possible'.

Mr Maynard—To give you a fuller answer, it would be best if I take that on notice.

Senator SHERRY—Regarding matters that have been referred to ASIC or the ATO, have there been any successful prosecutions from the referrals to date?

Mr Maynard—When we refer matters to ASIC, they are obliged under their act to investigate all the activities. They are constrained under their act in terms of providing feedback.

Senator SHERRY—I understand that. If there was a successful prosecution, and someone was found guilty, I assume you would be informed of that, wouldn't you?

Mr Maynard—We have had no such advice to date.

Senator SHERRY—I would have thought it a bit odd if you did not follow through to see whether a case has been concluded.

Mr Maynard—To answer your original question, we have not been advised of any successful prosecutions to date.

Senator SHERRY—What is the latest data on the waiting time for employees to receive their money?

Mr Maynard—In the first three months of this financial year, our performance has been 65 per cent within 16 weeks. The current performance in this quarter is running at 73 per cent within 16 weeks.

Senator SHERRY—Can you just refresh my memory on some of the historical data. I know it was an issue that certainly last year was quite an issue of question and comment, critique. What were we looking at this time last year in terms of the percentages within 16 weeks?

Mr Maynard—I think – it is only from recollection because I do not have that data with me – that it was in the low 60s. It was somewhere in the order of 62 or 63 per cent. Again, that is recollection. If I find that I have misled you, I will certainly provide you with the correct information.

Senator SHERRY—I think you are right. I certainly think it was less than 65 per cent—I thought it was in the high 50s or low 60s but I just could not recall. In respect of the moneys that are payable outside the 16 weeks, what are we looking at? Are we looking at total completion within six months? Do you have data on what percentage is completed in the following 16 weeks up to 32 weeks and so on?

Mr Maynard—The information I have on the scheme to date shows that 85 per cent has been completed within 26 weeks.

Senator SHERRY—Is this last quarter?

Mr Maynard—For the life of the scheme. That is 85 per cent within 26 weeks. It is 95 per cent within 36 weeks and 98.5 per cent within 52 weeks.

Senator SHERRY—Is that figure improving over time?

Mr Maynard—Yes, it is.

Senator SHERRY—I cannot recall whether you have given us those figures on a previous occasion. I suspect you have.

Mr Maynard—I believe we have.

Senator WONG—I want to return to your answer a little earlier to Senator Sherry on the issue of phoenix companies. Did I understand your evidence to be that it is not an issue that your section has considered in detail?

Mr Maynard—I have not mentioned phoenix companies. As you mention them, it is an area that we seek to identify if there are any concerns about. If there are, we would refer those matters to ASIC.

Senator WONG—Have any such referrals been made?

Mr Maynard—Yes, there have.

Senator SHERRY—Is there any other identifiable industry where these phoenix companies appear to be prevalent from your activities?

Mr Maynard—No. As I said before, we do not have industry codes stored on our data. Therefore, any advice I would have would merely be anecdotal. There is none that specifically comes to mind.

Senator WONG—Are there discussions which have taken place or which are occurring between you and ASIC in terms of coordinating some work in relation to phoenix companies?

Mr Maynard—Certainly there is.

Senator WONG—Obviously, there is a significant amount being allocated to ASIC for corporate insolvency issues over the forthcoming budget. Is this one of the areas that they are working on with you?

Mr Maynard—Yes. We have a good working relationship with ASIC. We are seeking to strengthen that to ensure that inappropriate activity is reported clearly and consistently and acted upon.

Senator WONG—Is it at the stage at the moment where if you think there is a problem you refer it?

Mr Maynard—Yes.

Senator WONG—Is there any more proactive strategies that you are putting in place in relation to phoenix companies?

Mr Maynard—We are working with ASIC to determine what other strategies might be more appropriate.

Senator WONG—How long have you been doing that?

Mr Maynard—Somewhere in the order of four to five months.

Senator WONG—When is it envisaged that these strategies will be finalised?

Mr Maynard—At this stage I do not have a time line on that particular activity. It is dependent upon ongoing discussions with ASIC. Obviously we will seek to put them in place as quickly as we can.

Senator SHERRY—The issue of phoenix companies reminded me that I have had a number of complaints that I was going to take up with ASIC and the ATO about phoenix companies and the non-payment of superannuation guarantee entitlements. I think I would have seen it if it had occurred, but I understand the scheme does not include superannuation entitlements, does it?

Mr Maynard—That is correct. Employer contributions are not included.

Senator SHERRY—I return to the issue of the moneys paid out. Do you have a breakdown of the size of businesses for which money has been paid out? Is there a category of size of businesses—say, up to 20 employees, which is roughly defined as a small business; more than 20 employees and that type of categorisation?

Mr Maynard—Yes, we do have that information.

Senator SHERRY—What can you give me, please?

Mr Maynard—At this point I do not have that information with me. Can we work through the specifics of the information that are you looking for? Would you like to know the amount advanced to companies with less than 20 employees?

Senator SHERRY—Correct. It would be 20 to 100 and over 100. I think that is a reasonably realistic categorisation. Can you break that down to those sorts of employee areas?

Mr Maynard—Yes.

Senator SHERRY—Great. You will obviously take that on notice?

Mr Maynard—Yes.

Senator SHERRY—What is the number of appeals that are being dealt with at the present time?

Mr Maynard—The data I have shows that there have been 853 appeals over the life of the scheme.

Senator SHERRY—I am sure you have given us the figure for the previous financial years. What about this financial year to date? What is the number of appeals?

Mr Maynard—I am sorry. I do not have that, but I will endeavour to get it for you. Possibly I could have it tabled tomorrow.

Senator SHERRY—That would be great. Do you have any idea of the number of appeals outstanding as at this point in time?

Mr Maynard—I am sorry, but I do not have that number. I will take that on notice.

Senator SHERRY—Thanks. I have one other issue before I move on. I have raised the issue of the peculiarity of the Tasmanian jurisdiction. Has there been any change in the scheme in respect to its application in Tasmania?

Mr Maynard—No. The rules of the scheme are such that assistance is provided for legal entitlements as at the date of the commencement of employer insolvency. Consequently, that has been put in place in 2002 and continues as is today.

Senator SHERRY—There is no variation to that?

Mr Maynard—No variation.

Senator SHERRY—What is the position regarding legislation?

Mr Hoy—That is a matter under consideration.

Senator SHERRY—Is the department drafting legislation at the present time?

Mr Hoy—Not at this stage, no.

Senator SHERRY—When you say it is under consideration, it has not got to the point that there needs to be legislation, therefore the department—

Mr Hoy—The government needs to make a policy decision on that matter.

Senator SHERRY—So it is under consideration and there is no decision as yet?

Mr Hoy—Correct.

Senator SHERRY—The ANAO did make some recommendations in this area of legislation. How does this stand with your earlier comments, Mr Maynard, that all of the recommendations have been accepted by the ANAO?

Mr Maynard—There was no recommendation specifically about the creation of legislation. I believe the ANAO may have noted that legislation did not exist and that it was a scheme established under administrative order. But there was no specific recommendation, to my knowledge, that said that legislation should be implemented.

Senator SHERRY—I seem to recall—and I do not have the report in front of me—that on page 42, I think it would be reasonable to understand, there was a criticism that it wasn't a legislated scheme.

Mr Maynard—I am sorry. I do not see any references to legislation on that particular page.

Senator SHERRY—Are you looking at report No. 20?

Mr Maynard—Yes.

Senator SHERRY—I want to turn to the SEESA scheme. What is the information on this financial year to date on payments through the SEESA scheme?

Mr Maynard—Over the full life of the scheme, the total outlay to former employees of the Ansett group of companies has been \$335.5 million. That is to a total of 12,983 former employees.

Senator SHERRY—As of what date is that figure?

Mr Maynard—That is a current figure as of today. At the start of this financial year, those respective numbers were \$298.1 million to 11,852 employees.

Senator SHERRY—What is the anticipated or projected figure in the coming financial year?

Mr Maynard—The advice I have at the moment is that further claims in the order of \$8 million might be anticipated to employees of a relatively small number—in the order, I believe, of 120 or thereabouts.

Senator SHERRY—So \$335 million and probably another \$8 million. Wasn't the loan to the Ansett administrators to cover the basic entitlements \$333 million?

Mr Maynard—It was \$350 million. That is the amount they obtained a loan for.

Senator SHERRY—I notice that the Ansett ticket levy is estimated to raise \$104 million in the coming financial year. Is that your understanding?

Mr Maynard—The levy is administered by the Department of Transport and Regional Services, but I have seen that number listed in the press as well. That would presume that the levy was retained for the full financial year.

Senator SHERRY—If that \$104 million was collected in the current financial year, it would be well in excess of the current payments and the anticipated \$8 million payment in the next financial year?

Ms Connell—I do not believe the \$104 million was relating to the levy at all.

Mr Maynard—No. The most recent advice I have from DOTARS, who administer the levy, is that \$240 million has been collected. I understand that they have a projection that in

the event the levy were to collect at the same rate for the full financial year, it would collect a further \$104 million.

Dr Boxall—But that is an issue that needs to be addressed to the department of transport. We are simply not in a position to make any authoritative statement about the collection of the ticket levy.

Senator SHERRY—Has the Commonwealth received any repayment on the original loan?

Mr Maynard—No, there has been no repayment.

Senator SHERRY—So what is expected in respect of repayment?

Mr Maynard—That is the nub of the issue, I understand. At this point, the Ansett administrators have not been able to make any distribution. Their capacity to make a distribution or the level of distribution that they may make is contingent on a number of legal proceedings that are currently afoot, the most significant of which would be the Ansett ground staff superannuation fund case, which may lead to an as yet undetermined further claim against the Ansett administrators. But the numbers of \$200 million to \$250 million have appeared in the press.

Senator SHERRY—I understand that the courts have resolved that issue, haven't they, but it may be appealed?

Mr Maynard—The courts found that the Ansett administrators were liable but the priority for which they were liable was as an unsecured creditor. That has been appealed by the trustees of the Ansett ground staff superannuation fund. They have sought to expedite a hearing. My understanding is that it is still being considered by the courts as to when that hearing would occur.

Senator SHERRY—As a matter of interest—that is not intended as a pun—do you know, if moneys were paid out under the redundancy provision of the superannuation fund, what the rate of interest would be?

Mr Maynard—I am sorry, I do not know.

Senator SHERRY—I wonder whether it would be negative or positive in the current environment. If the trustees were successful—you have mentioned that the figure is some hundreds of millions of dollars that would then become payable by the liquidator—it would take some time before those moneys could be found, if indeed they could be found, wouldn't it?

Mr Maynard—Yes.

Senator SHERRY—It would depend on the sale of other assets, such as aeroplanes, I assume, that have not been sold.

Mr Maynard—I believe that is the case. It would depend upon the sale of further assets.

Senator SHERRY—There has been no consideration given to what would occur if the court did find in favour of the trustees and a redundancy component as part of the superannuation fund would be required to be paid?

Mr Maynard—They are matters between the Ansett administrators and the superannuation trustees. I do not have any advice as to what the options may be for either party.

Senator SHERRY—The court found that they were unsecured creditors. I am assuming that the Commonwealth's loan is that of a secured creditor.

Mr Maynard—In December 2001, the rights of the repayments were agreed when the Ansett administrators, the ACTU, representing the employees, and the Commonwealth all argued the same case before the Federal Court. All were in heated agreement as to how the matter should go forward. It was agreed then that the matter would be repaid in accordance with the normal priority afforded to employees under section 55(6) of the Corporations Act.

Senator SHERRY—So where does the Commonwealth's loan stand in the queue in respect of the treatment of the redundancy provision within the super fund as an unsecured creditor at this point in time?

Mr Maynard—There is no relationship between the superannuation fund and moneys advanced under SEESA. The issue at the superannuation fund case is to what priority that debt may have. Consequently, it could be higher, equal to or lower than the repayment of moneys advanced under SEESA.

Senator SHERRY—If there are insufficient moneys in SEESA to advance the redundancy payments under the superannuation trustee, if the trustee should be successful, has there been any decision about advancing further moneys?

Mr Maynard—SEESA was established solely for the former employees for the specific entitlements of wages, annual leave, long service leave, payment in lieu of notice and redundancy. It does not and will not assist in providing funds to superannuation funds to meet any obligations they may have.

Senator SHERRY—I understand that. But is that so even in the case where there is a redundancy provision within the superannuation fund? I know that is unusual. It is almost unique, as I understand it.

Mr Maynard—The superannuation fund's payouts to employees who are made redundant is still a superannuation payout.

Senator SHERRY—That is the way you are treating it?

Mr Maynard—Yes, rather than a redundancy payment. The redundancy payment is made by the employer. The superannuation is paid by the superannuation fund.

Senator SHERRY—Except in this instance we have a redundancy payment which is called a redundancy payment as part of a superannuation fund. I know that is unusual. It was probably never anticipated.

Mr Maynard—My understanding is that the superannuation fund has a specific clause within it that leads to a payment of an increased amount of superannuation if the employee were made redundant. Consequently, it is a superannuation bonus, I suppose, for redundant employees rather than a redundancy payment.

Senator SHERRY—Putting aside the particular dispute over the redundancy payment, my understanding is that all the superannuation liabilities have been paid out in full. There are

sufficient assets in the superannuation funds – there are a couple of them, although I think not all of them include the redundancy provision.

Mr Maynard—I simply could not comment on the state of the superannuation funds, the number of which I could not even tell you, in the Ansett companies. It is not a matter, because superannuation is not covered by SEESA.

Senator SHERRY—That was going to be my next question. My understanding is that the Ansett schemes are a mixture of defined benefit and defined contribution. In a situation where there is a shortfall in a superannuation fund and there cannot have been a defined contribution but there can be a defined benefit—it could be in surplus or deficit depending on the state of the markets—don't you think it would be reasonable that the shortfall should be met if those circumstances emerged?

Dr Boxall—We cannot comment on that. We cannot give a view about whether we think it is reasonable or not. Mr Maynard has just said that the SEESA scheme does not cover superannuation.

Senator SHERRY—That is government policy?

Dr Boxall—That is correct.

Senator SHERRY—How is the cost of the administration of the SEESA scheme being met at the moment?

Mr Maynard—Under the Air Passenger Ticket Levy Collection Act there is a standing appropriation of a maximum of \$500 million which is made available to meet defined costs, including the costs for DOTARS and DEWR to administer the ticket levy and SEESA respectively.

Senator SHERRY—Is that being administered by your re-engineered unit?

Mr Maynard—SEESA is administered by the program branch rather than the project branch.

Senator SHERRY—So there has been no carryover into the new program branch that is within your re-engineered section?

Mr Maynard—The scheme is administered by staff who work to me in the program branch.

Senator SHERRY—Are they included within the staff numbers—this 50 you gave me earlier?

Mr Maynard—Yes, they are.

Senator SHERRY—What has been the cost to date this financial year for the administration of SEESA?

Mr Maynard—I do not have a breakdown for this financial year for SEESA administration costs.

Senator SHERRY—That is totally separate from the figures you gave me earlier?

Mr Maynard—The total costs for departmental expenses currently include the SEESA administration costs.

Senator SHERRY—Can you get me a breakdown of the SEESA administration costs?

Mr Maynard—Yes, I can. For this financial year?

Senator SHERRY—Yes. Again, we might have got this information in the previous financial year. If we didn't, could you give me that as well.

Mr Maynard—Certainly.

Senator SHERRY—Regarding the ongoing legal dispute over the redundancy-superannuation provisions, I assume you have taken some legal advice on this matter and sought a legal opinion? I do not know whether you intervened in the proceedings?

Mr Maynard—No. The Commonwealth, in any regard, whether it is ourselves or DOTARS or any other agency, is not a party in that particular matter.

Senator SHERRY—I thought that was the case, but has your unit or section sought legal advice on this matter at all?

Mr Maynard—Not to my knowledge.

Senator SHERRY—That is it. Thank you.

CHAIR—There being no further questions, that completes output 2. 2. Tomorrow morning we will begin with output 1.1, move to 1.2 and then the agencies. The committee stands adjourned.

Committee adjourned at 10.34 p.m.