



COMMONWEALTH OF AUSTRALIA

Proof Committee Hansard

SENATE

EDUCATION AND EMPLOYMENT LEGISLATION COMMITTEE

Estimates

(Public)

WEDNESDAY, 9 NOVEMBER 2022

CANBERRA

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EDUCATION AND EMPLOYMENT LEGISLATION COMMITTEE

Wednesday, 9 November 2022

Members in attendance: Senators Cash, Davey, Faruqi, Grogan, Liddle, O'Sullivan, Payman, Barbara Pocock, David Pocock, Rennick, Rice, Roberts, Sheldon, Sterle and Waters

EMPLOYMENT AND WORKPLACE RELATIONS PORTFOLIO**In Attendance**

Senator Chisholm, Assistant Minister for Education, Assistant Minister for Regional Development

Senator Watt, Minister for Agriculture, Fisheries and Forestry, Minister for Emergency Management

Department of Employment and Workplace Relations**Executive**

Ms Natalie James, Secretary

Corporate and Enabling Services

Ms Belinda Casson, Acting Deputy Secretary

Ms Kerry Kovacevic, Chief Digital Officer/First Assistant Secretary, Digital Services Division

Mr Scott Wallace, Chief Information Officer/First Assistant Secretary, Technology and Services Division

Mr Tim Ffrench, General Counsel/First Assistant Secretary, Legal and Assurance Division

Ms Kellie Spence, Acting First Assistant Secretary, People, Communication, Parliamentary and Governance

Ms Giorgina Strangio, Assistant Secretary, People, Communication, Parliamentary and Governance

Ms Dijanna Ratajkoski, Acting Assistant Secretary, People, Communication, Parliamentary and Governance

Ms Cha Jordanoski, Acting First Assistant Secretary/Chief Financial Officer, Finance and Budget Division

Employment and National Workforce

Mr Nathan Smyth, Deputy Secretary

Ms Melissa Ryan, First Assistant Secretary

Ms Quyen Tran, Assistant Secretary

Ms Fiona MacDonald, Assistant Secretary

Ms Belinda Catelli, Assistant Secretary

Ms Sonya McCarthy, Acting Assistant Secretary

Ms Robyn Shannon, First Assistant Secretary

Ms Samantha Robertson, Assistant Secretary

Mr Derek Stiller, Assistant Secretary

Mr Tim Matthews, Assistant Secretary

Ms Miranda Lauman, First Assistant Secretary

Mr Stuart Watson, Assistant Secretary

Ms Eve Wisowaty, Assistant Secretary

Ms Jodie Wearne, Assistant Secretary

Ms Benedikte Jensen, First Assistant Secretary

Mr Alistair Beasley, Assistant Secretary

Ms Deborah Brown, Acting Assistant Secretary

Ms Heike Phillips, Assistant Secretary

Ms Carmel O'Regan, Assistant Secretary

Mr Jason Stott, First Assistant Secretary

Ms Helen McCormack, Assistant Secretary

Ms Cary Duffy, Executive Director

Ms Kylie Crane, First Assistant Secretary

Dr Louise O'Rance, Assistant Secretary

Skills and Training

Ms Nadine Williams, Deputy Secretary

Dr Nicky Antonius, Acting Senior Responsible Officer, Apprenticeships Data Management System

Ms Clare Sharp, First Assistant Secretary, Apprenticeships and Foundation Skills Division

Ms Belinda Campbell, Assistant Secretary, Apprenticeships and Foundation Skills Division
Ms Carmen Saunders, Assistant Secretary, Apprenticeships and Foundation Skills Division
Ms Laura Angus, First Assistant Secretary, National Careers Institute
Ms Linda White, Assistant Secretary, National Careers Institute
Ms Danielle Finnigan, Assistant Secretary, National Careers Institute
Mr Lewis Conn, Acting First Assistant Secretary, Skills Reform Taskforce
Ms Natasha Ryan, Assistant Secretary, Skills Reform Taskforce
Mr Leif Smith, Assistant Secretary, Skills Reform Taskforce
Ms Renae Houston, First Assistant Secretary, VET Quality and Policy Division
Ms Katerina Lawler, Assistant Secretary, VET Quality and Policy Division
Ms Rachel Livingston, Acting First Assistant Secretary, VSL, VET Compliance and TRA Division
Ms Kathy Dennis, Assistant Secretary, VSL, VET Compliance and TRA Division

National Skills Commission

Mr Adam Boyton, National Skills Commissioner
Mr David Turvey, First Assistant Secretary
Dr Damian Oliver, Assistant Secretary, Pricing and Performance
Mr Clifton Bingham, Assistant Secretary, Labour Market Research and Analysis
Ms Angela Hope, Assistant Secretary, Skills, Intelligence and Engagement

Workplace Relations

Mr Martin Hehir, Deputy Secretary
Mr Greg Manning, First Assistant Secretary, Employment Conditions Division
Ms Sharon Huender, Assistant Secretary, WR Strategy Branch, Employment Conditions Division
Ms Tara Williams, Acting Assistant Secretary, Safety Net Branch, Employment Conditions Division
Ms Jennifer Wettinger, Assistant Secretary, Economics and International Labour Branch, Employment Conditions Division
Ms Jody Anderson, First Assistant Secretary, Safety and Industry Policy Division
Mr David Cains, Assistant Secretary, Bargaining and Industry Policy Branch, Safety and Industry Policy Division
Mr David Denney, Federal Safety Commissioner, Office of the Federal Safety Commission, Safety and Industry Policy Division
Mr Timothy Johnson, Assistant Secretary, Safety and Compensation Policy Branch, Safety and Industry Policy Division
Ms Angela Wallbank, Assistant Secretary, Workplace Relations Consultation Branch, Safety and Industry Policy Division
Ms Alexandra Mathews, First Assistant Secretary, Employee Entitlement Safeguards and Policy Division
Mrs Sue Saunders, Assistant Secretary, Fair Entitlements Guarantee Branch
Ms Danica Yanchenko, Assistant Secretary, Workplace Compliance and Enforcement Policy Branch, Employee Entitlement Safeguards and Policy Division
Mr Henry Carr, Assistant Secretary, Recovery and Litigation Branch, Employee Entitlement Safeguards and Policy Division
Ms Anne Sheehan, Chief Counsel/First Assistant Secretary, Workplace Relations Legal, Workplace Relations Legal Division
Ms Sarah Godden, Senior Executive Lawyer/Assistant Secretary, Bargaining and Coverage Branch, Workplace Relations Legal Division
Mr Stephen Still, Senior Executive Lawyer/Assistant Secretary, Employment Standards Branch, Workplace Relations Legal Division
Mr Adrian Breen, Senior Executive Lawyer/Assistant Secretary, Safety, Compensation and Institutions Branch, Workplace Relations Legal Division

Australian Skills Quality Authority

Ms Saxon Rice, Chief Executive Officer
Ms Christina Bolger, Deputy Chief Executive Officer
Ms Denise Lowe-Carlus, Executive Director, Qualifications Assurance and Market Entry
Mr Steve Maillat, Executive Director, Policy and Partnerships
Ms Carmen Basilicata, Executive Director, Market Performance and Engagement
Mr Ty Emerson, Executive Director, Business Systems and Capability
Mr Warren Rushby, Chief Financial Officer

Asbestos Safety and Eradication Agency

Ms Justine Ross, Chief Executive Officer
Ms Julia Collins, Director, Research, Data and Policy Team
Mr Shane McArdle, Director, Awareness and International Team

Australian Building and Construction Commission

Mr Stephen McBurney, Commissioner
Mr Matthew Kelleher, Deputy Commissioner, Legal
Ms Jill Jepson, Deputy Commissioner, Operations
Ms Janine Drennan, Chief Operating Officer/National Manager, Building Code
Ms Madeleine Jones, Acting Executive Director, Wages

Coal Mining Industry (Long Service Leave Funding) Corporation

Ms Darlene Perks, Chief Executive Officer

Comcare

Mr Aaron Hughes, Acting Chief Executive Officer
Mr Michael Duke, General Manager, Scheme Management Group
Dr Leanne Blackley, Chief Operating Officer
Mr Justin Napier, General Manager, Regulatory Operations Group
Ms Megan Buick, General Manager, Strategic Partnerships and Engagement Group
Ms Chloe Eaton, Acting General Manager, Claims Management Group
Ms Louise Close, Acting General Manager, Legal Group

Fair Work Commission

Mr Murray Furlong, General Manager
Ms Joelle Leggett, Executive Director, Tribunal Support Branch
Mr Jack Lambalk, Executive Director, Business Services Branch
Ms Ailsa Carruthers, Executive Director, Client Services Delivery Branch
Mr Patrick McCarthy, Executive Director, Communications, Legal and Organisations Branch

Fair Work Ombudsman

Ms Sandra Parker PSM, Fair Work Ombudsman
Ms Kristen Hannah, Deputy Fair Work Ombudsman, Policy and Communication
Mr Michael Campbell, Chief Operating Officer
Mr Mark Scully, Deputy Fair Work Ombudsman, Compliance and Enforcement
Ms Rachel Volzke, Chief Counsel
Mr Steven Ronson, Executive Director, Enforcement
Mr Anthony Fogarty, Executive Director, Policy
Ms Michelle Carey, Executive Director, Large Corporates Branch

Registered Organisations Commission

Mr Mark Bielecki, Commissioner

Mr Chris Enright, Executive Director

Safe Work Australia

Ms Michelle Baxter PSM, Chief Executive Officer

Ms Amanda Johnston, Deputy Chief Executive Officer

Ms Rebecca Newton, Branch Manager, Chemicals, Occupational Hygiene Policy and High Risk Work Policy

Ms Meredith Bryant, Branch Manager, Evidence, Communications and Strategic Policy

Ms Sarah Costelloe, Branch Manager, WHS Framework and Workers' Compensation Policy

Committee met at 09:02

CHAIR (Senator Sheldon): I declare open this meeting of the Education and Employment Legislation Committee on Wednesday, 9 November 2022. I begin by acknowledging the traditional custodians of the land on which we meet today and pay my respects to their elders past and present. I extend that respect to Aboriginal and Torres Strait Islander people here today.

The committee is due to report to the Senate on Tuesday 29 November 2022 and has fixed 16 December 2022 as the date for the return of answers to questions taken on notice. The committee has resolved that written questions on notice should be received from senators by close of business on Friday 18 November 2022. Under standing order 26 the committee must take all evidence in public session. This includes answers to questions on notice. I remind all witnesses that in giving evidence to the committee they are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to a committee, and such action may be treated by the Senate as a contempt. It is also a contempt to give false or misleading evidence.

The Senate has endorsed the following test of relevance of questions at estimates hearings. Any questions going to the operations or financial positions of the departments and agencies which are seeking funds in estimates are relevant questions for the purpose of estimates hearings. I remind officers that the Senate has resolved that there are no areas in connection with the expenditure of public funds where any person has a discretion to withhold details or explanations from the parliament or its committees unless the parliament has expressly provided otherwise. The Senate has resolved also that an officer of a department of the Commonwealth shall not be asked to give opinions on matters of policy, and shall be given reasonable opportunity to refer questions asked of the officer to superior officers or to a minister. This resolution does not preclude questions asking for explanations of policies or factual questions about when and how policies were adopted.

Witnesses are reminded of the Senate order, specifying the process by which a claim of public interest immunity should be raised, and I incorporate the public interest immunity statement into the *Hansard*:

The extract read as follows—

Public interest immunity claims

That the Senate—

(a) notes that ministers and officers have continued to refuse to provide information to Senate committees without properly raising claims of public interest immunity as required by past resolutions of the Senate;

(b) reaffirms the principles of past resolutions of the Senate by this order, to provide ministers and officers with guidance as to the proper process for raising public interest immunity claims and to consolidate those past resolutions of the Senate;

(c) orders that the following operate as an order of continuing effect:

(1) If:

(a) a Senate committee, or a senator in the course of proceedings of a committee, requests information or a document from a Commonwealth department or agency; and

(b) an officer of the department or agency to whom the request is directed believes that it may not be in the public interest to disclose the information or document to the committee, the officer shall state to the committee the ground on which the officer believes that it may not be in the public interest to disclose the information or document to the committee, and specify the harm to the public interest that could result from the disclosure of the information or document.

(2) If, after receiving the officer's statement under paragraph (1), the committee or the senator requests the officer to refer the question of the disclosure of the information or document to a responsible minister, the officer shall refer that question to the minister.

(3) If a minister, on a reference by an officer under paragraph (2), concludes that it would not be in the public interest to disclose the information or document to the committee, the minister shall provide to the committee a statement of the ground for that conclusion, specifying the harm to the public interest that could result from the disclosure of the information or document.

(4) A minister, in a statement under paragraph (3), shall indicate whether the harm to the public interest that could result from the disclosure of the information or document to the committee could result only from the publication of the information or document by the committee, or could result, equally or in part, from the disclosure of the information or document to the committee as in camera evidence.

(5) If, after considering a statement by a minister provided under paragraph (3), the committee concludes that the statement does not sufficiently justify the withholding of the information or document from the committee, the committee shall report the matter to the Senate.

(6) A decision by a committee not to report a matter to the Senate under paragraph (5) does not prevent a senator from raising the matter in the Senate in accordance with other procedures of the Senate.

(7) A statement that information or a document is not published, or is confidential, or consists of advice to, or internal deliberations of, government, in the absence of specification of the harm to the public interest that could result from the disclosure of the information or document, is not a statement that meets the requirements of paragraph (1) or (4).

(8) If a minister concludes that a statement under paragraph (3) should more appropriately be made by the head of an agency, by reason of the independence of that agency from ministerial direction or control, the minister shall inform the committee of that conclusion and the reason for that conclusion, and shall refer the matter to the head of the agency, who shall then be required to provide a statement in accordance with paragraph (3).

(d) requires the Procedure Committee to review the operation of this order and report to the Senate by 20 August 2009.

(13 May 2009 J.1941)

(Extract, Senate Standing Orders)

CHAIR: Senators, departments and agencies have been provided with advice on the arrangements in place to ensure the budget estimates 2022-23 hearings are conducted in a safe environment. This guidance is also available from the secretariat. The committee appreciates the cooperation of all attendees in adhering to these arrangements. Today the committee shall hear evidence from the Employment and Workplace Relations portfolio and Education portfolio.

Safe Work Australia

[09:05]

CHAIR: I welcome Senator the Hon. Murray Watt, Minister for Agriculture, Fisheries and Forestry and the Minister for Emergency Management, representing the Minister for Employment and Workplace Relations. Minister Watt, do you wish to make an opening statement?

Senator Watt: No, I don't, thanks, Chair.

CHAIR: I now welcome representatives from Safe Work Australia. Ms Baxter, do you wish to make an opening statement?

Ms Baxter: No, thank you.

CHAIR: I welcome Ms Johnston, as well. Over to you, Senator Liddle.

Senator LIDDLE: Thank you. Ms Baxter, I want to ask you a couple of questions around governance. Can you tell me how many Safe Work Australia board members there are, as of today's date?

Ms Baxter: Yes, I can.

Ms Johnston: The membership comprises 15 members, and all members, I think, are currently full and appointed.

Senator LIDDLE: So the full board is 15?

Ms Johnston: Yes.

Senator LIDDLE: And you currently have 15?

Ms Johnston: I think that's correct. There is one appointment that was in process for Queensland, and I'm not sure if that has been completed. We aren't responsible for appointments; that's the department. So I'm not sure where that's up to. I was advised it was in process, and I think it has been done, but the question may be better directed to the department.

Senator LIDDLE: What's a quorum for that board?

Ms Johnston: A quorum is a majority of the members.

Senator LIDDLE: What is it—a majority?

Ms Baxter: Well—yes.

Ms Johnston: Yes, but I think what Ms Baxter is concerned about is that there are different voting rules. If we're voting on legislation, it's two-thirds of a simple majority of jurisdictions; if it's not a decision on the model work health and safety laws, it's just a simple majority.

Senator LIDDLE: Is that a new board? What's the changeover like of that board? What is the transition rate?

Ms Johnston: Members are appointed for a three-year period, so it's constantly changing. The appointments aren't all up at the same time. They're up at different times. It will change at certain times. But it's not a new board. There are members who have been there for some years, and there are new appointees as well.

Senator LIDDLE: You've got a three-year period. Were all of those new members at the end of their three-year period or did some resign?

Ms Baxter: We have had no resignations. As Ms Johnston said, it's a rolling process, managed by the department.

Senator LIDDLE: So there are board members whose time actually came to an end and have now left, and you've had your reappointments? Can you tell me a little bit about the numbers in that transition?

Ms Baxter: What period are we talking about?

Senator LIDDLE: Say, the last 12 months?

Ms Baxter: In terms of appointments in the last 12 months, the chair was appointed on 1 February 2022. A member representing the Australian Council of Trade Unions was appointed on 19 September 2022. A member nominated by the Australian Industry Group was appointed on 3 December 2021. The CEO of Safe Work Australia, an ex officio member, myself, was appointed on the 1 November 2021—sorry, that is outside 12 months. A member representing Western Australia was appointed on 19 September 2022. A member representing New South Wales was appointed on 11 March 2022. A member representing the ACT—that's outside the 12 months.

Senator LIDDLE: You have confirmed there were no resignations in that time?

Ms Baxter: It might be that the member representing the Northern Territory resigned in that period because he left the position of working for the Northern Territory government as the work health and safety regulator. It may also be that a member nominated by the Australian Council of Trade Unions also resigned their membership on the basis of—no, their appointment period expired, and the ACTU nominated a different person to represent the ACTU.

Senator LIDDLE: How would you describe the current make-up of the board? Is it diverse? Is it consistent with a reflection across a whole range of areas that would be expected to be considered good governance by, say, the AICD?

Ms Baxter: The Safe Work Australia Act prescribes the membership of Safe Work Australia. Safe Work Australia is a tripartite body with representatives from government, employer representatives and employee representatives. It is up to each of the member jurisdictions or member bodies to nominate the person or people that they feel are most competent to represent their interests and their stakeholders.

Senator LIDDLE: How many board meetings have occurred since the change of government?

Ms Baxter: I think two meetings have occurred since the change of government. I'll correct that if I'm wrong. It's either one or two, but I believe it's two meetings. Over the period that our annual report covers, we have had seven meetings of Safe Work Australia members.

Senator O'SULLIVAN: Is that consistent with normal times?

Ms Baxter: The act prescribes the number of meetings that we must have each year, and that is three. But from time to time there are extraordinary meetings because of the pressing nature of an issue that needs the consideration of the full membership of Safe Work Australia.

Senator LIDDLE: No more from me. Thank you.

CHAIR: No further questions? We'll suspend for a moment.

Proceedings suspended from 09:13 to 09:16

CHAIR: I thank Safe Work for remaining with us. There are some questions that the opposition would additionally like to ask.

Senator O'SULLIVAN: Thanks for hanging around. Can I get an understanding of the appointment process for board members, please. What's the process for someone to be appointed to the board?

Ms Baxter: As Ms Johnston noted, the department manages that process. We in the agency are not a part of that process at all. We're simply notified when a member has been appointed.

Senator O'SULLIVAN: Okay. Is there an application process, though? So you've got no involvement—

Ms Baxter: I think that question is better directed to the department, given their responsibility for appointments.

Senator O'SULLIVAN: Minister, are you aware of whether or not the minister has had any contact with any of the new board members or potential candidates for the board?

Senator Watt: I'm not aware.

Senator O'SULLIVAN: On what date did the Safe Work Australia website update the new board members and their qualifications?

Ms Baxter: We may have to take that on notice, I'm afraid. I'm not sure that we have that information with us. No, we don't.

Ms Johnston: We would update our website as the new members are appointed, but there's not a point in time, because, as we said, there are different appointments that happen throughout time. As soon as we get a new member, we would update the website to reflect the new membership.

Senator O'SULLIVAN: Okay. When was the last appointment made? I think you ran through that.

Ms Baxter: I believe it was 19 September 2022.

Senator O'SULLIVAN: Has the website been updated with that appointment?

Ms Baxter: I need to take that on notice. I'm assuming it has been, but I don't want to mislead you.

Senator O'SULLIVAN: Minister, would the minister consider that the current make-up of the board is diverse?

Senator Watt: I'm not aware of what the minister's position is on the level of diversity within the board. My understanding is that the intention is that this is to be a tripartite organisation.

Senator O'SULLIVAN: Sometimes that has different meanings. By 'tripartite', what do you mean?

Senator Watt: Government, employer and union—or unions on behalf of workers.

Senator O'SULLIVAN: We heard earlier that the states have a role in appointing people. Is that right?

Ms Baxter: That's right. Each jurisdiction, including the Commonwealth, appoint one member each. There are two representatives representing employers and they are nominated by the Australian Industry Group and the Australian Chamber of Commerce and Industry, and there are two representatives representing employees and they are nominated by the Australian Council of Trade Unions.

Senator O'SULLIVAN: You said that the board is full. Are there any vacancies at all, at the moment?

Ms Johnston: As at 27 September, the Queensland appointment had not been filled yet. But, as Ms Baxter said, the legislation sets out that there are 15 members, and who they represent. If there's a vacancy, that means it's just in the process of being filled through the appointments process.

Senator LIDDLE: Can I ask a point of clarification? You were asked a question before about how these appointments occur. You said that they are made up of nominations, appointments, from these different bodies or states and territories. What role is played in assuring that that's a merit based, transparent process for the selection of those people to be put forward?

Ms Baxter: What I said was the nominations occur from jurisdictions and the social partners, we call them. That's prescribed under the act. In terms of the further points in your question, I think you would need to put those to the department, given they handle the appointments process.

Senator Watt: I've had a bit more of a look at the membership, Senator O'Sullivan. I don't know, by any means, all of the individuals on the board, but it appears to me that it's got reasonable diversity, from a gender point of view. But there might be other diversity measures that could be improved, whether it be cultural background or people with a disability. There are obviously a range of measures of diversity, if you want to put it that way, and it would seem to me that there could be some improvements to the diversity of the board, in that respect.

Senator O'SULLIVAN: Can I go to the annual report, please. With last year's report, can you tell me when the National Return to Work Strategy 2020-30 commenced?

Ms Baxter: Yes. I'll ask Ms Costelloe to come to the table.

Ms Costelloe: It commenced on 1 January 2020.

Senator O'SULLIVAN: Can you tell me who endorses this strategy and what it's achieved?

Ms Costelloe: The strategy was endorsed by all the Commonwealth state and territory ministers. In terms of achievements, a range of initiatives have been progressed under the strategy. It is early days; it's a 10-year strategy. I can read out some of the things that we have done in relation to the strategy.

We have published an independent research report regarding workers' understanding of workers compensation systems and communication preferences. We've published an independent research report regarding the causes and impacts of stigma in workplaces and approaches to creating positive work cultures that support return to work and effective return to work. We've published an independent research report to support workers' psychological responses to injury and successful return to work. We've most recently published a guide for supervisors in small and medium businesses to help them manage their relationship with an injured or ill worker during their return to work. We've also created an online central repository, which includes a range of resources, and some of those have been provided by the jurisdictions as well.

Senator O'SULLIVAN: What impact did you find, and what work have you done, in relation to dealing with COVID and the impact that had on the workforce?

Ms Costelloe: The strategy itself includes some time points where the strategy would be reviewed. There was a one-year scorecard report, which was very early days. It was right in the middle of the COVID pandemic. What we found was that there really wasn't much to measure at that point because of the impact of COVID. The next point of review will be the year 3 report. We'll commence doing that next year and work with the jurisdictions and our members on that.

Ms Baxter: If it assists, we do have some data in relation to COVID related workers compensation claims.

Senator O'SULLIVAN: Yes, please.

Ms Baxter: We've got two years worth of data, 2019-20 and 2020-21, noting that the data for 2020-21 is preliminary data. Over those two years, there were 906 accepted workers compensation claims for COVID-19.

Senator O'SULLIVAN: What's the nature of those claims? Obviously, you can't go into specifics.

Ms Baxter: We do not have that information.

Ms Johnston: Claims aren't made directly to us; we just receive the data from the jurisdictions, and it's just coded as a COVID-19 claim, so we don't have the granularity of what the circumstances were or why they're making that claim.

Senator O'SULLIVAN: It would be good to go into that. That's a shame. How does Safe Work Australia mainly communicate—through your website, media, social media?

Ms Baxter: We communicate in a number of ways. We communicate through our website. We have a list of stakeholders that we regularly send information out to. We have an engagement platform on our website where, when we put out, for instance, a consultation regulatory impact statement, any member of the public or any interested stakeholder can access the consultation RIS—regulatory impact statement—and make a submission or provide comment in relation to that. We also communicate through our members, and our members disseminate information and products that are developed at Safe Work Australia. We also keep work health and safety ministers across Australia up to date with the work of Safe Work Australia through meetings of work health and safety ministers.

Senator O'SULLIVAN: Can you tell me about your media engagement. What was achieved through that over the last 12 months?

Ms Baxter: I might ask Ms Bryant, who has responsibility for our communications area, to come up and assist you with that.

Ms Bryant: Safe Work Australia has a legislative function to develop and implement national education and communication strategies and initiatives to support improvements in work health and safety outcomes and workers compensation arrangements and to promote national consistency in such strategies and initiatives. You'd probably be aware that, as agreed by National Cabinet in 2020, Safe Work Australia's website remains a central hub of COVID-19 work health and safety information and guidance for employers, small businesses and workers.

We also have a major initiative that's just completed for this year—National Safe Work Month. The 2022 campaign thing was, 'Know safety, work safely,' and that's a broad campaign that encourages workplaces to make health and safety at work a priority. Supporting this overarching theme, the campaign this year highlighted various work health and safety topics each week over a four-week period and produced a range of resources and

collateral, including a campaign toolkit that we encourage stakeholders across the work health and safety system and the broader community to use to raise awareness of both the work that Safe Work Australia does and the important work that we encourage all workplaces to undertake to consult with their workers and talk and educate about safety issues.

Senator O'SULLIVAN: How much is in the budget for you to perform those activities?

Ms Bryant: There is not a specific line item in our budget for National Safe Work Month. A lot of the material that we produce, all of it in fact, is developed in-house by our designers and communications specialists. We then promote that in conjunction with our Safe Work Australia members through our jurisdictional members and social partner members to distribute throughout their networks. We work very closely with the communication reference group to make sure we've got broad reach into the entire system.

Senator O'SULLIVAN: You mentioned, with COVID, there was the information for workplaces. Was that what was distributed across many workplaces across Australia?

Ms Baxter: Yes, definitely. As I said, the Safe Work Australia website was a key communication channel. That consisted of over 800 publications and 500 pages of content. Sorry, I beg your pardon. That's our website overall, but a large component of that has been our COVID-19 pages. Just to give some context of the reach of the website, in 2021-22, the Safe Work Australia website received more than 9.9 million page views and, of these, more than 3.3 million were views of the COVID-19 content.

Senator O'SULLIVAN: That would probably be a big jump on what you would normally get. Is that right?

Ms Baxter: It was significant, yes.

Senator O'SULLIVAN: So the A4 sheets you saw put up around offices with guides on hygiene and washing hands and masks and various things, was that your collateral?

Ms Johnston: Some were ours but some were the Department of Health and the jurisdictional departments of health.

Senator O'SULLIVAN: But you were disseminating it though. Is that right?

Ms Johnston: We worked closely with the Department of Health throughout COVID-19. We were sharing information and linking on both our websites. We were not responsible for disseminating the Department of Health's resources but we certainly linked to the Department of Health and made them available on our website.

Senator O'SULLIVAN: Well done. You did a good job getting that out anyway. Can I ask about the research plan of 2021-22? SWA members endorsed that plan. Is that correct? Was that plan endorsed?

Ms Bryant: That's correct.

Senator O'SULLIVAN: When was that endorsed?

Ms Bryant: I'd have to check our records, but I think it was around December 2020, because it was a two-year plan. But I might just check the record on that and correct if I need to.

Senator O'SULLIVAN: What's in the plan? What are you researching?

Ms Bryant: There were a range of activities identified under the research plan, some of which Ms Costelloe already referred to in the key initiatives under the National Return to Work Strategy. We also recently released cost-of-injury modelling that we undertook in conjunction with Deloitte that modelled the benefit to the Australian economy of reducing the burden of injury and illness in Australia and the positive effects that that can have throughout the economy.

Senator O'SULLIVAN: What were the key findings there?

Ms Bryant: The modelling showed that if the effects of work-related illnesses and injuries between 2008 and 2018 are removed, the Australian economy would have been \$28.6 billion larger each year or \$315 billion in total. Each year there would have been an additional 185,500 full-time equivalent jobs, and wages would also have increased on average 1.3 per cent. In effect, the removal of work-related injuries and illness would have a comparable economic impact to the current direct contribution of the Australian agricultural industry or the growth forgone during the New South Wales 2021 COVID-19 lockdown, just to give some order of magnitude about the impact that reducing that injury burden could have.

Senator O'SULLIVAN: When you get findings like that—they're quite impressive—what do you do? How do you help influence policy on that?

Ms Bryant: To give some background on how we develop the research, we undertook and worked with Deloitte using a computable general equilibrium model, which combines real-world data which Safe Work Australia provided with economic ideas to explore how our economy may react under different situations, such as

a change in policy or a significant event. In this situation, the model has enabled us to understand how industries operate together to support the economy. When we change one aspect of this connected system—in this case, removing the impact of the injuries and illnesses suffered over that 10-year period—what impact that has then on the wider economy. We provide the inputs. We took all the information about injuries and illnesses that occurred over that 10-year period, we fed it into the CGE model and that's the shock that we introduced to the system to see what the ripple effect out into the broader economy would be of reducing those injuries and illnesses. So that's how we can understand the impact on wages, the impact on the addition of not only additional jobs but skilled jobs across the broader economy. One of the interesting findings was it's not just limited to the industries in which the injuries were experienced but beyond that into other industries.

Senator O'SULLIVAN: Did you want to add something, Ms Baxter?

Ms Baxter: Yes. I was just reflecting on the fact that we have this report. It's only recently been published. We do have a communications plan around it. We are just waiting for a little bit of clear air in order to make some approaches to the media, so we have a strategy around that.

Senator O'SULLIVAN: What do you mean by 'clear air'?

Ms Baxter: We published it the day before the budget came down.

Senator O'SULLIVAN: You didn't want the message lost among everything?

Ms Baxter: Exactly. It's a really important message about the contribution of work health and safety to the economy.

Senator O'SULLIVAN: It's a good point, highlighting the economic driver as well. Obviously, we hope that every workplace is focused on the human cost and the impact but obviously combining that with that economic cost can drive behaviour as well. As they say, behaviour follows reward.

Ms Baxter: To your question about influencing policy, Ms Bryant and her team have a number of connections into a number of relevant Commonwealth departments and agencies where this may be of interest, so they've been sharing the report and their findings with those agencies and departments.

Senator RENNICK: I have a couple of questions—and apologies for my ignorance. Do you cover workers' comp for federal employees?

Ms Baxter: No, we don't. That's Comcare.

Senator RENNICK: But are you involved in setting up policies around workers' compensation and things like that?

Ms Baxter: One of our functions is we have a role in furthering the consistency of workers' compensation schemes across Australia.

Senator RENNICK: Does that go into assessing workplace practices and the safety of those workplace practices and things like that?

Ms Baxter: No, that would fall to the work health and safety regulators in each jurisdiction, and for the Commonwealth that's Comcare also.

Senator RENNICK: So it's Comcare I need to speak to. That's all I need to know.

Coal Mining Industry (Long Service Leave Funding) Corporation

[09:38]

CHAIR: We now call the Coal Mining Industry (Long Service Leave Funding) Corporation. Welcome, Ms Perks. Would you like to make an opening statement?

Ms Perks: No, thank you.

Senator ROBERTS: Thank you, Ms Perks, for being here again. What was the total value of the levy underpayments as identified by the PricewaterhouseCoopers audit in 2021? How many years back did the audit extend?

Ms Perks: The engagement with PWC was specifically to recalculate levy reporting for a three-month period for 10 employers of casual employees in the scheme. The piece of work was an engagement and a scope that was covered to inform us on regulatory activities, and it certainly has delivered on that.

Senator ROBERTS: In what way has it delivered?

Ms Perks: It has informed focused regulatory activities that we have in train with the 10 employers that were covered in the scope for the three months worth of data assessment. The one thing which I'd draw out which is really pertinent to the piece of work is the litigation that's on foot with WorkPac and Coal LSL which assesses the

calculation of eligible wages for casuals and also looks at the interpretation of reporting of hours. Whilst that was a piece of work that has progressed as a result of the PwC analysis, which is informing us on the areas of concern in regard to the data that's been received from the employers, that litigation on foot will be very pertinent to inform the escalated regulatory activities that we have in train.

Senator ROBERTS: What have you learned about Coal LSL—and maybe yourself—as a result of this?

Ms Perks: The information certainly validated for us the complexities that our legislation has in regard to interpretation of calculation of eligible wages and also the complexity of reporting of hours. We also understand, through the engagement and interactions with employers, that some of the errors are purely administrative because of the complexities and some are conscious decisions in how legislation is being interpreted. So we really are seeing two different categorisations of issues as we work through the discrepancies with the employers.

Senator ROBERTS: It sounds to me you're, admirably, acknowledging that you've learned something.

Ms Perks: We continue to understand further the complexities and how the employers are challenged to interpret the legislation, and where there may be differing views to our interpretation of the legislation.

Senator ROBERTS: Over how many years was the PricewaterhouseCoopers audit conducted?

Ms Perks: It was three months worth of data.

Senator ROBERTS: Just that? That's it?

Ms Perks: Yes.

Senator ROBERTS: Could we have the breakdown of the under-reported hours and the dollar values, and the name of the employer, please? I'm happy to take that on notice.

Ms Perks: As I said, the report is informing our regulatory activity, so I will take it on notice and ascertain whether it's under legal privilege because it is informing regulatory activities.

Senator ROBERTS: On 7 April 2014, Ai Group put out a report called *Significant workplace relations issues*. In this report Ai Group states:

The Coal Mining (Long Service Leave Funding) Corporation has advised Ai Group that it intends to pursue claims against 260 companies which it alleges are covered by the coal industry portable long service leave scheme.

Given the issues I've raised many times over many years now with Coal LSL, the KPMG review identified many issues with Coal LSL. This review was ordered by the former government's Attorney-General, Senator Cash, and Coal LSL and the Attorney-General then accepted all recommendations from that review. Based on that I have the following questions: please give me the names of all 260 companies identified in 2014 that were covered by the Coal LSL scheme that Coal LSL identified to the Ai Group.

Ms Perks: I'm not familiar with the report you're referring to, Senator. We'll certainly access it and align that report to the request. I'm pleased to say that, today, the list of known non-complying employers is less than 214, but it is still voluminous and one that we're certainly still pursuing.

Senator ROBERTS: Could you indicate how many of those were labour hire companies and who they were?

Ms Perks: We would do our best. It's quite a subjective assessment with labour hire companies. The way we look at it—again subjectively—is we ask: are they a producer, or do we believe, through the duties that we're able to ascertain their employees are performing, that they're labour hire? There are the known labour hire companies, but there are certainly other employers in the industry which could be inferred as labour hire but wouldn't be traditionally classified as labour hire. We will take that on notice. I'll probably just highlight that we may be subjective in how we're classifying those employers.

Senator ROBERTS: Because of what we exposed in the Hunter Valley, in particular, and potentially in Central Queensland, with the abuse of miners employed under labour hire companies, I think it's pretty important to understand what we're dealing with. Could you please provide me with all the correspondence between Coal LSL, the Ai Group and those identified companies with regard to this matter?

Ms Perks: We'll take that on notice.

Senator ROBERTS: Thank you. What are you doing within Coal LSL, because we uncovered sloppiness and low accountability?

Ms Perks: Is there a specific question to that?

Senator ROBERTS: What initiatives are you taking to sharpen up Coal LSL and improve accountability?

Ms Perks: The corporate plan that was published this year is an advancement on the previous plans. It outlines the four-year transformation program, which, for us, is about moving us further towards that position of

being a contemporary government organisation that manages such an important scheme: the portable long service leave scheme. There are four pillars to that program. One is headed regulation, which is focused on regulatory activities, decision-making and employer and employee online services. It is about providing systems and access to information that is more in line with a modern organisation. We have a technology and data pillar, which is focused on advancing our systems and our in-house operations. Another pillar is capability, so it's really important that we continue to invest in our people to ensure that their capability aligns with a transforming organisation.

Senator ROBERTS: What does that look like specifically?

Ms Perks: The capability pillar?

Senator ROBERTS: Yes.

Ms Perks: It looks at learning development and technical training. It's a really important one. With the specialist skills that we have in our organisation it is important that we continue to train our people to ensure consistency of approach and consistency of understanding and interpretation of our statute and the application thereof. Those are a couple of examples. It also extends to work health and safety matters and ensuring that all of our obligations as an organisation are met in protecting, advancing and managing our people. Those are a couple of examples of what would sit under that capability program.

Senator ROBERTS: And the fourth pillar?

Ms Perks: The fourth one is governance, so continuing to improve governance. We don't have concerns that our governance frameworks aren't appropriate, but governance in any organisation is one that needs to continue to improve to ensure it is meeting and mitigating all risks in a changing environment.

Senator ROBERTS: You sound like me three years ago. So there's now an acknowledgement that governance and accountability need to improve?

Ms Perks: I've been CEO for five years and governance is and has always been really important to me. What we're doing in the organisation is recognising and reflecting how important it is and the programs that sit within it. I'm confident it's always been important under my watch.

Senator ROBERTS: Are the two independent directors appointed?

Ms Perks: That would require a legislative change, so that is something that would be in the hands of government.

Senator ROBERTS: But you're working on it with the government?

Ms Perks: Yes.

Senator ROBERTS: Is that the intention?

Ms Perks: That was one of the recommendations.

Senator ROBERTS: The government at the time and Coal LSL said they would be implementing all the recommendations.

Ms Perks: That is in line with government's recommendations, but, again, that relies on legislative change and reform.

Senator ROBERTS: Okay. It will be easy for Coal LSL to identify casual employees in your system now, as they will have a C next to their name. Is that correct?

Ms Perks: We've always been able to classify them. They are classified as casuals.

Senator ROBERTS: How many casuals are there?

Ms Perks: Our scheme today has over 56,000 total active employees, who, our records say, are working in the industry today. Of those 56,000 employees, 11 per cent are classified as casuals—so over 6,000.

Senator ROBERTS: How many casuals have been paid their LSL?

Ms Perks: I'll need to take that on notice. For clarity, is that in their history of employment? They do move in classification from casual to full timer. Is the question specifically around whether casuals today have met qualifying service and accessed long service leave?

Senator ROBERTS: Yes. I accept that.

Ms Perks: We can provide that information.

Senator ROBERTS: Thank you. How many casuals have left the coal industry and have never been paid their coal LSL?

Ms Perks: Again, I'll take that on notice.

Senator ROBERTS: Thank you. Could I have the dollar value of that amount, please?

Ms Perks: We record it in hours. The employee's entitlement is in hours, so we can report the hours that accrued at the time that they left the industry.

Senator ROBERTS: And a rough estimate of the dollars?

Ms Perks: We could do a broad estimate on an average hourly rate.

Senator ROBERTS: Thank you. Just an indicative estimate. Where is that money that hasn't been paid out being held?

Ms Perks: This question has been answered in previous QONs. I'm happy to respond by referring back to the QON.

Senator ROBERTS: Thank you. That'll be fine. What's your plan for these funds?

Ms Perks: Again, this has been answered in a previous QON.

Senator ROBERTS: I can't remember.

Ms Perks: I'll refer back to our previous responses.

Senator ROBERTS: Thank you. What are your key priorities for developing accountability right across Coal LSL?

Ms Perks: In line with the strategic plan, under governance, we have a piece of work enhancing our delegations and responsibilities framework. We do have a delegations framework, and they're official instruments that have been approved by the board. It's important, as the organisation transforms, that we continue to align the responsibilities frameworks and our policies to the changing organisation. That is important to us and it will be ongoing to ensure that, with each step in the transformation, our frameworks stay in check and very transparent about who has authority and empowerment to make decisions at either a financial level or in a regulatory decision or similar within the organisation.

Senator ROBERTS: How have you improved communication of entitlements for casuals to get their payouts? Casuals are entitled to either keep their money in the fund or get it paid out, aren't they?

Ms Perks: After eight years of qualifying service, every employee has a vested entitlement to access. That is the same set of rules and criteria for all employees in the scheme. Our system does not have mobile or portal access for employees to access their entitlements in a live setting yet. It is part of the transformation agenda so that all employees can access their entitlement balance anytime, anywhere. That is in train. It isn't live as yet.

Senator ROBERTS: When you say 'access', you don't mean access funds—

Ms Perks: Have visibility of.

Senator ROBERTS: Have the ability to get the information?

Ms Perks: Yes. In the absence of that, employees will ring our service centre or get onto the portal to have visibility of their entitlements. That is the means of communicating entitlement balances to date. Again, it is a key part of our transformation agenda to improve that system access.

Senator ROBERTS: Is there any thought given to—it might defeat the purpose of the scheme—giving casuals access to their coal LSL as they're paid? In other words, put it on top of their pay rather than wait eight years, because some of them spend less than eight years in the industry and never get their money.

Ms Perks: It hasn't been an item of discussion that I've been part of to date.

Senator ROBERTS: Would it be worth discussing? Because these people are basically missing out on their entitlements.

Ms Perks: Something to look at is whether there would be any change to the waiver agreement regulation. That's where it could be assessed if there were a reasoning and a good cause to provide that access to casuals. That's where I would suggest it could be incorporated as a regulatory change.

Senator ROBERTS: Is it something you would think about and consider?

Ms Perks: I think that would be a matter for government.

Senator ROBERTS: But you would advise them.

Ms Perks: If we come back to the concept of portable long service leave, the concept is retaining people in an industry. If we come back to that concept, then having a cohort of employees cashing out that benefit along the way could be in tension with the intent of the scheme and how it was constructed.

Senator ROBERTS: I can accept that view, that argument, Ms Perks, but, at the same time, these people are missing out and there's no way they're going to get their payment. As a matter of fairness, they're just not getting it because of the way the industry has been structured in recent years. Is there any thought about the need for fairness?

Ms Perks: I think fairness, equity, certainty and consistency is a fundamental component of the scheme—the design of it and how it needs to mature and advance—so we should be considering any areas to address that.

Senator ROBERTS: Thank you, Ms Perks.

Senator LIDDLE: In relation to Coal LSL and the independent review, could you take us through the terms of reference that were set as part of the commissioning of that review?

Ms Perks: The terms of reference and the contract were with the department, so I think that would be a question for the department to answer.

Senator LIDDLE: Was there any consultation with your organisation?

Ms Perks: No.

Senator LIDDLE: You've obviously reviewed the terms of reference. From your perspective, is it clear that there will be no reduction in entitlements for eligible employees as part of those terms of reference?

Ms Perks: It was an explicit part of the terms of reference that entitlements would not be reduced.

Senator LIDDLE: Do you understand the stakeholder consultation process that the review undertook, and was anybody left out?

Ms Perks: We contributed to the consultation as an interested party, but we did not lead the consultation. I don't have visibility, other than what was published in the report.

Senator LIDDLE: You weren't asked for any advice on whether the stakeholder list could have been increased?

Ms Perks: No.

Senator LIDDLE: In terms of the report's recommendations, are there any that were directed to you?

Ms Perks: Off the top of my head, there were 10 recommendations directed to Coal LSL, and those recommendations certainly have been addressed in our recent corporate plan and the transformation agenda, which has a four-year timeline. We're very confident that each of the recommendations will be addressed over a multiyear period, in order to complete and advance the organisation.

Senator LIDDLE: Noting that the issue of the differences between casual and permanent workers under Coal LSL legislation has been raised previously in this committee, could you expand a little more on the recommendation that relates to those differences and the government's response to that recommendation?

Ms Perks: I certainly don't have visibility of the new government's response on that recommendation. I can talk to the three areas that the report outlined, if that would help?

Senator LIDDLE: Yes, please.

Ms Perks: We're talking about recommendation 4 in the report?

Senator LIDDLE: Yes, that's the one.

Ms Perks: The recommendation from KPMG in the report states:

It is recommended that the Commonwealth enact legislative amendments to ensure that casual employees are treated no less favourably than permanent employees in the Scheme.

It outlines, I guess, the anomalies between how eligible wages are calculated, how work hours are calculated and then how employers are reporting hours through monthly returns. So the issue talks to the assessment of working hours in relation to a roster, and then how that information is reported to us and then calculated as entitlement. That's the core of the issue—and, similarly with that, how the definition of eligible wages has been defined for employers of casual employees. The recommendation, put in simple terms, is to align where possible the calculation of eligible wages and then the reporting of hours.

Senator LIDDLE: From your perspective, where are those recommendations up to? How much progress has been made?

Ms Perks: The 10 recommendations to Coal LSL have been captured in an operational plan or our strategic agenda. The activities or the strategic programs that sit within the transformation agenda have all progressed. We're only several months since the publishing of that corporate plan, so the focus for us has been standing up the

project teams and getting the appropriate project governance in place to manage the significant pieces of work. Progress has started, but certainly it's in the early days of progression for each of the strategic agenda items.

Senator LIDDLE: You mentioned before about communication and education activities. Can you take us through some of the work that you undertake in this space, and how those programs are received—so there's two parts to that.

Ms Perks: This is an area where, certainly in our transformation, we'll see more advanced communication and engagement with our client base. But we have in place today a service team of 17 staff who are based in Newcastle, and they field a lot of inquiries through email inquiries or phone inquiries. That is our main channel of communication and interaction with the client base. So it's a reactive communication interaction. Our proactive communication is, to date, either through our website channel or through a bimonthly client e-newsletter to our employers of the scheme or, where appropriate, through the LinkedIn social media platform. It is limited to those sources, currently.

Senator LIDDLE: So you're obviously hearing from those people who contact you. We heard, in the previous estimates process, some of the complaints from those people. Can you tell us a little bit more about that and what actions that you understand have been taken by LSL?

Ms Perks: In regard to the complaints?

Senator LIDDLE: Yes.

Ms Perks: I'd say the recent themes of complaints that we're receiving would be from frustrated employees who cannot access their long service leave. I'd categorise them in that way. You certainly get administrative complaints of, 'An employer isn't approving my long service leave application within the 14 days, which is outlined in the statute.' We will act on that by providing a communication to the employer reminding them of their obligations. So there are administrative complaints that are escalated to the team, but I would say the themes of complaints we're predominantly seeing are employees who have leave, qualified service and a vested entitlement yet cannot access that entitlement because their employer is not registered—that is, they're in our non-compliant employer list. They're stuck. They can't access their leave, and they should be able to, and we do not have power under our statute to pay them directly.

When we talk about the question, 'What are we doing?' we're certainly very live to the issue that it's problematic. We certainly appreciate the frustration of employees who should be able to but can't access their leave. What can we do under our statute? We can't pay them directly; we can't do anything. We are stuck. That, I guess, answers your question around what we're seeing and what's shifted over the last 12 months. That's been the shift in complaints for us, predominantly.

Senator LIDDLE: We've heard 'frustration', 'stuck'. In terms of Coal LSL, would you describe their response and their participation as taking this seriously and honestly, in terms of trying to find solutions?

Ms Perks: Yes, we are definitely taking it seriously. You're capturing the issue and yes, it's not being buried, is what I would say to that question.

Senator LIDDLE: If they're stuck and frustrated, what other opportunities are available for you to help progress these issues?

Ms Perks: The avenue for us is the ability to pay the employee directly, in a situation where they have a vested entitlement and should be able to. That would be the solution. We cannot identify an alternative solution other than that but are certainly open to other ideas of how we can help alleviate this problem that we have: a number of employees who are stuck within the scheme.

Senator LIDDLE: Are you able to take me through the recent investment returns for Coal LSL?

Ms Perks: I can, yes. We have just received our October results, and you can appreciate that for anyone managing money and investment portfolios it's been a bumpy ride over the last 12 months. With the October results, I'll start with the funds under management. The investment portfolio was valued at \$1.972 billion at the end of October. The one-month return for October was a positive 3.9 per cent. The result for the financial year to date is two per cent. The rolling one-year result is minus 6.1 per cent; we're still carrying the negative results of the financial year ending in June. The three-year results at the end of October, positive 3.5 per cent; five years, five per cent; and eight years, 5.7 per cent.

Senator LIDDLE: What are some of the areas identified in the investment portfolio and some of the areas that they invest their money in?

Ms Perks: Our portfolio is structured similarly to what you'd see as a growth fund. We have a portfolio of domestic and international equities, alternative assets, infrastructure assets, private unlisted assets and emerging

market debt assets. That's off the top of my head, but I can provide the strategic asset allocation specifics to you on notice, if that would be helpful.

Senator LIDDLE: Yes. Are there any restrictions from government as to how any returns can be invested?

Ms Perks: Off the top of my head, I'm going to say no, but we have an investment policy that is published. That investment policy is tabled with the minister annually. I'll share that investment policy on notice, because that would outline any restrictions, but there's nothing—

Senator O'SULLIVAN: Would your investment policy be similar to, say, the Future Fund?

Ms Perks: I'm not as familiar with the Future Fund's investment policy.

Senator LIDDLE: Does Coal LSL invest any money in companies which undertake coal mining or coal exporting activities?

Ms Perks: Not directly. I think it's important for me to share that all of our investments are through unit trusts, so we do not have any segregated mandates, like direct investments. That's been a decision that has been made by the board in the investment committee over the years. As to whether any of our investment managers have equities in companies, we don't have visibility of the underlying stock holding on a monthly basis, but I can certainly answer that we do not have direct investments with coal companies.

Senator LIDDLE: You outlined the investment portfolio earlier. That's very strong investment returns and a strong portfolio. Will there potentially be a reduction in premiums for employers?

Ms Perks: The current payroll levy, which is two per cent of eligible wages, is lower than the actuarial long-term rate. Since 2018 employers have had a holiday, I will call it, or have benefited from a lower payroll levy rate. The fund surplus has been impacted over the last 12 months, with investment returns. We have an actuarial report that is in train and will be reviewed by the board in December. I think it's important to know that it is very unlikely that that levy rate will reduce below two per cent. We expect it will need to go up at some point in time in the future to be more in line with the long-term actuarial rate, which is greater than two per cent.

Senator LIDDLE: In terms of levy forms, how many have actually been processed?

Ms Perks: Is that for the month of September or for—

Senator LIDDLE: What periods do you have them for?

Ms Perks: We receive levy returns monthly. We have 1,153 registered employers in the scheme today, so we should be receiving 1,153 levy returns on a monthly basis.

Senator LIDDLE: So you expect a 100 per cent return rate?

Ms Perks: Yes.

Senator LIDDLE: Thank you.

Senator ROBERTS: Ms Perks, do you have any plans for paying employees directly? You mentioned it a little while ago.

Ms Perks: That would be a matter for government.

Senator ROBERTS: But do you have any plans for fostering that?

Ms Perks: We would support that position.

Senator ROBERTS: Have you taken it up with the government?

Ms Perks: We have discussed the solution that could be assessed in regard to paying stranded employees directly. The report said a direct-payment model in a whole reform would be quite dramatic. For the scheme to be redesigned to pay every employee directly is a wholesale change, and the report outlined that as option 3—very futuristic. There is a middle ground where, if we can have the capacity or the power to pay employees directly in certain circumstances—we have it with section 48 payments, where the employer is insolvent. Current legislation says you can pay the employees directly in that situation, and that works very well. It is an important part of us being able to facilitate access to the entitlement. If that can be considered and extended to direct payment for stranded employees, it would be a good improvement.

Senator ROBERTS: So you could recommend that to the government?

Ms Perks: Yes.

Senator ROBERTS: My last question is perhaps not a direct question of you: do you think about these things impacting people? How can a casual be a casual for eight years?

Ms Perks: We think about these fundamental challenges daily, I will say. We see the scheme as a very valuable scheme to employees that are captured under the definition—

Senator ROBERTS: So do I; that's why I've been chasing it.

Ms Perks: With any advancement to improve that, we would look to see how we can play a part to operationalise that and ensure that it's implemented in the most effective way.

Senator ROBERTS: The workplace is changing, Chair. It beggars belief that someone can be a casual for eight years.

Senator Watt: I couldn't agree more!

CHAIR: I couldn't agree more, Senator Roberts. We've had nine years of that problem. We're hoping to fix that. Senator Pocock.

Senator BARBARA POCOCK: Thank you—and I couldn't agree more either! Excuse me if you've already answered this—I'm late to the party: what is the quantum of funds under management in your entity at the moment?

Ms Perks: The value of the funds under management as of 31 October was \$1.972 billion.

Senator BARBARA POCOCK: Are you giving any instructions to your unit trust investors around where they invest?

Ms Perks: We haven't approved strategic asset allocation. Our investment committee approve and terminate the investment managers that are in place to hold those funds. We do not direct the investment manager in regard to their underlying investments. We hold units in their fund, which has a mandate that they're working within, but the interactions within their fund we do not direct.

Senator BARBARA POCOCK: So you have no directions in relation to tobacco?

Ms Perks: No.

Senator BARBARA POCOCK: Or armaments?

Ms Perks: No.

Senator BARBARA POCOCK: And no instructions around fossil fuels?

Ms Perks: No. We have an ESG statement, which certainly outlines our position, and the conversations that we have with investment managers, on an ongoing basis, are understanding their profile of investments and having visibility of how they're adhering to their ESG statements. That's the assurance work that we undertake regularly to ensure that they're meeting their obligations as outlined in their ESG statements.

Senator BARBARA POCOCK: Do you think signing up to an ESG statement and reporting against it would mean that they would not be investing in, for example, tobacco and gambling?

Ms Perks: Again, without looking at the specifics of their mandate, we would certainly be digging deeper and ensure that it aligns with the direction of our investment policy and any exemptions that are outlined in that.

Senator BARBARA POCOCK: Could I put that on notice? I'd be interested to hear what your ESG gives, how it guides investment, and whether, specifically, your fund has investments in gambling, tobacco, fossil fuels and armaments.

Ms Perks: Yes.

Senator LIDDLE: I have a couple of follow-up questions. How many applications for long-service leave were processed?

Ms Perks: In the annual report—it's probably the best number I can refer to—there were more than 1.9 million hours of long service leave taken in the last 12 months. If you would like that quantified, in regard to the number of leave applications, I can take that on notice and provide that number.

Senator LIDDLE: Yes, if you could please do that.

Ms Perks: Sorry, I do have the number here. Applications for long service: 19,033 were processed in the last 12 months.

Senator LIDDLE: How many employers are registered in Coal LSL? You might have mentioned it before, but if you could just remind me what that is.

Ms Perks: Yes, 1,153 are currently registered with us.

Senator LIDDLE: Are you able to provide a break down of active employees and employers across the respective states and territories?

Ms Perks: I'll just confirm your question. There's an infographic in the annual report, on page 8, which has the number of employers and active employees, in total, by region—for example, Queensland has 637 employers and 31,340 active employees. So we have that information in the report, and if that answers your question we can—that data was at 30 June.

Senator LIDDLE: How often do you update that data?

Ms Perks: It's monthly.

Senator LIDDLE: How many of those, identified in that mapping, are active employees who are part of the scheme?

Ms Perks: I would say all of them are part of the scheme. By classification of active, we define that as employees who are in the industry today. The levy returns are telling us that they have worked in the month of June. As at June, there were 54,603 employees who were reported to us by employers as working in the industry. That number today is over 56,000.

Senator O'SULLIVAN: I have a couple of questions about the client satisfaction survey. I take it that the Levy Loader is your online platform, is it?

Ms Perks: It's the online platform for the submission of the levy return.

Senator O'SULLIVAN: Employers are asking for more automation and availability of online services. Can you talk to us about that?

Ms Perks: Levy Loader was our first online tool, and it went live in August last year. Part of the transformation agenda for the next four years will see further automation. If I talk to the employer experience, a typical one might be the automation of the leave application process. Currently that's a manual process of filling out a form, so that would be something which we would automate to link straight into our system, as an example. The other part, another major process for us is the reimbursement claim. Again, that is currently a manual form, that would be one which we would move into an online platform to link to our system. There are five main processes we have that we would automate. Refunds would be a third one. The other processes would extend to automation for employees.

Senator O'SULLIVAN: Is there any interfacing with payroll systems at all?

Ms Perks: Not currently. That would certainly be an advancement that we're looking at.

Senator O'SULLIVAN: That would be super charged automation?

Ms Perks: Yes, that would be. What we're looking at with each advancement is how to reduce the administrative burden on employers. If we can automate calculations, automate an integration or interface to a payroll system, we would expect that would reduce the administrative burden on the employer. We're looking at all options to minimise that.

Senator O'SULLIVAN: Is there a budget for the capital costs—the investment cost—in developing any of these automated systems?

Ms Perks: In budgeting, at the moment? Yes, it's in the early stages of the scoping.

Senator O'SULLIVAN: Is it envisaged that that would actually save money over the longer term?

Ms Perks: You would expect so. We would have productivity gains with the systems that we would be advancing. It would definitely result in efficiencies and effectiveness not only for the employer but for us.

Senator O'SULLIVAN: The survey said that industry employers rate your team favourably, again, this year. This is a bit of a trend, is it?

Ms Perks: We have a very committed workforce who are passionate about the work that they perform to connect the employees to their leave benefits. As I said, there are 17 people in our service team, we're committed to providing that human interface, human interaction and service to support the industry.

Senator O'SULLIVAN: Obviously your survey is one way to measure people's perception of how you are going, but do you have other metrics that you measure yourself against such as time lines around responsiveness to requests? What are your measurements there?

Ms Perks: Internally, we have SLAs that we work for, for example time to process a levy, time to respond to an inquiry, so we have internal standards and NPS scores that we look at to ensure that we're looking at every opportunity to improve continuously.

Senator O'SULLIVAN: Do you have an engagement with both the employer and the employee within those—

Ms Perks: Yes. The way that the scheme is constructed, the employer is—it sounds crude—the conduit to the transaction. The employee is the beneficiary, but the conduit is through the employer.

Senator O'SULLIVAN: Are you interfacing with the employer from a payroll side and then the employee who's seeking to access their entitlements?

Ms Perks: That's right. We're interacting with the employer for the collection of the levy, so the tax. We're interacting with the employer for the leave application process. If an employee wants to access long service leave, firstly they would check with us that they have an entitlement that is vested, and we will verify the balance. Then they'll put the leave application through their employer because the employer must approve it in line with their business operations. Then it comes to us to formally approve and sign off that that leave can be accessed. Once the leave is taken, the employer will pay the employee through payroll and claim a reimbursement through us from the fund for the payment.

Senator O'SULLIVAN: Can the employees see their entitlements through the normal payroll system and their payslips?

Ms Perks: No. We hold centralised records of the long service leave entitlements.

Senator O'SULLIVAN: Is there anything remarkable about the feedback from employees?

Ms Perks: No, there were no surprises there. The desire for us to advance automation certainly is something we're very attuned to. It's pleasing to see they're satisfied with our team's interactions and the service they provide. They are the call-outs for us.

Senator O'SULLIVAN: How often do you do the surveys? Is it annual?

Ms Perks: Historically, they were performed annually. We're now moving to a quarterly cycle with a smaller group, so we're looking at more regular, rolling surveys so that we can be more informed and adjust to—

Senator O'SULLIVAN: So you're segmenting the employers and employees.

Ms Perks: Yes.

Senator O'SULLIVAN: Is it the same employees of those employers?

Ms Perks: No.

Senator O'SULLIVAN: If you've carved out a quarter of employers, you're not asking the employees of those same companies.

Ms Perks: No.

Senator O'SULLIVAN: What's the benefit of not doing that? Or does it not matter?

Ms Perks: I don't think it would matter. This is the recommendation of the research company that is facilitating it, who feel that we would get better results by segmenting the cohorts.

Senator O'SULLIVAN: Yes, because you're getting more iterative dates.

Ms Perks: Yes.

Senator O'SULLIVAN: Are there any trends that are emerging through making that change?

Ms Perks: We've just changed. This financial year will be the shift to the quarterly surveys.

Senator O'SULLIVAN: But have there been trends even with the annual reports over time? I've just read this one, the latest one, but is there a trend over time?

Ms Perks: No, there are similar themes for the last three years. Desire for automation, I think, is the main piece of data that we keep gleaning from the surveys—employees' and employers' desire and need for automation—and we certainly recognise that and are moving towards that end state.

Senator O'SULLIVAN: That's all my questions. Thanks very much for the work you do.

CHAIR: We will now suspend.

Senator Watt: Chair, are we going to be continuing with Ms Perks?

CHAIR: My apologies; thank you for asking that. No, you're released, Ms Perks.

Proceedings suspended from 10:28 to 10:47

Fair Work Commission

CHAIR: I now welcome representatives from the Fair Work Commission. Welcome, Mr Furlong. Do you wish to make an opening statement?

Mr Furlong: Good morning, Chair. No, thank you.

CHAIR: Good, thank you. Ms Leggett and Mr Lambalk, it's good to see you as well. Senator Pocock?

Senator BARBARA POCOCK: I only have a few questions. Thank you for being here. I am curious about your perspective on the recommendations in the current bill before the parliament for new panels on pay equity and on the care and community sector. I'm just wondering whether you have given any consideration to how those panels might be structured.

Mr Furlong: As you'd be aware, the bill hasn't secured passage through parliament, but we aren't flat footed; we've already convened a team for the implementation of all of the reforms that are likely or anticipated to come to the commission. In terms of the expert panels, we are aware that a number of panels will be established. We received funding in the most recent budget to support those new functions. In essence, our planning is reasonably advanced in terms of the support that will be provided to them as well. Essentially, as you're aware, while we're putting these things in place, it is still early on in the process.

Senator BARBARA POCOCK: I appreciate that it's in the future. In terms of funding for these two particular new panels, how much has been allocated to each of them?

Mr Furlong: I will ask Mr Lambalk to assist with that.

Mr Lambalk: We received funding for the Fair Work Commission expert panels of \$20.26 million over four years.

Senator BARBARA POCOCK: Do you expect to sort of evenly divide that between the two new panels? Have you given thought to that?

Mr Furlong: There will be a process—which we need to work through—and it will be informed by the legislation ultimately. But, as with most matters that come before the commission, we will seek submissions. There may be things like establishing an annual work program, things of that nature. The funding also included additional support by the provision of four members with skills and expertise in these very, very important areas.

Senator BARBARA POCOCK: Are the new commissioners part time or full time? And is that eight new commissioners, four for each panel?

Mr Furlong: In terms of this particular funding measure, there are four new members that will be full time. They will be available for a range of matters that come before the commission, but in essence the funding, or the measure, provides for four full-time members.

Senator BARBARA POCOCK: Are you expecting to make part-time appointments as well?

Mr Furlong: The appointments are a matter for government, as you're aware. It's hard to talk in the abstract because of where we are in the process, but we already have very strong research capability at the Fair Work Commission in relation to the annual wage review, and they support most of the major decisions of the commission. So the fundamentals, the foundations, are very strong there, and it will essentially be building on some of those existing resources.

Senator BARBARA POCOCK: On page 71 of the explanatory memorandum for the new bill, it says:
... either part-time Expert Panel members or appropriately qualified FWC members.

Are the four new members that you're appointing expected to be general commissioners or are they with specific expertise in relation to pay equity and care and community?

Mr Furlong: Just as a point of clarification here: the Fair Work Commission won't make the appointments. It's the Governor-General that makes them, on the recommendation of the government. But, yes, the legislation may ultimately prescribe that they need to have skills and experience that are relevant to support these new functions.

Senator BARBARA POCOCK: This may be a very rude question, but would you say that your existing commissioners include expertise in these two particular fields alongside the four new appointments, or are you really looking to your new appointments to be the active members of these new panels?

Mr Furlong: I'm not in a position to comment about that. I'm terribly sorry.

Senator BARBARA POCOCK: Fair enough. I think that's it. Thank you.

Senator O'SULLIVAN: I want to ask about the resignation of the President of the Fair Work Commission. When did the president advise the minister or his office of this decision?

Mr Furlong: I'm not aware of when the president had that conversation with the minister. In the normal course of things, communications between a minister and the president are confidential in nature. In terms of my functions, I'm essentially the agency head responsible for the administration of the organisation. That sort of communication mostly occurs outside of anything that I have any dealings with.

Senator O'SULLIVAN: Are you aware of whether the communication was in writing or verbal?

Mr Furlong: I'm not aware of how it was initially communicated, no.

Senator O'SULLIVAN: Have you seen anything written?

Mr Furlong: I saw a draft of a letter that the president was going to send to the minister. I saw that last Friday afternoon. But, in essence, it just indicated his intention to retire and it said the date of 18 November, as was discussed in this committee yesterday.

Senator O'SULLIVAN: You've seen the draft. You didn't see the final. Were you given a copy of the final?

Mr Furlong: I can take that on notice, but it is the standing practice over a very, very long time that communication between ministers and the president of the commission—any president of the commission—are confidential. In essence, it goes to the essential independence of the tribunal.

Senator O'SULLIVAN: Are you able to provide us with a copy of the draft that you have?

Mr Furlong: I don't have a copy of it.

Senator O'SULLIVAN: Are you aware of when the president first raised his resignation with the minister?

Mr Furlong: No.

Senator O'SULLIVAN: Do you know if the president had any discussions with the Prime Minister?

Mr Furlong: No.

Senator O'SULLIVAN: You're not aware?

Mr Furlong: No.

Senator O'SULLIVAN: Do you know when the president advised the department of his resignation?

Mr Furlong: I'm not aware. I understand, from listening to sections of the committee yesterday, that it was when the media release was pushed out on Monday of this week.

Senator O'SULLIVAN: That's when you think the department were advised.

Mr Furlong: At the same time as or just after staff and members of the commission, yes.

Senator O'SULLIVAN: But you first became aware on the 18th.

Mr Furlong: No, I first became aware last Friday afternoon, and the reason was—

Senator O'SULLIVAN: Sorry, the 18th is the date that he's finishing. What was the date—on Friday?

Mr Furlong: It was last Friday. One of the reasons why, I imagine, that I received the information there is that under the Fair Work Act my role is essentially to assist the president in ensuring the commission performs its functions and exercises its powers. We had an all-member and all-staff update on Monday of this week, and one of the many responsibilities of this role is to ensure that those administrative tasks are well facilitated and provided for.

Senator LIDDLE: You mentioned that the practice over a very long time was for you not necessarily to be engaged in the correspondence between the president and the minister. How was it then that you came in contact with a draft of the resignation?

Mr Furlong: The president and I had a short meeting last Friday afternoon, and during that meeting he showed me the draft letter at that time.

Senator LIDDLE: Did he say why he was giving you a draft? Why a draft?

Mr Furlong: Because I don't know if that was the final. I saw a copy of a letter. I can't confirm that that was the final.

Senator LIDDLE: What I'm trying to understand is: what did you understand was the reason for him giving you a draft of a resignation letter?

Mr Furlong: I saw the draft; I wasn't given a copy of the draft. In essence, part of it, as I just explained, was to ensure that the arrangements for the all-staff, all-member presentation that occurred on Monday of this week ran smoothly.

Senator LIDDLE: Did he give you the draft?

Mr Furlong: No.

Senator LIDDLE: Who gave you the draft?

Mr Furlong: I saw the draft.

Senator LIDDLE: You saw it through your—

Mr Furlong: The president showed me.

Senator LIDDLE: Right, so he gave it to you.

Senator O'SULLIVAN: Did it contain the reasons for his resignation?

Mr Furlong: No. I think that the reasons for the resignation were spelt out in the media release, which I have a copy of. I can tender that, if you wish.

Senator O'SULLIVAN: Actually, we have that, but for the committee that would be good.

CHAIR: If you could table that, it would be helpful, Mr Furlong.

Senator O'SULLIVAN: Yes, thank you. Were there any significant differences between the draft and what was published through the media release?

Mr Furlong: Sorry, can I just ask what the question was?

Senator O'SULLIVAN: Is the draft that you saw consistent with the media release?

Mr Furlong: The letter that I saw, and I obviously can't remember it verbatim, just indicated the president's intention to resign his commission as president of the commission and as a judge of the Federal Court on 18 November. In essence, that was the letter.

Senator O'SULLIVAN: Can you tell us what, or do you know whether the president had, discussions with the minister or his office in relation to the appointment of the interim president?

Mr Furlong: I'm not aware of that, and, in the normal course of things, I wouldn't be aware of those conversations.

Senator O'SULLIVAN: Were you involved at all in the appointment of an interim?

Mr Furlong: Ultimately, it's a matter for government. The Fair Work Act provides some guidance—and this was traversed yesterday, I understand—about the skills and experience of the president and that a vice president of the commission could be appointed as an acting president. But, in essence, those conversations, those appointments, those arrangements, occur between the department, which makes the administrative arrangements for those appointments—but it's essentially a matter for government—

Senator O'SULLIVAN: And the Governor-General, I guess!

Mr Furlong: Yes.

Senator O'SULLIVAN: So you're not involved at all in the preparation of the search or anything like that?

Mr Furlong: In my experience—and I've been in this role now, including in an acting capacity, for just over 18 months—when members are appointed, I'll normally get a phone call very close to the time of the appointment indicating that a media release will go out, and then I'll wait for the instruments of appointment to come through via email and they're often circulated—

Senator O'SULLIVAN: So you're not involved in preparing any briefs on any potential candidates or anything like that?

Mr Furlong: No. Those requests don't come.

Senator O'SULLIVAN: Are you aware of any discussions that the president had with the department in relation to the appointment of a new president?

Mr Furlong: No.

Senator O'SULLIVAN: I've got more, but do you want to go to someone else, Chair? I'm about to change subject. Do you want to give the call to someone else?

CHAIR: Senator Roberts.

Senator ROBERTS: Thank you for appearing today. Can an enterprise agreement remove all applicable award entitlements—yes or no? It's not a trick question.

Mr Furlong: The answer to that question is no.

Senator ROBERTS: No—that's right. Can an enterprise agreement remove the entitlements that the Fair Work Act and the National Employment Standards provide employees?

Mr Furlong: No.

Senator ROBERTS: Can an employment contract or letter of offer remove legal minimum entitlements?

Mr Furlong: The extent of the information that I could provide today relates to the functions of the Fair Work Commission in discharging its obligations under the Fair Work Act. I'm not too sure if I can actually answer that question, because it goes to common law.

Senator ROBERTS: A letter of offer of employment, if I'm an employer, to a prospective employee cannot undermine National Employment Standards—

Mr Furlong: No. The statutory minimums stand.

Senator ROBERTS: or the award?

Mr Furlong: The statutory minimums stand.

Senator ROBERTS: If an enterprise agreement is terminated by the Fair Work Commission and those employees covered by that enterprise agreement are then deemed to be covered by the applicable award, how can those employees be owed money under the applicable award if the Fair Work Commission approved that agreement at that time?

Mr Furlong: There are a number of things I'll have to go through here. The primary element of making, or of the commission approving, an enterprise agreement is to ensure that it meets the better off overall test, and the better off overall test has applied since the commencement of the Fair Work Act. It has evolved with evolving case law. But, in essence, the test applies at the time that the agreement has been made. So an agreement that was made, say, in 2007-08, under that legislative regime at that point in time, may not satisfy the BOOT, the better off overall test, if it was applied now.

Senator ROBERTS: But that would be recognised in the law, wouldn't it? So there wouldn't be any backpay involved then? If that was the agreement at the time, there wouldn't be any backpay. But here I'm talking about someone who has had their enterprise agreement cancelled by the Fair Work Commission and then has been entitled to backpay. That would indicate that it's inferior.

Mr Furlong: It's hard to talk in the abstract about this, but if that enterprise agreement contained, say, a loaded rate or compensated for penalty rates that may have otherwise applied under the award, the minimum rate still has to be equal to or more than the minimum wage, but the penalty rates are things that sit outside of that minimum entitlement. In certain circumstances—like the one you've just raised—after the termination of an enterprise agreement, particularly one that was made a very long time ago with loaded rates—and depending on the shift patterns of the employees, whether they're working weekends, public holidays and things of that nature—an employee may not be compensated for the patterns worked.

Senator ROBERTS: I see what you're getting at with loaded rates, different penalty rates and the enterprise agreement compared with the award. But, while ever the enterprise agreement was in place, that person wouldn't be entitled to extra back pay, surely?

Mr Furlong: No, because—

Senator ROBERTS: Because the agreement was struck.

Mr Furlong: Yes, and that agreement provides the terms and conditions of their—

Senator ROBERTS: We agree on that. So how could someone whose enterprise agreement is terminated be entitled to back pay unless it was inferior to the award?

Mr Furlong: I've just tried to explain—

Senator ROBERTS: I get it, Mr Furlong, but if we have an award in place and an enterprise agreement comes along that's better than the award but for which some of the penalty rates or loaded rates may be different, then once that enterprise agreement is removed, that person wouldn't be entitled to back pay because they were working under a legitimate legal contract or employment scheme. So why would they get back pay unless it was inferior to the award?

Mr Furlong: In certain circumstances it would depend on the legislative regime that was in place when the agreement was made. In my time in industrial relations, there was the no-disadvantage test. There was a period when there was no test, then there was the fairness test—

Senator ROBERTS: There have been a lot of tests, haven't there?

Mr Furlong: and then the 'better off overall' test. But the agreement, when it is struck, is applied against the tests that apply to that point in time. So, while that enterprise agreement still operates, it may not, apart from the minimum rate of pay, provide for exactly the same or better entitlements that would've been provided for under one award.

Senator ROBERTS: I accept what you're saying in that it would be the case but—if the enterprise agreement is in place then it takes precedence over the award.

Mr Furlong: Yes.

Senator ROBERTS: But once the enterprise agreement is cancelled by the Fair Work Commission, the award would take precedence, so why would there be any back pay? They were working legally under the enterprise agreement.

Mr Furlong: Essentially, what you're asking is a legal question, and it's not my role to interpret the legislation. If you wish I can take these questions on notice, but it's very difficult to provide information on that in a hypothetical.

Senator ROBERTS: We're dealing in abstracts. Let's get to a concrete one. An enterprise agreement must pay more than the applicable award for the agreement to be passed; is that correct?

Mr Furlong: The 'better off overall' test?

Senator ROBERTS: Yes. This was clearly not the case in the one key case, as the Federal Court ruled that union member employees were back paid by court order, and non-union members were back paid by a Fair Entitlements Guarantee. How did this happen, and why has this not been applied to other labour hire companies with coalmining employees, who are paid less than the legal minimum that the award, the Fair Work Act and National Employment Standards provide employees?

Mr Furlong: If an agreement has reached its nominal expiry date, any employee or representative of an employee can make an application to the Fair Work Commission to have that agreement terminated. If that application is made—there's a test in section 225 that deals with agreements that expire and their termination—there are a number of things that a member of the commission has to consider. One of them is if it's in the public interest not to terminate it; another one is the impact it's going to have on employees. From some cursory analysis that we've done, we've seen that the vast majority of these applications to terminate agreements are uncontested. That is one option that's available.

Senator ROBERTS: Why would the Federal Court rule that union member employees should be back-paid by court order and non-union members back-paid by the Fair Entitlements Guarantee?

Mr Furlong: Essentially, the decision of the Federal Court in the One Key case stands for itself. I certainly can't comment on the reasoning of a full bench of the Federal Court.

Senator ROBERTS: How can a CFMEU-negotiated and -endorsed enterprise agreement that did not allow any input and involvement from the employees that this enterprise agreement would go undercover and remove all those listed legal minimum entitlements, and then that Fair Work Act and National Employment Standards entitlements would be approved by the Fair Work Commission?

Mr Furlong: Once again, I can't talk in the abstract. I'm not too sure how to answer your question.

Senator ROBERTS: Can we get you some material?

Mr Furlong: Certainly.

Senator ROBERTS: We'll get that to you. Minister, I have some questions for you. The primary workplace relationship is that of employee-employer, with representatives allowed for either party, would you agree?

Senator Watt: I guess in general terms, yes. There is obviously a range of—

Senator ROBERTS: The lawyer in you says 'general terms'?

Senator Watt: There are obviously a range of different workplace relationships beyond employee-employer. There are independent contractors; there are a whole bunch of other things. Fortunately, the majority are still of that nature.

Senator ROBERTS: I'm not trying to trap you.

Senator Watt: I just want to make sure I'm giving accurate answers, that's all.

Senator ROBERTS: After graduation, I worked at the coalface around Australia and then in management and leadership, so I've seen industrial relations from both perspectives. Australia's history in workplace relations is one of adversarial approaches, conflict and conflict resolution, gamesmanship and power steps. We've even had Sally McManus—but I'm not calling her out—and industrial groups, union bosses and employer bodies talking about power, and the power is brought largely by industrial legislation, would you agree?

Senator Watt: I think, certainly, there are power relationships in workplace environments. Depending on the laws that we have at any one time, they can be weighted one way or another, but there are definitely power relationships.

Senator ROBERTS: That's how unions started, because there was an imbalance of power in the first place until people started to work together and then form a union.

Senator Watt: Yes, it's that idea that you're more powerful being with other people than on your own.

Senator ROBERTS: In Central Queensland and the Hunter Valley there have been miners who have suffered under a system which the IR club wins regardless, while the system does not serve workers or small businesses. I brought this up with the previous Liberal-National government, and initially the LNP were silent. Later on, Senator Cash did her bit to implement an understanding that we came to her with, with regard to investigating the abuse and exploitation of miners, particularly in Central Queensland and the Hunter Valley. Labor MPs, though, dishonestly diverted and hid the truth and the exploitation of miners, seriously affecting their pay, safety and workers compensation. Workers compensation is enshrined in legislation, but it was bypassed.

Senator Watt: I'd have to pick you up on that. I don't think anyone who has observed the work that I've done, that any number of other Labor—federal Labor—

Senator ROBERTS: Mr Joel Fitzgibbon and the current MP, Dan Repacholi, have tried to smear me and imply that there's nothing wrong with the Hunter Valley, when there is.

Senator Watt: I've seen both Joel Fitzgibbon and Dan Repacholi make many public statements about the need for changes to the law to protect coalminers. Dan Repacholi is a long-term member of the miners union. He was a coalminer before he was elected. Joel's support for the coal industry and coal workers is well known. I've seen them over many years try to convince Senator Cash and her colleagues that we needed to change the law to protect coalminers. Unfortunately, that never happened.

Senator ROBERTS: When I first started finding out what was going on in the Hunter Valley—the abuse and exploitation—I made that clear and public, and Mr Fitzgibbon came out and said, 'I'm pleased that Senator Roberts has woken up to the casual rot,' which I exposed as well. As for the rest of the stuff with the CFMEU—'No, no, not true.' That's what he said. He smeared me because of that. Dan Repacholi has also misled people into thinking there's no problem, other than casuals. We have got serious problems in the Hunter Valley. My question is this: instead of the patchwork of bandaids on bandaids and continually adding complexity, isn't it time to reform industrial relations comprehensively and bring it back to something basic for the employer-employee relationship?

Senator Watt: I completely agree that we need to fundamentally reform workplace laws, and that's what we're trying to do with the laws that are currently before the House of Reps. I'd be very happy to talk with you about why those laws are important and, hopefully, in that way gain your support for those laws when they come to the Senate. I'm not sure if you were here when we had a discussion about this yesterday, Senator Roberts, but it's not as if this bill that we've got before the parliament at the moment is the entire set of changes that workplace laws need. The issues around same job, same pay that I think you're familiar with, particularly in the coal industry, aren't being dealt with in this particular bill, but it's the government's intention to deal with them in a future piece of legislation. But I'd love to think that you would support our overhaul of the industrial relations laws with this bill we've got.

CHAIR: Senator Roberts, I just want to give you a heads-up. We're going in 15-minute cycles, so you've got another three minutes.

Senator ROBERTS: Okay. I'm happy to talk with you, Senator Watt.

Senator Watt: Sure. That would be great.

Senator ROBERTS: What this is, though, is my attempt to make equal pay received for equal work. I see that as a last resort on my part, after trying to work with employers and employer groups who are neglecting what's going on in the Hunter Valley, and some of their own members are abusing miners. Complicit with the CFMEU in the Hunter Valley, they are exploiting miners. In frustration, I said, 'Let's make sure that we've got equal pay for equal work,' but that's an added complexity. In my view, it's better than having the abuse and exploitation of miners continuing—because most employers are clearly not interested in solving this. So, instead of simplifying things, I'm going to add to the complexity if my bill is passed. But what I'm trying to say, Senator Watt, is that instead of a patchwork of third-party overseers and myriad rules that people play games around, especially people with deep pockets, like union bosses and employer groups with deep legal pockets, couldn't we get back to the basics—for example, just very basic worker and employer protections, rights and entitlements; instead of a 650-page document, just a 20-page document; and severe penalties for those who breach those provisions?

Senator Watt: I'm not sure that you'd necessarily be able to cover every potential workplace issue—

Senator ROBERTS: That's my point; I don't think anyone can. The Fair Work Act has attempted to do that, and it's now a patchwork. It's a mess.

Senator Watt: That's actually one of the reasons for the government seeking to introduce some form of multi-employer bargaining, especially for low-paid workers. You'd be familiar, Senator Roberts, from your discussions with small business owners, with the complexity they experience in having to come up with individual agreements with their employees, whether it be five people in a shop or 20 people in a small manufacturing outfit or something like that. There's a lot of feedback that we've received from smaller businesses that they would appreciate being able to be part of a broader system that is negotiated by a bunch of smaller businesses with similar types of workers and similar types of workplaces. That's exactly what multi-employer bargaining is about—trying to reduce that complexity for employers, rather than them having to have their own HR teams.

Senator ROBERTS: That's one of the many provisions in your bill. I'm not talking about your bill.

Senator Watt: Yes. I'm just giving an example.

Senator ROBERTS: I'm not talking about your bill. I'm not saying that—

CHAIR: Final question, Senator Roberts.

Senator ROBERTS: What I am saying is that the complexity enables those with deep legal pockets to get around those complexities to do whatever they want. Meanwhile, the worker is not protected, as I've shown in the Hunter Valley. They have been decimated by their union and by unscrupulous employers. What I'm saying is, if we cleared all the crap and just got down to something basic and simple that entrenched the workplace relationships sanctity and had severe repercussions for people who deliberately broke those conditions, I think that would be a far better way to go than, at the moment, having people able to willy-nilly get around the myriad provisions.

Senator Watt: I think in general terms I can agree that, the simpler the laws are, the better.

Senator ROBERTS: Can we say that's a first!

Senator Watt: That we agree? We've agreed on a few things over the years. I'll never forget that time that we jump-started a minivan in the Northern Territory, I think it was.

Senator ROBERTS: Mount Isa?

Senator Watt: In general terms, I agree. One of the things I would disagree with is that I don't think the miners union, of all unions, could be accused of selling out their members.

Senator ROBERTS: I never would have thought so until the last three years—

Senator Watt: I mean, if you can convince—

Senator ROBERTS: No, not the miners union—the Hunter Valley branch of the miners union.

Senator Watt: I think the miners union, of all unions, has a long history of securing very good wages and conditions for their members—

Senator ROBERTS: That's why I was stunned to see them complicit. I was stunned.

Senator Watt: and it's the de-unionisation of that industry, I think, that has led to some of the labour hire issues and the casualisation rorts and things like that. In general terms, of course we would like to have laws as simple as possible, but, unfortunately, in the real world, sometimes they need to be a bit more complex.

CHAIR: It's time to move the call to Senator Grogan.

Senator GROGAN: Can you step out for us what the functions of the Fair Work Commission were in terms of regulating registered organisations before the ROC came into being in 2017?

Mr Furlong: Essentially, with the Fair Work Commission, the general manager had most of the functions—and I can go into a lot of detail here, if you would like—that were transferred across to the Registered Organisations Commission, prior to the establishment of that institution. There are a couple of other functions that they've got now, including around licensing auditors and things of that nature. But, in essence, the functions are largely consistent or similar to what they were prior to them moving across.

Senator GROGAN: Could I ask you to speak up a little bit?

Mr Furlong: The functions of the Registered Organisations Commission previously sat with the general manager of the Fair Work Commission prior to the establishment of that institution. As you're aware, the current bill provides for those functions to return to the Fair Work Commission. I noted, though, that in the bill there are some additional compliance instruments that will be made available.

Senator GROGAN: What I'm really trying to tease out here is the functions that were transitioned in 2017. From your perspective, from having looked at the pathway should this bill pass in its current form, I'm interested in: where it was, what you lost and what might be coming back. Is it the same? What additional pieces are there? That's basically it, so we can get a sense of how you would then absorb those functions that are currently within the ROC, and what else there might be there?

Mr Furlong: I can go to some detail here. But in terms of a very comprehensive analysis of the bill, as you would be aware, we don't enter the policy debate—

Senator GROGAN: Of course—hence my question being about 'as the bill currently stands' and 'to the best of your knowledge'.

Mr Furlong: Thank you. We've mentioned a number of the Registered Organisations Commission's functions previously, including granting elections for officers in registered organisations, receiving and processing any returns, prescribed records kept by registered organisations, compliance with financial reporting rules, inquiries and investigations relating to noncompliance with the RO act or regulations, and offering assistance. In essence, it's the full suite of a regulator: education, advice and compliance measures.

A number of the functions will be new as they return to us, but currently exist with the Registered Organisation Commission. Please be aware that this is not an expansive list, but there are: powers relating to the registration of auditors of registered organisations, which I just referred to; assessing officer disclosure statements of organisations and their branches; approving training associated with financial management duties; and there are a number of enhanced investigative powers that were established when the Registered Organisation Commission was enacted—or the legislation that enacted it for when they return.

Senator GROGAN: I know Senator Pocock stepped out some of the panel stuff. Do you see quite a clean pathway to this transition, should the bill pass in its current form?

Mr Furlong: Without hubris, as a machinery-of-government change, the resources essentially follow function here. As an institution at the moment, the commission isn't carrying any backlogs. Our digital transformation is very well progressed. We're finalising 50 per cent of all cases within five weeks, and 90 per cent of cases within 13 weeks. That's across 34,000 applications a year. We retain some functions associated with registered organisations, and I exercise powers in relation to rules of organisations, in essence, that don't go to eligibility—the way they're reporting units, even things like their address, the governance structures. We have retained significant capability internally at the Fair Work Commission as well. With that in mind, and with 20-plus years experience—half of it as a regulator in the industrial relations—I'm confident that if the provisions secure passage we will have a successful transition.

Senator GROGAN: Excellent. Thank you very much.

Senator PAYMAN: I'll be quick. For the new kid on the block, and for the benefit of the committee, can you please go through some examples of what noncompliant conduct or behaviour by registered organisations look like? What are some penalties?

Mr Furlong: Thank you for the question. You would be better placed to ask those questions of the Registered Organisations Commission, who will be on later today.

Senator PAYMAN: No worries. With regard to the regulatory tools, what are some additional tools that will be introduced to the compliance and enforcement framework of the Fair Work (Registered Organisations) Act to respond to noncompliance by registered organisations?

Mr Furlong: Bear in mind that I obviously keep a close eye on the bill as it's moving, but it's certainly not for me to talk about matters of policy. My understanding, from a recent reading of the bill, is that it now contains provisions for enforceable undertakings and infringement notices. There are additional compliance tools to assist with ensuring compliance of registered organisations under the proposed legislation.

Senator PAYMAN: Can you talk us through the additional resources the Fair Work Commission was provided in the budget?

Mr Furlong: I will ask Mr Lambalk to help with that.

Mr Lambalk: On the transfer of the ROC, we were provided funding of \$26.517 million, but it's effectively a machinery-of-government change, where the resources previously provided to the ROC entity has been transferred to us in whole. It's a like-for-like transfer.

Senator PAYMAN: What does that translate to over the next four years?

Mr Lambalk: Effectively, it means the staff moved in the machinery-of-government change from the ROC entity to the Fair Work Commission as a whole. The resources would effectively stay the same for us.

Mr Furlong: In this case, it's 29.4 ASL, and over the forward years it's \$26.517 million.

Senator GROGAN: The two panels that were discussed earlier—there is also a research capacity?

Mr Furlong: Yes.

Senator GROGAN: Can you talk us through what you see that research capacity doing, and what the funding stream for that is as well.

Mr Furlong: I can ask Mr Lambalk to discuss the funding. We went through it at the start of the proceedings.

Senator GROGAN: Is it that same parcel of \$20.26 million?

Mr Lambalk: From my memory, it's about \$700,000 per annum for research.

Senator GROGAN: What do you anticipate that's going to give you the capacity to do?

Mr Furlong: It will be up to the members who, ultimately, are appointed and the full benches that run those matters to determine what the research program should include. The president of the commission released a statement about other areas where there are pay equity issues across the modern award system, and we'll table that. I believe that will be very helpful in assisting those full benches when they've ultimately convened in directing their work. But it's impossible for me to say in the abstract because it's work that's driven by members of the tribunal under legislation.

Senator GROGAN: Do you have any great dreams of those long-finger issues you'd like to address that may actually be captured within that research function?

Mr Furlong: If the legislation secures passage, I look forward to coming before you and providing information on our research priorities. We've been provided, in the October budget, with significant resources, and we will ensure that they are well spent.

Senator GROGAN: Thank you very much.

CHAIR: Senator Waters.

Senator WATERS: My colleagues have already asked some excellent questions, so I'll make sure I build on those. I might start off on a different tack, with the Respect@Work work changes, particularly in relation to the stop sexual harassment orders. How many applications for those have been made since March 2022?

Ms Carruthers: I'll just grab those numbers for you. I can't quite remember which time frame you asked?

Senator WATERS: Since March 2022.

Ms Carruthers: I don't have the figures since March 2022. The jurisdiction commenced on 11 November 2021.

Senator WATERS: Okay. Do you have figures for that period of time?

Ms Carruthers: Yes. Between 11 November 2021 and 30 June 2022, we had 29 applications in total, five of those were simply for orders to stop sexual harassment at work, and 24 were for applications to stop both bullying and sexual harassment at work.

Senator WATERS: Okay, thank you. How many stop sexual harassment orders were granted?

Ms Carruthers: None.

Senator WATERS: Have there been any granted at all?

Ms Carruthers: No, not that I'm aware of. I hasten to add that that's not unusual in this jurisdiction. It is a jurisdiction we intend to bring—because they're ongoing employment relationships, you tend to bring the parties together to discuss what's happened to date and what can be done to ensure that there's a strong, ongoing working relationship. It's not that frequent that we actually have stop orders made in any event.

Senator WATERS: Have there been negotiated outcomes, then, in those applications?

Ms Carruthers: Yes. Well, when I say 'yes', I'm not privy to the outcome of all of the matters. But it is very common, during the early stages, when we start working very closely with the parties, they negotiate outcomes and the applicant withdraws, or the matter goes to a member potentially for a conference or a conciliation and there's further work done between the parties at that stage and it's withdrawn then. It's very seldom we have decisions actually issued. Last year, in the antibullying jurisdiction for instance, we had 67 decisions issued for the stop orders jurisdiction overall, which includes bullying and sexual harassment, which is only 10 per cent of finalised matters. We had two stop orders issued last year with respect to antibullying. So with the remaining 65 decisions, they're essentially dismissing the matter. It might be for administrative reasons—basically, because there's no ongoing danger that the bullying or sexual harassment will continue, so there's no need to issue a stop order.

Senator WATERS: Could you clarify for me, of the 29 applications made for a stop sexual harassment order, how many were withdrawn at that initial phase that you referred to, how many were withdrawn after the conference or conciliation with the member, and how many were dismissed?

Ms Carruthers: I'll have to take that on notice for you, Senator.

Senator WATERS: Thank you.

Ms Carruthers: I can tell you broadly that 30 per cent to 35 per cent of matters are withdrawn in the early case management stage. Then you've got the 10 per cent at the end where there's a decision, and the remainder in the middle are dealt with by members in conference. I can get you those exact statistics.

Senator WATERS: Thank you. Pardon my ignorance. Are the reasons for the withdrawal ever given and then made public? How do we know if the person is actually happy to withdraw or if they're withdrawing for other reasons but they're still unsatisfied?

Ms Carruthers: The applicant can withdraw by filling in a form, but they can also just tell us during a conference or they can ring us up and advise us over the phone. There will be a form for some matters, but not all, where they're withdrawn. We're usually not privy to that. It's certainly not published anywhere on our website. When I say we're not privy—it's not in the public domain why a matter has been withdrawn.

Senator WATERS: Is that something that you feel you need to be apprised of to make sure there's not some systemic barrier that is actually deterring complainants from pursuing it?

Ms Carruthers: The important thing to understand in this context is that this is about preserving ongoing employment relationships and, going forward, ensuring that there doesn't continue to be a risk to the worker's health and safety. If there have been really good discussions and so on and we've made an assessment of any potential past threats to health and safety which resulted in the application being lodged—what's the current scenario? The people who were potentially involved earlier in any incidents may no longer be in the workplace, for instance. The person who made the application may have moved to a different team or department. There are lots of reasons why there isn't an ongoing risk into the future, so it doesn't justify an order being made. That's not to say that it's not substantively dealt with; we just don't need an order because the risk of future harm isn't there.

Senator WATERS: Do you always know that, given that the reason's not required to be provided when the complainant withdraws? How can you have confidence that it's been resolved satisfactorily and that the risk has been removed?

Ms Carruthers: It is members dealing with these matters, mostly substantively. I can't speak for the members themselves, but I would be very confident that—

Senator WATERS: That they'd satisfy themselves of that? Are they required to satisfy themselves?

Ms Carruthers: Can I flip it around for you? If a member was of the view that there was an ongoing risk of harm to an applicant, then obviously that is something that the member has the power to deal with under the legislation. We can't force someone to withdraw.

Senator WATERS: Nor can you stop them from withdrawing.

Ms Carruthers: No, we can't stop them, but we can't force them, and a member would be very actively dealing with a matter if they were of the view that there was any potential harm.

Senator WATERS: Do you think employees are aware of the option to apply for a stop sexual harassment order? What work been done, whether it's by your commission or anyone else that you're aware of, to promote awareness of that option?

Ms Carruthers: We have a lot of dedicated information on our website. The current jurisdiction for stopping-sexual-harassment orders commenced on 11 November. Before 11 November 2021, however, we did occasionally have sexual harassment matters come up in the context of antibullying applications, as well, so it's not completely new to us. But from November of last year we have had dedicated website materials that are specifically about stop sexual harassment orders. It would be naive to say that applications come our way just because of our materials. The Australian Human Rights Commission has a lot of really, really good information on its website and, in fact, released just last week a lot of information and education materials, which I'm sure you'll have heard about already or will hear about soon. There are also the state and territory work health and safety regulators, who have website information, who can cross-refer to us and so on. So there are a number of different ways people come to our door.

Senator WATERS: The budget provides \$15.1 million over four years to implement the new prohibitions on sexual harassment, including under the new respect at work bill. How will that money be allocated? Will it go to education materials, compliance work or a mixture?

Mr Furlong: It will essentially go across the board, and there will be case managers, frontline staff, training, education materials, bench books, and engagement and consultation with experts. We'll make sure that any case management practices we put in place are trauma informed. We've gone through this process when we implemented our current jurisdiction. We are well placed to do this work well. In essence, because it's a common-base jurisdiction in some ways, in terms of the case management methodology, it won't be perfectly the same, but it will follow the similar application form—early triage and case management, essentially. From there, we haven't figured out exactly how it will flow through the system but, in essence, it will match or be very close to matching our current case management practices for other individual rights based matters.

Senator WATERS: Did the commission seek a specific amount to allow it to undertake these additional duties? If so, is it what you got, or how different?

Mr Furlong: We received significant additional resources to perform this function, should it secure passage through parliament. Mr Lambalk can give you the—

Mr Lambalk: We worked through the department of employment with the costings. It was what we were provided and I think it matches what we discussed in terms of the implementation.

Senator WATERS: Okay. So you got what you asked for? Yes? Just for *Hansard*, there's a nod there. Can I move on and I'm almost finished? I want to ask about the aged care work value case released last Friday, which, in a very welcome move, recognises the gendered nature of the undervaluation of work. Will the Fair Work Commission review all other awards in that context or was this a specific determination just for the aged-care sector and you'll stop there?

Mr Furlong: Ms Leggett will be able to assist you with that question.

Ms Leggett: In terms of the aged-care case of itself, as you've noted it issued its interim decision on 4 November. That outlined that there was an interim increase of 15 per cent to the wages of personal-care workers, enrolled nurses and registered nurses, direct-care workers covering the nurses' award, the aged-care award and shortening the SCHADS award.

There will be a phase 2 to be dealt with in relation to that case that will look at the timing, among other matters, of that increase. The third stage will be looking at matters including the consideration of other workers, who are covered by those three awards, who were not subject to the interim increase announced on 4 November.

Separately to that is the statement that the general manager was just referring to, which was issued by the president on 4 December. That outlined a number of matters, but also some analysis that the commission has undertaken of other awards which potentially fall within WGEA's definition of a female or a gender-segregated workforce, and some awards that would fall into that classification. However, the statement does conclude that the commission would be available to facilitate discussions between parties who may consider bringing a work value or equal remuneration application pursuant to those awards, but it won't be bringing those matters on its own.

Senator WATERS: I'm not sure if I've got a copy of that. Would you mind listing the awards that will be in scope for that consideration?

Ms Leggett: As noted, it's not necessarily within scope; it's more that the analysis has been given. But I can read out the awards of the analysis that was provided. It includes the Fast Food Industry Award, the General Retail Industry Award, the Hospitality Industry General Award, the Health Professionals and Support Services Award 2020, the Registered and Licensed Clubs Award, the Educational Services (Post-Secondary Education) Award, the Educational Services (Schools) General Staff Award, the Educational Services (Teachers) Award, the Restaurant Industry Award and the Children's Services Award.

Senator WATERS: Okay. For clarity, can you say again, perhaps in different words, what you said about what will be done? Did you say that the commission will now look at those awards but also invites anyone to specifically take a pay equity case.

Ms Leggett: No. The commission has indicated that it's available to facilitate discussions between parties who may consider making work value or equal remuneration applications, but the comment that was made within the statement—and I will table the statement—is:

...it's apparent from the Aged Care case that cases of this type require significant evidence from those with experience in relevant industries, supported by appropriate experts.

It's more that we've brought the information to the attention of the public, but it's for parties to—

Senator WATERS: I see. So you're indicating a willingness to consider these issues. Is that right?

Ms Leggett: Yes. We're:

available to facilitate discussions between parties who may consider making work value for equal remuneration claims to other modern awards in the future.

Senator WATERS: Thank you. My colleague, Senator Pocock, asked about the expert panels on pay equity and the care and community sector. My question is: how will the research unit—which Senator Grogan also asked about—to support those panels, align with the work being done by WGEA?

Mr Furlong: Just before we answer that, Senator, I want to give you the name of the statement that Ms Leggett was referring to. It's on our website as well. It's the occupational segregation and gender undervaluation statement, as issued on 4 November. But we'll table a copy of it as well.

I imagine that as we move into the implementation phase, once the bill secures passage through parliament, part of the consultation will be to meet with officials at WGEA and move through that, to ensure that, whatever the priorities are of the members, the full bench considering these work value cases is informed by as much data and information that's available to them.

Senator O'SULLIVAN: I'd like to ask questions about the individual flexibility arrangements report.

Mr Furlong: Can I confirm that you're referring to the general manager's 653 reports?

Senator O'SULLIVAN: Yes, 2018 to 2021.

Mr Furlong: It's been a little while since I've looked at those reports. I'll try my hardest.

Senator O'SULLIVAN: Can you take me through the key findings of this report, please?

Mr Furlong: I'll have to take that on notice. I don't have a copy of the report in front of me. As you know, they were tabled in November last year. It's been a while since I've viewed them.

Senator O'SULLIVAN: I'll go to more general questions then. As I understand it, most, if not all, employees who applied for individual flexibility arrangements were satisfied.

Mr Furlong: From the research that we conducted, to inform the general manager's reports, I understand that is accurate, yes.

Senator O'SULLIVAN: What was the most common reason, do you recall, for the IFAs being requested by employees?

Mr Furlong: The most common requests were a reduction in work hours, often by full-time workers looking to work part time, and a change of location. My understanding is that the requests—bear in mind, it's been a while since I looked at these—were generally agreed by employers or agreed following negotiations and that, based on the independent research that we commissioned to inform the general manager's reports, refusals were rare.

Senator O'SULLIVAN: Can you take me through what's currently available, in terms of the data around the type of flexibility that's been requested?

Mr Furlong: There are a number of things, from that research—bearing in mind it was a point in time based on a limited sample. In essence, the formal right to request flexible working arrangements was extensively used in almost all industries, except for some male dominated industries, such as maritime. More women than men sought to make changes to their work arrangements, and requests were mainly made by employees who were parents or carers of a child, school-age or younger.

Senator O'SULLIVAN: Who requested the IFA in the data that you analysed?

Mr Furlong: I'm possibly at the edges of my recollection and knowledge of these matters. I'm very happy to take some questions on notice.

Senator O'SULLIVAN: Yes, if could come back to us with that one, 'Who requested the IFA in the data you analysed?' Do you provide data on why these arrangements are not always used, in terms of flexibility arrangements for workers?

Mr Furlong: No, we don't maintain that data at the Fair Work Commission. It's certainly not one of our functions. It's dealt with in the general manager's reports—required by, I think, section 653 of the Fair Work Act—but it requires research specifically relating to those issues to identify it. I'm not sure if anyone is capturing data about the utilisation of IFAs at the moment.

Senator O'SULLIVAN: Are you able to tell me, with some of the information provided in your work to study this, why IFAs were not used in all circumstances?

Mr Furlong: Do you mind if I take that question on notice?

Senator O'SULLIVAN: Sure. On notice as well: what was the breakdown of demographic information in relation to this report? I'm also interested in understanding if COVID-19 saw any significant uptick in IFAs; you'll probably have to take that on notice too.

Mr Furlong: We'll take that on notice.

Senator O'SULLIVAN: I will turn to the Workplace Advice Service. Can you take me through the work of the Workplace Advice Service? What does the Fair Work Commission do in this regard?

Ms Carruthers: I would describe it as one of our flagship programs. It's a service where we partner with around 90 organisations that are law firms, community legal centres and legal aid to provide pro bono legal advice to people before they apply to the commission or after they apply to the commission. About 52 per cent of applicants apply before they even lodge. They're trying to seek independent legal advice about where they should be lodging, the strengths and weaknesses of their claim, the type of claim they should be making—that sort of thing.

Senator O'SULLIVAN: These are individual employees?

Ms Carruthers: We provide advice both to individual employees and to small-business employers as defined under the Fair Work Act—so up to 14 employees—on the basis that small businesses are very time-poor. As we know, they often have very little or no in-house HR or industrial relations legal resources. They are particularly in need of pro bono legal advice, in our experience, so we target them in particular.

Senator O'SULLIVAN: Do you have any data on the latest financial year's figures on access to this program?

Ms Carruthers: Indeed I do. In 2021-22 our partner organisations held 4,657 appointments.

Senator O'SULLIVAN: Partner organisations? These are those 90—

Ms Carruthers: Yes—the 90 law firms, community legal centres, legal aid and so on.

Senator O'SULLIVAN: So employees and employers can access it?

Ms Carruthers: Yes.

Senator O'SULLIVAN: Do you speak to someone? Is it electronic? How does it work?

Ms Carruthers: They're usually telephone appointments of up to one hour in length, and they are focused on applications involving unfair dismissal, general protections or stop-order applications.

Senator O'SULLIVAN: What's an example of an issue that someone would raise?

Ms Carruthers: I'm not in these appointments. They're independent to the commission. We simply facilitate them. The purpose of it is to provide independent legal advice to people for free for up to an hour. If I was to imagine: it may be that someone has lost their job and they're not sure whether they're eligible to make an unfair dismissal application or whether they should make a general protections application about dismissal, or whether they should be at the Fair Work Commission or at a state and territory equivalent body. They're trying to figure out what sort of claim they should lodge, who they should lodge it with and whether the commission is the right place. I said to you earlier that 52 per cent of participants—we survey our participants in the program—sought advice before they decided whether to lodge with the commission, and 24 per cent—around half those people—didn't end up lodging with the commission. I don't know why that was; our survey doesn't go into that level of detail. Presumably it was because they realised either that they didn't have a strong claim or that the commission wasn't the place for them to be going and that it was a workers comp issue rather than a termination-of-employment issue. It'll depend on the individual circumstances of each person seeking advice.

Senator O'SULLIVAN: Is there some kind of statute of limitations?

Ms Carruthers: If you want to lodge an unfair dismissal application or a general protections dismissal application, you need to lodge it within 21 days of the dismissal taking effect. If you want to lodge a stop-orders application—as I was explaining earlier, they're for people continuing in the workplace, so, in that sense, one of the prerequisites is that you're still employed. We can't issue a stop order if the employment relationship has ended because there's no relationship to regulate.

Senator O'SULLIVAN: Is there any remedy for someone after the 21 days?

Ms Carruthers: If you lodge after 21 days, you then need to apply for an extension of time. Around five per cent of our matters are lodged late—so after the 21 days. Unfair dismissal applications, our largest application type, are routinely sent off to a member of the commission to determine whether there are exceptional circumstances that would warrant granting an extension of time. They're not often granted; only around five per cent of cases are granted an extension of time. It is very important that people get their application in during that 21-day period.

Senator O'SULLIVAN: Are there any eligibility limits at all for businesses to access the service?

Ms Carruthers: As I referenced earlier, the service is primarily for small-business employers.

Senator O'SULLIVAN: Under the normal standard definition of 'small business'?

Ms Carruthers: There's a Fair Work Act definition of 'small business'. I recognise it is a term that's loosely thrown around in conversation, and it can mean anywhere from five to 200 employees depending on the context. Under the Fair Work Act—it's section 23 or 27; I can't remember—it's up to 14 employees headcount. However, we have a pilot on at the moment where we're adopting a more flexible approach to trying to resolve unfair dismissal and general protection dismissal disputes by using alternative dispute resolution that's a bit more hands-on than our traditional model. We're allowing employers with up to 49 employees—so small businesses with up to 49 employees can participate in that pilot through the Workplace Advice Service.

Senator O'SULLIVAN: With regard to casuals in the headcount, how are they determined?

Ms Carruthers: Off the top of my head, it needs to be a—

Senator O'SULLIVAN: They need to have a regular pattern of work?

Ms Carruthers: Precisely—regular and systematic. Casuals are counted in the headcount.

Senator O'SULLIVAN: Thank you.

Senator RENNICK: I've got signed affidavits from some claimants to a Fair Work hearing where they heard the vice-president say to the claimants, 'Do as you're told or get another job', and, 'They're not looking after my granddaughter if they're not vaccinated, sorry'. Given those prejudicial statements, is there any means for these claimants to ask for a retrial? This particular vice-president went on to hear further cases on vaccine mandates.

Mr Furlong: I'm not aware of the circumstances you've just raised. In terms of vaccination cases, essentially dismissal applications and general protection cases that come before the commission that have an element to do with vaccinations are dealt with either by a voluntary conciliation process or, if they're not resolved through that, by being allocated to members for determination. The members are independent statutory appointees. They make their decisions based on the merits of each case. Then there's an appeal if the party to those decisions is unhappy with the outcome of the decision; they have a right of appeal.

Senator RENNICK: Who do they appeal to? Other Fair Work commissioners?

Mr Furlong: Decisions at first instance of single members of the tribunal are appealed to full benches of the commission, in general terms.

Senator RENNICK: Last time I asked you how Fair Work commissioners bring themselves up to speed on the science behind the vaccines, because, as you know, it's a new technology, and you said it's up to the claimants, basically, to present the science to the commissioners at the time. I want to quote another case here—Jovicic and Markovic v Coopers Brewery. In the ruling, the particular commissioner said:

ATAGI is an expert body whose role is to provide evidence-based advice on the administration of vaccines ...

... ..

In updates from September to December 2021 ATAGI stated that vaccination was an intervention to '*prevent infection, transmission and severe disease*'.

The problem with that statement is that I have a statement here from the FDA, who said in December 2020:

At this time, data are not available to make a determination about how long the vaccine will provide protection, nor is there evidence that the vaccine prevents transmission of SARS-CoV-2 from person to person.

That was confirmed two weeks ago in the European parliament, where a representative for Pfizer said that they never tested for prevention of transmission. Yet again, we've got a Fair Work vice president here who has basically washed their hands of it and said, 'We're going to rely on the experts,' a number of whom have conflicts of interest because they themselves work for universities that receive money from big pharma. What's the point of having a Fair Work Commission if it isn't actually going to be independent from government and government bodies and actually take the advice of other expert witnesses?

Mr Furlong: Senator, I don't necessarily agree with the way that you've described my evidence when we've discussed this previously. We actually dealt with the matters that you've just raised on notice, as you'd be aware. We provided a significant response. That question—

Senator RENNICK: I didn't ask you the question about the fact that the FDA has said that there was never any evidence that the vaccine stopped transmission, when these mandates were based on the idea that it was going to stop transmission.

Mr Furlong: Once again, do you mind if I return you to the question on notice, QON EEC-AE22-046. One of a number of things that it goes to is the functions of the Fair Work Commission— in essence, what our roles and responsibilities conferred by the legislation are. It also indicates that the commission does not have general powers to deal with employment related vaccination disputes and does not have the power to mandate vaccinations. It goes into quite a lot of detail.

Senator RENNICK: Who doesn't have the power to mandate vaccinations?

Mr Furlong: The Fair Work Commission. It's not one of our functions to mandate vaccinations.

Senator RENNICK: Then why aren't you stopping companies from mandating vaccinations? Isn't the whole point of Fair Work Australia actually to protect employees?

Mr Furlong: No. The question on notice contains the list of functions of the commission. I'm very happy to go through those with you now if you like.

Senator RENNICK: So where are employees going to go to get justice? I've got a database of 7½ thousand people who have been sacked because of the mandates. Of those, 407 were injured by the first shot and subsequently sacked because they didn't want to get a second shot, so they've now been both injured and sacked. They have been trying to seek justice, and they're not getting it via the Fair Work Commission, who is just saying that these are found reasonable directions. I fail to see how it's a reasonable and fair direction for an employer to be able to tell an employee to take the risk of being injured, when everybody has different health issues and some people have different allergies—to have a blanket mandated rule that says that the employer can just dictate that you must get vaccinated or you'll be sacked. How is that right? And if you can't get justice from the Fair Work Commission, who should these people try and get justice from?

Mr Furlong: To return to this question on notice, from questions 4 to 8 that you asked:

The Commission has no role in relation to common law damages or workers' compensation claims.

As you know, Senator, I can only talk about the functions and the activities of the Fair Work Commission.

Senator RENNICK: I'm confused here. You're saying the Fair Work Commission has got no jurisdiction over mandates at all? There are lots of people going to Fair Work who have been spending a lot of time and effort and money on trying to get these mandates lifted via the Fair Work Commission. Now you're saying that the Fair Work Commission has no authority to override these mandates? Are they wasting their time—is that what you're saying?

Mr Furlong: The focus of the Fair Work Commission when we receive vaccination related applications in relation to unfair dismissals—I might ask Ms Carruthers to assist me here, but there may be some antibullying claims, certainly general termination—

Senator RENNICK: These cases are around unfair dismissal as a result of the vaccine mandate.

Mr Furlong: Amongst others. There are some applications that have been made under dispute provisions under the relevant industrial instrument as well, but in terms of the volume, the vast majority were in relation to unfair dismissal applications, and, as with all other dismissal applications that come before the commission, they are dealt with initially—depending on the circumstances, but it's the general rule—by staff conciliation, where we bring the parties together and essentially conciliate.

Senator RENNICK: That's the process. I understand the process. My problem is with the outcome, that people are getting sacked for exercising their right over body autonomy and because they've been injured and then they've been sacked. Where do these people go to get protection from their employer or from the government, whoever is mandating this stuff? Where do they go to get protection? If you're not going to do it, if the Fair Work Commission, which I thought was responsible for protecting employees, isn't going to do it, where do they go?

Mr Furlong: I can only talk about the functions and activities of the Fair Work Commission.

Senator RENNICK: You're not answering my question. Why aren't you answering my question here?

Mr Furlong: What I'm trying to make clear here, Senator, is that what I can talk to you about, what I can provide evidence on, is the functions and the activities of the Fair Work Commission. You're asking me where people who have been injured from a WH&S perspective can go to seek—

Senator RENNICK: I'm talking about court cases where your own vice-presidents have called ATAGI the experts. I've demonstrated to you that what ATAGI have said in their advice is completely wrong, from the FDA, who actually reviewed the Pfizer information, unlike our own TGA, and said it didn't stop transmission. These mandates are based on the fact that the vaccines were meant to stop transmission and 10 months later we have 11 or 12 million cases of COVID in less than a year. Clearly we don't even need to rely on the FDA ruling; we can

see it for ourselves. You're washing your hands of it. Answer me this, then: why are these people wasting their time and effort going through the Fair Work Commission, if you're now saying it's not the role of the Fair Work Commission to hear these cases where they have been unfairly dismissed?

Mr Furlong: There is a lot of information on our web site. There is a lot of jurisprudence that has been established as we have dealt with vaccination related dismissal applications. There is a lot of public information available. In essence, the members of the tribunal who make these determinations are independent statutory office holders. They will assess the information that's available to them and they will make a determination based on that. I just want to reiterate that, if a party to those proceedings is unhappy with the outcome, they can appeal the matter to a full bench of the commission for it to be reviewed.

Senator RENNICK: Will that cost them money? These people are broke. Some of them were injured and have paid medical bills, and they have no income as well. Will it cost them money to go back to the full bench of the Fair Work Commission?

Mr Furlong: It depends on if they're self-represented or not and on the legal fees associated with the representation. It is very difficult to talk about in the abstract.

Senator RENNICK: Can you give me the number of people who have made Fair Work claims under Fair Work Australia since the mandates were introduced around October last year?

Mr Furlong: Can I clarify, the question is: how many vaccination related cases were received?

Senator RENNICK: Yes.

Mr Furlong: From what date?

Senator RENNICK: Let's say from 1 October 2021.

Mr Furlong: We have some information available but we can take that on notice and get back to you.

Senator ROBERTS: Chair, can I ask a question following on from Senator Rennick?

CHAIR: If it's very brief, because I do need to give enough time to Senator David Pocock.

Senator ROBERTS: Mr Furlong, I know a pilot who works with Virgin airlines. He had his first injection because Virgin airlines forced him to. He was severely incapacitated. He went back to work. He was forced to get a second injection or lose his job. Where do these people go? Their employers are doing this to them. Senator Rennick is absolutely correct; there is no valid scientific or medical basis for it. Where do they go when their employers are bullying them?

Mr Furlong: Under WH&S law, and I'm coming to it from my own perspective, as the person conducting a business or undertaking at the Fair Work Commission, I'm responsible for the health and safety of everyone in my organisation. I imagine that PCBUs across all organisations—

Senator ROBERTS: This is not just about workplace health and safety. This is also about saying, 'If you want to stay working here, you will get this shot.' That's intimidation, bullying and coercion, and it's not based on any scientific or medical knowledge. Where does an employee go?

Mr Furlong: If they feel like they've been unfairly dismissed or they haven't been provided with a workplace right—

Senator ROBERTS: They're being intimidated into doing something that they don't want to do. That's a fundamental right.

Ms Carruthers: I might jump in there. They might be able to lodge a dispute application before the Fair Work Commission, for instance, under an award or an agreement. That might be an option available to them.

CHAIR: Thank you, Senator Roberts. Senator David Pocock.

Senator DAVID POCOCK: I'm keen to learn a little bit about your resourcing. Can you confirm how much additional funding you received in the recent budget?

Mr Lambalk: We received a total of \$66 million over four years.

Senator DAVID POCOCK: In addition to your existing funding?

Mr Lambalk: Correct. It's additional funding for the three measures.

Senator DAVID POCOCK: Is that split evenly between those years?

Mr Lambalk: In this current year, it's \$9.8 million, and then it's roughly \$20 million each year.

Senator DAVID POCOCK: I understand that you will have eight new commissioners going forward.

Mr Furlong: They've been funded, yes. Ultimately the appointment of those members is for the government.

Senator DAVID POCOCK: But that's the plan?

Mr Furlong: Yes.

Senator DAVID POCOCK: What will the cost of those eight commissioners be in terms of salaries?

Mr Furlong: The independent Remuneration Tribunal sets the salaries for the statutory office holders. A commissioner at present receives \$398,630; a deputy president receives \$484,050.

Senator DAVID POCOCK: Is that the total package, or are there other allowances on top of that?

Mr Furlong: In essence, that's the total remuneration package.

Senator DAVID POCOCK: Do you have an idea of how the other funding will be spent?

Mr Furlong: As you know, the bill hasn't secured passage. As I indicated at the start of these proceedings, we've already established a cross-institution working group. There are national practice leaders—very senior members of the tribunal—who have been allocated ultimate responsibility for each of the measures, and we are also in the process of, and very close to, finalising very senior staff members who will work in establishing those functions. We're skilled and experienced at implementing new reforms, and, as I said previously, we're not carrying any backlog in any case type at the moment. Our digital infrastructure is strong. The organisation capability is strong at the moment. As I indicated earlier, without hubris, I'm confident that we will be able to do a reasonable job of the implementation.

Senator DAVID POCOCK: The Fair Work Legislation Amendment (Secure Jobs, Better Pay) Bill 2022 that's currently in the lower house is proposing two new expert panels. How is the commission placed to set them up? Do you have the expertise, or will you need to bring some expertise in?

Mr Furlong: My understanding from the measures is that four of the new members that we've been funded for will be appointed on the basis of skills, experience and knowledge, particularly in relation to gender pay equity issues. They will feature very heavily in the composition of these full benches and the expert panels, and in the assessment of the evidence and looking at those areas where there may be significant gender pay gaps.

Senator DAVID POCOCK: Looking at your current operations, what's the current time frame for approving single enterprise agreements?

Mr Furlong: I'm very pleased to indicate that complete and compliant enterprise agreements are approved within a median of 12 days at the moment and all enterprise agreements—this is the 4½ thousand or so enterprise agreements, and we're at the five-year trend at the moment in terms of the application volume—are completed within a median of 15 days. I have to say that I think, as far as practicable, we are dealing with these applications whilst also meeting our statutory obligations under the Fair Work Act as quickly as possible.

Senator DAVID POCOCK: Do you have a sense of the trend over the last 12 months?

Mr Furlong: It's been consistent over the last 12 months. We've seen significant improvement over the last four years but, against every metric—and we've got very detailed KPIs across every sort of function and every operation and every metric at the commission; for every activity there are metrics associated with performance—we continue to meet and surpass our key performance indicators.

Senator DAVID POCOCK: What is the current time frame for approving multi-enterprise agreements?

Mr Furlong: I might have to take that on notice. There are only a small number of applications that we receive. I'm sorry I don't have that information.

Senator DAVID POCOCK: You can get back to me on that.

Mr Furlong: I think there were 50-odd last financial year.

Senator DAVID POCOCK: Has the commission looked at the details of the 'secure jobs, better pay' bill and modelled, or have a good sense of, whether or not the additional resources will be enough to meet the needs and still hit these turnarounds and KPIs that you're hitting at the moment?

Mr Furlong: It's very difficult to talk in the abstract without knowing what the final form of the legislation—

Senator DAVID POCOCK: It may be difficult, but funding has been allocated, so I'm keen to understand what your thinking is there.

Mr Furlong: There were three measures that we're receiving as machinery-of-government changes around the Registered Organisations Commission. The first was in relation to compensation based jurisdiction and sexual harassment out of the *Respect@Work* report. I think it's recommendation 28, from memory. There are the gender equity panels. Then the third measure that we received additional funding for relates to assisting small business with enterprise agreements. We work closely with the department in the normal course of things about the

resourcing of the commission, but we haven't received specific additional resourcing in relation to the bargaining reforms. Once we know the final state of those reforms, we'll be in a much better place to have those conversations with the department.

Senator DAVID POCOCK: So it's your expectation that, if the bill was passed with those three additional streams, you would likely need more resources to deal with that workload?

Mr Furlong: I can't say that. I can say that, from the measures from the budget for the additional functions that are proposed for us, I'm confident that they will ensure that we can discharge those additional responsibilities well. As I said, without seeing the final form of the legislation, it's impossible for me to talk in the abstract because adding a conciliation conference to each of the protected action ballot order applications that are coming through may have an impact on our resources and the way that we allocate work and the work associated—those sorts of things. It's impossible to talk in the abstract and it's impossible to do the modelling until you find out what the final state of the legislation is.

Senator DAVID POCOCK: So you haven't done modelling on what has been proposed? You'll wait for the—

Mr Furlong: We worked very closely with the department in establishing the new policy proposals around the measures that we received funding for. We don't enter the policy debate, but we provide some information and some guidance to the department, where we believe there are opportunities to improve the administration and the effectiveness of the legislation, but it's a narrow area that we operate in there.

Senator DAVID POCOCK: In terms of the mechanism to get more funding, do you put a request in to the department or to the minister before the budget? How does that work?

Mr Furlong: My experience is that they're ongoing conversations that occur throughout the reporting cycle as well. We have a really strong relationship with the department, and my experience in this job and in previous senior executive roles is that that is the nature of it. It starts off with conversations and then they ultimately end up in your policy proposals.

Senator DAVID POCOCK: Thanks very much. Thank you, Chair.

CHAIR: Good. Thanks very much. There's a brief question from Senator O'Sullivan.

Senator O'SULLIVAN: Just to confirm, you said there are eight new positions, or there are a few people leaving?

Mr Furlong: There's funding for eight additional members.

Senator O'SULLIVAN: Additional—alright.

CHAIR: Senator Roberts, did you still have that question?

Senator ROBERTS: Just finishing our conversation, Minister. Systems drive behaviour. We've got the consequences of a hundred years of an industrial relations system that's based on conflict and drives managers away from managing the business to managing conflict that sometimes is sparked. So we have to improve the quality of Australian management and take them away from fighting union bosses and back to leading and enabling employees to serve the business's core: the customers. We need to fight overseas competitors, not fellow Australians. Arguably, one of the biggest opportunities we have in this country for the future is unity to battle our overseas competitors. Is there any prospect of this government embarking on such a path as I mentioned earlier—comprehensively reviewing industrial relations, setting up comprehensive reform, simplifying it, and then making very sharp, severe penalties for those who breach them, instead of the current morass and tangle of an industrial relations mess?

Senator Watt: As I said before, Senator Roberts, I certainly agree with you in principle that, wherever possible, legislation should be as simple as possible. Sadly, that's not always able to be done as much as people would like. What I can say to you is that I absolutely agree with you—the government does as well—that the more we can encourage cooperation in workplace settings the better. I think that's better for employers and it's better for workers. I think, if you look around the world, most countries that have more cooperative workplace laws tend to have higher productivity, which is good for business; higher wages, which is good for workers—

Senator ROBERTS: Higher safety.

Senator Watt: higher safety—innovation, because that encourages that exchange of ideas from the shop floor through to management. That bill that we've got before parliament at the moment is exactly about trying to drive that. We've seen the results of having a highly conflict based IR system, especially over the last 10 years, where wages haven't grown and productivity hasn't grown, and that's why we want to try and move to a much more cooperative system.

I'm not sure if you were here yesterday when I was responding to Senator Cash, but I know that there are claims being made that this bill is all about increasing the number of strikes. Nothing could be further from the truth. In fact, this bill that we're putting forward retains the existing laws around strikes and things that have to be done before that, and it actually imposes extra measures that need to be taken before protected action, whether it be strikes by workers or lockouts by employers, can happen. There's a requirement that, before a strike or a lockout can happen, the parties have to go to conciliation at the Fair Work Commission to try to actually sort it out with an independent umpire there. You've got to give 120 hours notice of industrial action for a whole range of bargaining examples. So we're actually trying to remove the conflict from the system and trying to encourage more cooperation, more agreements, at the workplace level. I'm sure you've seen the stats, Senator Roberts, that the percentage of Australian workers who are covered by enterprise agreements has crashed—

Senator ROBERTS: That tells us something.

Senator Watt: it does—because the system isn't working, and that's what we're trying to fix. It's not working for workers. It's not working for bosses. You've got more and more people who are on award wages, which are obviously pretty low in most cases, rather than being able to negotiate higher rates of pay. So that is actually one of the really core principles.

Senator ROBERTS: What you're doing fundamentally, Minister, is adding complexity, because there's an attempt in this country in industrial relations to try to regulate everything, to cover every aspect of every business, and it's physically impossible. It's intellectually impossible. It's morally bankrupt. So I think we need to come back to something simple, and that was the basis of my question—something simple but comprehensive, with severe penalties for breaking it. At the moment, if you've got a good lawyer, you can break anything. That's what we've got to get away from. You're adding more band-aids. I'm not talking about this legislation; I'm talking about in general. Will we ever see the day when industrial relations gets back to the primacy of the workplace relationship between employer and employee? That's it.

Senator Watt: It won't surprise you to hear me say that we also think that it's not just about the relationship between an individual employer and an individual employee, because of that power imbalance we were talking about earlier. That's why—

Senator ROBERTS: I meant employees and employers.

Senator Watt: And their unions or—

Senator ROBERTS: It doesn't matter if they have a representative or not. It doesn't matter. But let's focus on the work and competing requirements.

Senator Watt: That's why this bill and some of the other IR reforms we have intended are about fixing the bargaining system so that workers and employers can come to agreements about what works best for them. I'd be delighted to take you through it in a bit more detail.

CHAIR: I thank and release you all. Thank you very much for joining us.

Fair Work Ombudsman

[12:27]

CHAIR: I now welcome the Fair Work Ombudsman to join us. Ms Parker, do you wish to make an opening statement?

Ms Parker: I don't, thank you.

CHAIR: I have some questions to start off. First of all, I've looked at the results for the work the ombudsman has done over this past 12 months—congratulations on the degree of work that you've been doing. According to budget papers, which I might get circulated, the ABCC received funding last year of \$46.344 million while the Fair Work Ombudsman received funding of \$165.219 million; is that correct?

Ms Parker: I'm not sure what the ABCC received. I haven't got it in front of me. I can certainly confirm what we receive as an agency.

CHAIR: It's on the attachment of the Australian Building and Construction Commission's annual report—in this case, for 2020-21. There are a couple of documents attached to the back of it which have the budget paper figures. Based on those figures, the ABCC's funding was 28 per cent of your budget. According to the ABCC's most recent annual report, the ABCC recovered only \$902,464 in wage theft. In your most recent annual report, you say the ombudsman recovered \$532 million. If I do the maths and I have got the amount right, the ABCC recovered in wage theft just 0.17 per cent of the amount recovered by the ombudsman. So while the ABCC received 28 per cent as much funding, their wage theft recovery was only 0.17 per cent of yours. That's quite a great gap. I am very impressed with the results you've got.

Ms Parker: I would say we cover every sector, including residential construction; they cover only one sector. Ours is around a million workplaces. I'm not sure how many there are in building and construction. We do have a very wide remit.

CHAIR: That's a fair comment. You may have come across reports of the billions of dollars in wage theft and superannuation theft across that sector in the construction industry. It's notorious. It's certainly been argued in many places and by many academics as one of the worst areas for wage theft. How much money has the ombudsman spent in the last few years on litigation about women's toilets, flags, stickers and union officials having cups of tea?

Ms Parker: We don't have the building and construction sector. We certainly haven't had any of those kinds of matters in the residential construction sector.

CHAIR: Have you had it in any other areas that you've litigated—women's toilets, flags, stickers or union officials having cups of tea?

Ms Parker: Our functions are set out in the Fair Work Act. We don't have some of those matters that were under the building and construction act. It's squarely under the Fair Work Act.

CHAIR: Do you think having a strong focus on supporting workers rather than bullying and harassing union officials helps the Fair Work Ombudsman to help workers more efficiently?

Ms Parker: Senator, I don't think it's appropriate for me to comment. I'm happy to talk about our functions and what we do, but certainly we do what we're asked to do under the Fair Work Act.

CHAIR: I fully respect the fact that you're being above and beyond the fray, because that's appropriate.

Senator PAYMAN: Speaking of functions, can you please let us know some of the current functions of the ombudsman?

Ms Parker: Our functions are laid out in the Fair Work Act. Sorry, I'm trying to find that in broad terms. Ms Volzke will answer that while I try to find the right page.

Ms Volzke: Our functions are derived from section 682 of the Fair Work Act. Essentially there are two arms of that: our advice and information function for employers and employees and workers; and also our function to inquire and investigate potential contraventions not only of the act but of relevant instruments made under that act, to refer matters to relevant authorities and also to commence proceedings.

Senator PAYMAN: How will the functions of the ABCC be absorbed by the ombudsman if the legislation goes through?

Ms Volzke: From tomorrow, the Fair Work Ombudsman will stand up its function of regulating Fair Work Act contraventions across the entire industry. At the moment, it is the case that there is overlapping jurisdiction between the ABCC and the FWO in relation to commercial building and construction. We effectively already have all of the tools and infrastructure in place under the Fair Work Act to stand up and do that from tomorrow.

Senator PAYMAN: Excellent. What additional resources has the government committed to the Fair Work Ombudsman to support the absorption of the ABCC's functions?

Ms Parker: We've been provided with additional funding of \$69.9 million and 80 ASL to cover those additional functions. Those functions are obviously under the Fair Work Act. Does that answer your question?

Senator PAYMAN: Yes. Can you elaborate on where that funding is going?

Ms Parker: We will obviously use that to add—we have a couple of areas that we will focus on, including, as the chair mentioned, wage underpayments in the commercial building and construction sector. To date we've been doing all the other sectors and the residential building and construction. So, some of the funding will obviously go to that. We already have a pretty sophisticated underpayments team and inspectorate as well as all our other staff who support those functions. And of course the other work is in regard to the other functions that we will receive as part of that transfer.

So, to answer your question of where the funding's going, as a result of this funding and the additional staff we're having a bit of a restructure internally and looking at where we put our resources. We've been focused very heavily in the past few years on corporate underpayments, focusing on universities. We're anticipating other potential functions that the government has announced, such as criminalising wage theft. So, we're doing a restructure and we will have a team, or a group, that will be focused on large corporates and industrial matters. So, the industrial-matters part of those new functions will go in there. But it won't just be building and construction; it will be all sectors.

Senator PAYMAN: Great. Thank you. Are there any ongoing savings achieved by the abolition of the ABCC?

Ms Parker: We worked with the department and we received funding that we thought we would need. So, there are not any savings required in that. We didn't take on all the functions the ABCC had, so clearly we weren't going to get the same resources they had—the Building Code and other functions. For the functions we have inherited we have received the funding we've sought, which we're very grateful for.

Senator PAYMAN: What will happen to the ABCC's current cases?

Ms Volzke: With the bill that's been introduced into the parliament, assuming its passage on royal assent the day after, those matters will transfer to the FWO's name, so we'll essentially be subrogated into the ABCC's shoes. Then we'll continue to litigate those matters in accordance with our compliance and enforcement policy and obviously our model litigant obligations as well.

Senator PAYMAN: Thank you very much.

Senator CASH: I want to take a step back, in terms of the transfer of the functions of the ABCC to the Fair Work Ombudsman. In the first instance, how many times have you met with the department in relation to the transfer of the functions?

Ms Parker: We've been meeting regularly. The election commitment was clear: once the government settled in we suggested that we have regular meetings with the ABCC and with the department. So, we've been having those weekly. Also, separately I've been meeting with Commissioner McBurney and getting down to pretty nitty-gritty things—staffing transfers and all the sorts of things we need to consider, such as property, where they were located and what it's going to mean.

Senator CASH: My next question is in terms of the meetings with the Australian Building and Construction Commission. Have you met with the minister or the minister's office in relation to the transfer of functions—we'll go through the functions shortly—of the ABCC to the Fair Work Ombudsman?

Ms Parker: No. We've been working with the department. There's been a very close working relationship, at all levels, really, so we've been operating in that way. That's been pretty effective.

Senator CASH: You had said the FWO is not taking on all of the functions of the Australian Building and Construction Commission. Can you take me through what functions you are taking on and then what functions you are not taking on?

Ms Parker: Yes, we can. We obviously watched the ABCC's appearance last night, and they went through that. We would say the same thing as they said. Did you want us to—

Senator CASH: I would like to hear it from your perspective, because I think they also took some of it on notice. They were able to give us some.

Ms Parker: Certainly.

Ms Volzke: Essentially, as I mentioned previously, we will take over responsibility for prosecuting the Fair Work Act, so we'll be taking over that entire function from the ABCC. That was dealt with previously by way of an exchange of letters, MOU, so that will rescind. We'll take that over. That will include all Fair Work Act matters, wage underpayments, general protections, the whole gamut of those. The principle ones that we won't take over are specific civil penalty provisions and prohibitions in the BCIIIP Act that aren't in the Fair Work Act, some overlap but some more particular general protections type contraventions and unlawful picketing. I think the other one mentioned last night was in relation to the building code.

Senator CASH: In terms of the transfer of cases to the Fair Work Ombudsman, when does that and how does that occur?

Ms Volzke: Can I clarify that you mean the litigation that's on foot?

Senator CASH: Sorry, the litigation, yes.

Ms Volzke: At this point in time, the ABCC continues as an independent statutory agency. Those matters were started in the ABCC's names. So he retains responsibility for those. Then there's provision in the legislation, I think, once the bill goes through and it receives royal assent—from the day after, it's a transition period that starts. Those matters will transfer in name to us. Then there's a period of transition which is, from memory, about two months before there is abolition. Through that time, I think, we'll continue to work with ABCC's staff that are left, to get the handovers for those cases and make sure that we're in a good position to run with those as they continue through the litigation process.

Senator CASH: How many cases, or should I say cases that are currently on foot, are you taking over?

Ms Volzke: The case load is a matter for the ABCC, but I understand that last night they gave evidence that approximately 39 matters are on foot. My understanding from the legislation is that all of those matters will transfer to us once the bill goes through the parliament.

Senator CASH: And, Ms Parker, that's your understanding, that if it is the 39 matters they would transfer over. In terms of the discussions with the ABCC, on these particular matters, I appreciate you've said that once the bill goes through there will be further discussions but what discussions have you had to date, in terms of—taking on litigation is quite a big job, especially when there are 39 matters. What sort of preparatory work and discussions have been had to date?

Ms Volzke: To be honest, we haven't had detailed discussions about taking any of those matters over. Having said that, we're acutely aware of the timetable for the passage of the legislation. So we're planning for that. What we have done is: we've taken steps, in accordance with the legal services directions, to seek the court documents, the pleadings, in relation to all of those matters that are on foot and also just the prospects advice in relation to each of those matters, so that we, internally, within our legal group, can make an assessment of those matters and start preparing for when they transfer, which could be, I think, conceivably, as early as next month.

Senator CASH: Understood. In terms of the transfer of—we'll call it 39 matters that are currently on foot, is there a review process that the Fair Work Ombudsman then undertakes in relation to whether or not to continue to pursue them?

Ms Volzke: What I would say is that it comes back to our compliance and enforcement policy, and we would treat these litigations in the same way that we treat all other litigations, and what that means is: it's not set and forget. We'll obviously continue to review matters as they go through the court process. If there's a change in the prospects, or—there can be, I guess, a myriad of reasons that could arise, and obviously we'll be cognisant of those in our assessment more broadly, with each and every one of those matters.

Senator CASH: You said it's not set and forget. So there is a review process?

Ms Volzke: Yes.

Senator CASH: Is it a formal review process that is in place?

Ms Volzke: I've spoken to you about the first step that we're doing in anticipation of that litigation coming over, and what we do internally, in the legal group, with all of our matters that will continue, with these matters that will be subsumed into the work that we do more broadly, is: we have weekly case meetings, discussions with inspectorate, obviously, and assessment against our annual priorities, having a look at the evidence. And that's an organic and continuing process, which I think is the case for any litigation, and particularly considering the model litigant obligations that we have in relation to our carriage of litigation.

Senator CASH: If there were any cases that had been brought in relation to a function that was not transferring over, what would happen to that?

Ms Volzke: I have to be honest: I haven't looked closely at the provisions yet. It's been busy. But my understanding is that all of those matters transfer, including those that perhaps might, for example, have been started under the BCIIIP Act.

Senator CASH: Ms Parker, it might be you that answers. How does that actually operate?

Ms Parker: The transfer?

Senator CASH: Yes, the transfer in relation to the cases that were brought under the BCIIIP Act, transferring over to you, when the BCIIIP Act is no longer there. How will that actually operate?

Ms Parker: The legislation will allow for that transfer, and we will do an assessment then against our compliance and enforcement policy.

Senator CASH: That's what I'm getting to, exactly. So, in terms of what your current compliance and enforcement policy is, does that differ from the compliance and enforcement policy of the ABCC?

Ms Parker: In broad terms, I would say not. We have to be a model litigant, but we also look at things like public messaging, stopping and deterring people from engaging in unlawful behaviour and clarifying the law if it helps the community understand the obligations and rights. We, the Fair Work Ombudsman, are more likely to litigate where it's deliberate or repeated noncompliance, where it's exploitation of vulnerable workers, or where there's a failure to cooperate with us or fix any contraventions or there's a prior history of contraventions and there have been no steps taken to ensure compliance. So there's a range of factors we take into account, and it would be, I imagine, similar for the ABCC, but I haven't read their compliance and enforcement—

Senator CASH: Could you actually provide to the committee—and I'm happy for you to do this on notice—a copy of the compliance and enforcement policy?

Ms Parker: Certainly, yes. And it is on our website.

Senator CASH: It is on the website? I'm happy to look at that. That's fine. So any cases involving abuse, harassment et cetera, in particular the harassment of females on worksites, are cases that you would look at?

Ms Parker: Potentially. Each matter is assessed separately. We look at the range of factors. It's a holistic assessment. We're more likely, as I said, to litigate where it's deliberate or repeated, but we also look at the number of people affected. If it was one person, we may say: 'Well, is that a good use of public money? Is it in the public interest?' If it's a broader range of people, it depends. Sorry, I have to say this—it depends. But it will be very much case specific.

Senator CASH: This is an independent review process that the Fair Work Ombudsman undertakes?

Ms Parker: Within our own agency.

Senator CASH: Yes. It's not you personally—you're not going to undertake it—but it's within your agency.

Ms Parker: Yes.

Senator CASH: Is the minister's office able to provide you with any guidance in relation to this review process?

Ms Parker: It would be unusual, and I would think not. Ministers' offices and ministers can ask independent agencies to do things. If they were to direct, then it would need to be tabled et cetera, but they can certainly ask. And ministers in the past have done that—they have asked regulators to take a particular interest in something or to focus on something of concern, and that's fine. It doesn't mean I would have to do it, but I can certainly understand that that's part of the public interest consideration.

Senator CASH: To date, have the department or the minister's office given you any indication as to what that independent review process should entail?

Ms Parker: No, we haven't had any communication on that.

Senator CASH: In terms of the number of cases—the 39 matters that we currently have before the court—are you satisfied that you have the resources to continue to manage all of those cases if you choose to? Or would you have to prioritise them?

Ms Parker: We always prioritise. It would be part of the mix of our prioritising. If I can put it in a process sense, when we're considering a matter for investigation, mostly at the litigation stage, then we bring to bear a board within the agency—that is our enforcement board—and we look at those factors and we consider that case-by-case analysis. Part of that consideration is, obviously, resourcing. As every regulator does, we have to prioritise. We cannot do everything. Hence, we have to cut our cloth, which is why we set priorities each year, but we also have this policy by which we can filter things through and say, 'Are we able to do it or not?' So I would certainly say to Ms Volzke, 'If you're going to bring litigation, what are we not going to do?' and we would all discuss that and decide as a board.

Senator CASH: In terms of the current capacity of the Fair Work Ombudsman, how many are in the legal team, and how many are lawyers within the legal team?

Ms Volzke: It's about 110 ASL at the moment, but I think the headcount across the entire legal group is 139.

Senator CASH: And in terms of additional staff, how many will you add to the legal team?

Ms Volzke: Certainly, the relationship that our inspectors and our lawyers have is seamless. They always work very closely together, so I'm not sure that we've landed on a finite number. The focus has been on transferring the functions to stand up tomorrow, and then we'll be on a recruitment drive.

Mr Campbell: As part of this budget measure, we were appropriated an additional \$13.36 million this financial year, because of the part-year allocation, and on top of that 66.7 ASL. Throughout the NPP process—without going into too much detail—there's clearly a focus on resourcing our operational areas and our legal areas to assist the expansion of our operations into the commercial construction sector. So there will be lawyers recruited and operational staff as well.

Senator CASH: You said a 'recruitment drive' and then you said 'recruited'. In terms of the staff at the ABCC—of whom, unfortunately, we heard last night, many are jobless—how many staff do you expect to take from the ABCC in the legal team? And could you take me through the discussions that you've had with the ABCC in terms of taking on their staff et cetera?

Mr Campbell: Sure. I think it's two in the legal team. But I need to step back from that a little, in terms of time, and say we began, probably around late August, talking with the ABCC about how we might facilitate the transition of staff to the FWO at the right time, obviously conscious that our resource allocation at that point was fully utilised and it was going to be dependent on additional resources being provided to the FWO through the budget process.

We sought expressions of interest from staff at the ABCC to join the organisation. As you heard last night it's a section 26 process, therefore both parties have to want the transfer to occur. As and when the budget became available to us on budget night, 25 October, the additional funding was appropriated to us. We've then taken steps to activate those expressions of interest where we can. As you heard last night, a lot of ABCC staff have already taken up opportunities elsewhere, which is completely fine and you'd expect them to exercise those. But we've so far secured 16 people.

Senator CASH: Sixteen—1-6?

Mr Campbell: Sixteen. Yes. That's inside however many days—less than two weeks. And there may well be more, but I think what Mr McBurney said last night is that some of the staff will be tracking towards redundancies because they are in roles that won't exist at the Fair Work Ombudsman.

Senator CASH: I understand that, Chair, you were looking for a natural break to allow Senator Roberts to ask some questions.

CHAIR: Thank you. Yes. Senator Roberts?

Senator ROBERTS: Thank you for appearing today. Is the ABN important to an employee's payslip? And why is the employer's ABN on that payslip to its employees, important?

Ms Volzke: I'd have to take on notice exactly what the requirements are in the Fair Work Regulations in relation to what must be listed on a payslip.

Senator ROBERTS: Okay.

Ms Volzke: I'm not sure—and hopefully one of my team will get back to me—whether or not that is actually a requirement. But certainly my understanding is that the identity of the employer is usually included on a payslip.

Senator ROBERTS: The identity of the employer?

Ms Volzke: Yes.

Senator ROBERTS: That's fundamental. I'm not surprised there's such a morass of regulations that you can't answer that. I don't hold it against you. Thank you for your truth.

Can a letter of offer or employment contract remove the compulsory employer legal obligations of the Fair Work Act, National Employment Standards and applicable awards?

Ms Parker: We don't know the answer to the first question so we can't really answer the second.

Senator ROBERTS: I would have thought the answer was fairly simple, Ombudsman.

Ms Parker: The payslip basically—

Senator ROBERTS: No, forget the payslip for a minute.

Mr Campbell: Are you asking whether or not an employer can contract out of their legislative obligations?

Senator ROBERTS: Yes.

Ms Volzke: The answer is no. And the regulation is 3.46(1)(h) to have that—

Senator ROBERTS: Sorry?

Ms Volzke: It's 3.46(1)(h)—

Senator ROBERTS: For the payslips?

Ms Volzke: for the ABN number.

Senator ROBERTS: So it's required?

Ms Volzke: Yes, it is.

Senator ROBERTS: It is required. Thank you. And it has to be the employer's ABN?

Ms Volzke: Correct.

Senator ROBERTS: Can a letter of offer or employment contract mislead the employee as to who the actual employer is?

Ms Volzke: What I would say is that we can't give legal advice in this forum in relation to particular matters. And, as all lawyers always say, it will depend on the facts and circumstances, so I can't give an unqualified answer in the abstract without a little bit more information about the particular facts and circumstances. That's probably outside of the remit of today.

Senator ROBERTS: I appreciate that you've got to give a technically correct answer, but to me it would seem that—and I'm not looking for validation or verification—a letter of offer of employment, a contract, could not mislead an employee as to who their employer is.

Ms Volzke: What I would say is that we regulate the Fair Work Act rather than common law, and there may well be some common-law remedies that might be applicable—or indeed you might be able to rope in a particular contravention of the Fair Work Act—depending on what the circumstances are. But I just can't give you an unqualified answer. It would really depend.

Senator ROBERTS: I appreciate that. As I said, you have to give a technically correct answer. What the qualifications needed for a Fair Work Ombudsman investigator? For example, are legal qualifications such as a law degree needed? It probably would help, wouldn't it, with the morass of regulations?

Ms Volzke: They're not required, no. But we do require very specific training. They need to be ongoing staff, for example—they can't be contractors.

Senator ROBERTS: What are the qualifications? Are they fairly broad?

Mr Campbell: There's a mix of skill sets that make up the group of our Fair Work inspectors, but the fundamental is the very robust and competitive training program we put them through with respect to workplace relations knowledge and basics and then the actual investigative process as well.

Ms Parker: They require security clearances, too, so we need to check their character.

Senator ROBERTS: So it's their more general life experience and ability to handle—

Ms Parker: Potentially, yes.

Mr Campbell: Over the journey, soft skills have been just as important as the ability to hold your ground in difficult circumstances. Being able to defuse a challenging circumstance through human interaction with another human is a skill set we expect of people, but equally we need people who can know and apply the law in situ.

Ms Parker: There is comprehensive training we provide them, as well.

Senator ROBERTS: So you get people from diverse backgrounds, bring them together and give the training they need. So it would be fair to say from what Mr Campbell said that their people skills would be more important than their specific technical skills, because you could train them?

Mr Campbell: It's both; it has to be. You can't work in workplace relations without being able to consume and apply some reasonably detailed statute.

Senator ROBERTS: Thank you. When a Fair Work Ombudsman investigator is carrying out an investigation into an employer for a possible breach of the Fair Work Act and the National Employment Standards, does that Fair Work Ombudsman investigator check the authenticity of documents to be true and correct, and what checks and balances does the investigator take to verify all documents are true and correct? For example, how would the investigator check a PAYG summary that an employer has given the investigator?

Ms Parker: Given the detail of that, we might get Mr Ronson to help you out. He's been doing this for a long time and he's been on many worksites.

Mr Ronson: Senator, I think your question is going to how we verify or validate what we receive.

Senator ROBERTS: Yes—to make sure what the employer gives you is accurate.

Mr Ronson: I think the first place to start, depending on how high you want to take this, is that it's an offence to provide any false or misleading records to the Fair Work Ombudsman. To a certain degree, any employer who chooses to provide documentation that is not true or correct is obviously taking a risk. There is, of course, though, deliberate and then inadvertent provision of documentation. Back to your initial question: the answer is quite simple. The Fair Work inspector will request documentation in the course of an investigation. That's their whole job—they're sourcing evidence not just from the employing entity but from a range of parties. They will obviously caution all parties that they are to provide true, correct information. If it's proven to be otherwise, then that becomes its own investigation.

Senator ROBERTS: Thank you. During an investigation, does the Fair Work Ombudsman investigator check the employer's ABN on employees' payslips and then cross-check that that ABN on the payslip is the same as the ABN on the employer's submitted PAYG summary on the ATO?

Mr Ronson: Typically that would be the case.

Senator ROBERTS: You do check it?

Mr Ronson: Yes. ABNs are an important source of information—

Senator ROBERTS: Yeah, they are.

Mr Ronson: for an inspector because—I think you know where we're going with the question—they use it to determine who the employing entity is.

Senator ROBERTS: What are the penalties for an employer giving false or misleading documents to the Fair Work Ombudsman during an investigation into a breach of the Fair Work Act and the National Employment Standards? Has this happened before and has it been prosecuted by the Fair Work Ombudsman?

Mr Ronson: We have taken several cases, since our inception, to court, where we have sought orders in relation to the provision of false or misleading documents. And then, without trying to complicate this, there are degrees of provision.

Senator ROBERTS: 'Deliberately misleading' compared with 'accidental', for example?

Mr Ronson: Yes.

Senator ROBERTS: 'Accidental' would just be sloppy and a slap on the wrist?

Mr Ronson: Yes.

Senator ROBERTS: Does the Fair Work Ombudsman know what the dollar value is for a black coal award covered employee who works a four-panel roster, working 12½ hour shifts seven days per week, including weekends, public holidays, night and day shifts, including all loadings for those shifts worked and six weeks annual leave, plus leave loading and paid sick leave?

Mr Ronson: A Fair Work inspector would be able to easily obtain that information through our own tool, which is also public facing, called PACT. It's a pay and conditions tool calculator which contains every price point of every award for every contingency in Australia.

Senator ROBERTS: Have you during an investigation into award payments versus an enterprise agreement to check that an employer was meeting their legal obligations under the Fair Work Act?

Mr Ronson: Sorry; can you repeat that question, Senator?

Senator ROBERTS: Yes. I didn't say it very well. Have you checked, during an investigation into award payments versus an enterprise agreement, that an employer was meeting their legal obligations under the Fair Work Act?

Mr Ronson: Typically, the vast majority of investigations that we undertake relate to the award system. Enterprise agreements are a smaller proportion, just because of numbers of our investigations. We typically are an award based inspectorate, if you drill it down to that.

Senator ROBERTS: But you can do both?

Mr Ronson: Exactly. But if we are looking at a request for assistance or a complaint that relates to an enterprise agreement we may or may not have to compare it with the award. The enterprise agreement typically stands on its own. It's been ratified and approved by the Fair Work Commission. Then we look to the terms, initially, of the enterprise agreement. If there is reference to an underlying instrument, the modern award, then of course we would examine that. But the enterprise agreement, by the very nature of the fact that it's been approved by the Fair Work Commission, is the primary industrial instrument governing the terms and conditions of employment.

Senator ROBERTS: Okay. So you're less likely to check under an enterprise agreement, because of what it's been through?

Mr Ronson: That's right. The enterprise agreement stands on its own, as a general rule. I'm just giving you some generalities here.

Senator ROBERTS: And that's on the assumption that it's been verified and stamped by the Fair Work Commission. So you rely on them?

Mr Ronson: Correct.

Senator ROBERTS: I must say, Chair, these answers are really quick and clean and very precise. Thank you, Mr Ronson; I really do appreciate that. I'll just get on to something that's got a little bit of uncertainty, and I'm nearly finished, Chair.

CHAIR: You've got three minutes, Senator.

Senator ROBERTS: I think that'll be fine. In the previous government—we've had this discussion, Ms Parker—Minister Christian Porter undertook to have an investigation, with me, into the exploitation and abuse of Hunter Valley coalminers: what's going on with some of the labour hire casual miners. When Minister Porter was transferred and Minister Cash became Attorney-General, I reminded her of this. She said she didn't know, which I accepted, which is fine. But she agreed with me that an investigation into casual labour hire miners in the Hunter is needed. That was delayed, and I don't blame Senator Cash, as Attorney-General at the time, for that. I think her staff eventually discussed it with your people at Fair Work, Ms Parker.

Ms Parker: I believe it was mentioned—if I can disclose it—but it never progressed. There was nothing.

Senator ROBERTS: I'm not chasing you. I'm just putting facts in there, looking to a request in a minute. And now we've got a new government. What is the process for getting an investigation into the abuse of labour hire workers or casual workers in the Hunter Valley? Can we recommend something to you? Can we write to you like ANAO?

Ms Parker: Depending on what you want investigated then I guess an option you have is to write to the minister, as you've done in the past, and seek that. In terms of where that would then be investigated from or reviewed, it would depend on the focus and what needs to be achieved. For example, if you were looking at an investigation that covers entirely about wages and entitlements then the Fair Work Ombudsman's role is that. But if you wanted to broaden that into work health and safety matters or other broader matters then that would be beyond our remit. If we were asked whether we could do some sort of investigation, I would need to take account of our priorities. We set out our annual priorities, and this area isn't one of those for this current year. I would also have to consider resourcing. I would need additional resourcing to do something like that, which is quite a big piece of work that we're clearly not resourced for. That would be the approach, but, as I said, you would need to be very clear on exactly what you wanted to achieve. But I would have a discussion with the department as well around where that might fit, because they have very good relationships with other departments that might have a role in areas such as, as I said, work health and safety or workers compensation, depending on where your interests lie.

Senator ROBERTS: The minister cannot direct you because you are the ombudsman and you're supposed to be separate, right, independent?

Ms Parker: The minister can direct. That needs then to be tabled in the parliament. But the minister, as I mentioned before, can ask us to look into things. Again, I would need to take account of—we're a relatively small agency and we've got a pretty big remit. We have to prioritise. We can't go in every workplace. We can't look at everything, so we have to decide on the basis of requests for assistance, anonymous reports, where the intelligence lies. We've had very few complaints from the sector. We have very little intelligence that there are issues. Of course, we've worked with you and you've raised issues, but in terms of this systemic issue we don't get very much at all.

Senator ROBERTS: So you work more on specifics, an individual worker has a problem or an individual employer has a problem?

Ms Parker: We help a lot of individuals, as we've outlined in our annual report. If someone comes to us with an underpayment issue then we'll look into that. In terms of a broader sector investigation, that's a much bigger piece of work, and I'd need to consider all our other priorities as well. We are working on vulnerable workers, migrant workers. We've got fast food restaurants and cafes as a priority. We are still working on large corporate sector matters, universities. We've got a very big workload, and everyone is fully utilised. We are fully staffed, we've slightly overspent—don't tell!

Senator ROBERTS: It's on the *Hansard*!

Ms Parker: We do get a lot of requests.

Senator ROBERTS: Just to clarifying: specific requests for investigating pay and entitlements, fine; if it's broader, workers comp, safety, to the minister?

Ms Parker: Yes, and as I said I don't like to be difficult. You can ask, but we will have to look at what we are able to achieve with our resources.

Senator ROBERTS: That's fine, and I reiterate how much I appreciate your responses.

Proceedings suspended from 13:13 to 14:23

Senator WATERS: Thanks very much for joining us today. I only have a few questions about the support that you provide around the paid family domestic violence scheme which just passed the parliament a week or so

ago. Budget Paper 2 outlines that I believe you will get \$2.2 million to assist small businesses to implement that paid DV scheme. What resources will you produce with that?

Ms Parker: Just generally speaking, for background, we'll play a really important role about changes coming out of those reforms. We were provided with \$2.2 million to support small businesses to understand and implement 10 days of paid family domestic violence leave. Ms Hannah will take you through what we will do with that money?

Ms Hannah: We've already got some content and some tools on our website. When the leave was initially introduced into the NES in December 2018, we developed a range of tools. That included a guide for employers, a checklist for employees, and also a fact sheet for workers who are affected. When the new changes come into effect, we've already started working with DEWR, the department, in terms of updating those resources and making them a bit more complete. The sorts of things we are looking at doing is developing some skills based training, some online training courses. We appreciate that it's a very sensitive area and workplace participants will need a whole lot of new and different skills to implement those changes. We're also working with stakeholders and, like I said, very closely with the department.

Senator WATERS: What consultation with victim survivors and with small business will be undertaken in developing those resources?

Ms Hannah: What we tend to do with all of our resources is we introduce them, launch them, communicate with stakeholders and get stakeholders to promote those resources through their channels. Then we do a lot of user testing. We intend to do some user testing with all sorts of workplace participants, including survivors, and then we will fine-tune resources.

Senator WATERS: So you'll develop them first and then field test them if you like.

Ms Hannah: Yes.

Ms Parker: Noting that we've already got—

Senator WATERS: Noting you've got the unpaid leave provisions already.

Ms Hannah: We've tested those and got feedback from those. That's just our business-as-usual approach to new tools.

Senator WATERS: Will the resources you work on encourage employers to minimise the evidence that they ask for and provide guidance on maintaining the privacy of any evidence provided?

Ms Hannah: We know that there's a lot of sensitivity around both of those issues, and we're working with the department to make sure that we take a best-practice approach to address all of those issues. That is still very much a work in progress. That is something we are very conscious of.

Senator WATERS: As is appropriate. Lastly, will the Fair Work Ombudsman provide support for workers whose application for paid leave for family and domestic violence is denied?

Ms Hannah: Yes. That's something that I think we'll be able to cover off in our communications materials, in terms of disputes and how to resolve disputes.

Senator FARUQI: Good afternoon and thanks for being here to answer our questions. The Fair Work Ombudsman announced in June that one of its focuses this financial year is universities. In that announcement, Ms Parker, you said 'We expect to be taking high-level enforcement action against a number of universities this year and urge all to prioritise their compliance.' Can you provide an update on this enforcement action, such as against which universities this enforcement action is being taken and what it involves, if that's possible at all?

Ms Parker: Yes, certainly. We're currently investigating eight universities. We have a number of matters. We have the University of Melbourne litigation. We have commenced legal proceedings against the University of Melbourne in relation to allegations of coercion and adverse action against two casual academic employees. We have also got an ongoing investigation into the alleged underpayment of casual academic employees at that same university, which commenced after media reports. We also have two enforceable undertakings, which are high-and-enforcement outcomes. One is with Charles Sturt University and one is with the University of Newcastle. The Charles Sturt University enforceable undertaking was entered into on 29 August this year, and the University of Newcastle enforceable undertaking was entered into on the same date. We were investigating those in parallel. They're different enforceable undertakings, different issues at each of those universities. We also have the other matters under investigation, and we do expect further high-end enforcement outcomes this year.

Senator FARUQI: That's three universities you've named, but you said there were eight universities. Could you name the other five?

Ms Parker: Yes, I can. The eight are: the University of Tasmania, La Trobe University, Monash University, the University of Melbourne—that's ongoing—the University of New South Wales, the University of Sydney, the University of Technology Sydney and Charles Darwin University. For information, the majority of those were self-reports, which means that, following letters from me and following a fair bit of attention on this sector and union reports as well, they have come forward and are working with us. There are a couple that were reported through the media that we then followed up and are investigating. Even if it's a self-report, we call it an investigation. The job of the agency is to provide assurance to the community that universities are calculating correctly and that they're going to do the right thing by the workers—pay them back money and interest and so on. Also, when we negotiate an enforceable undertaking, we ask for a whole lot of other commitments. That includes annual audits, it can include apologies, it can include fixing up their payroll systems and demonstrating that, or it can be training of their HR people. There are a whole lot of things that we include depending on the matter, so they're all slightly different.

Senator FARUQI: And out of these eight, have any of those been completed as of yet, or are they still ongoing?

Ms Parker: They're ongoing.

Senator FARUQI: Do we have timelines for the completion, or is that difficult?

Ms Volzke: If I could assist Ms Parker, I would refer you back to our question on notice in relation to the question that you gave us on 27 October. I think there might have been a bit of a conflation, but it is that question on notice that lists the universities that are in the public domain as being investigated. They are La Trobe, Monash, RMIT, the University of Melbourne, the University of New England, the University of New South Wales, the University of Newcastle and the University of Sydney. There are so many of them that it can be difficult.

Ms Parker: Yes, there's a slight difference there.

Senator FARUQI: Sorry, can you just tell me the number that was there in the October QON?

Ms Volzke: Yes. That was EEC-SBE21-051 —

Senator FARUQI: And how many universities in total were there?

Ms Volzke: When we provided the answer to that question on notice, we said that there were 14.

Senator FARUQI: Yes, that's what I thought. Last year there were 14. And some of them have been completed now? Is that why there are eight now and others added?

Ms Parker: I mentioned before that we've had contact with 26 out of the 43 total institutions. It doesn't mean that all of them are under investigation, but we're having contact with them, so there's ongoing work. We have ongoing communication with their councils and peak bodies. As you mentioned at the start, it's a priority for us across the year, which means that we'll continue to investigate. What I would hope is that they're all very much looking at their payrolls and their histories and their payslips. I understand from those universities that I am talking to and their peak bodies that that is the case. They have recognised that there's a systemic issue. They are addressing it, some more quickly than others, but it is a complex activity for them.

Senator FARUQI: I want to clarify, with the 26 that you're talking to, the 14 that were listed last year and the eight that are listed now, how many are being investigated by you at the moment? And have some of those investigations been completed?

Ms Parker: Yes. For example, with Charles Sturt University and the enforceable undertaking, that investigation is complete, so we have an outcome. For the University of Newcastle enforceable undertaking we have an outcome; they are no longer being investigated as such. We will monitor the enforceable undertaking, though, across the years that are signed up for, and if they break that, of course, we can take them to court. With the University of Melbourne, there are two components I mentioned. One of those is in court, so it's not an investigation as such, but the other is continuing to be investigated.

Senator FARUQI: I want to be crystal clear: how many are you investigating now, and who are they?

Mr Scully: We might take that on notice. As Ms Parker and Ms Volzke have said, we have got eight under way at the moment that are in the public domain, but there are ons and offs all the time. There are a number that have been finalised, and there are new ones coming in. There are eight in the public domain, but we'll take it on notice.

Senator FARUQI: If you could also give us a list of 26 which you have been dealing with. Some may have been investigated, others may not, but the conversations are happening I think. That would be really appreciated. In August this year, Ms Parker, FWO commenced legal action against the University of Melbourne, as you stated

earlier, alleging it coerced and took adverse action against two casual academics to stop them from claiming payment for work performed. You said that action has been resolved now.

Ms Parker: No, that matter is still in the court, and we are now waiting on a court to consider it. That could take time; courts run to their own timelines.

Senator FARUQI: Of course. Is the FWO investigating other instances of universities taking adverse action against staff who have attempted to exert their right to fair pay?

Ms Parker: I would prefer not to comment on those investigations or what sort of matters we are investigating. We don't always let the employer know what we are investigating or what we be going to do, so if we are still in the process of determining the litigation we prefer not to comment on what it is we're looking into.

Senator FARUQI: Okay, but the Melbourne one has been made public.

Ms Parker: That's in the court.

Senator FARUQI: That's in the court, okay. So if the others get to court you will make them public?

Ms Parker: Yes, definitely.

Senator FARUQI: The universities that you are looking into, they are all kind of matters of underpayments in general, for different reasons, right?

Ms Parker: Yes, not just underpayments—they are generally underpayments, but there may be other issues as well.

Senator FARUQI: Earlier this month it was reported that about 15,000 casuals at the University of Melbourne will be paid \$22 million as a result of wage theft between 2013 and 2021. As I understand it, that is on top of some earlier announcement on payments. I think the total is over \$30 million at the moment. I am just wondering, are you surprised by the scale of this reported wage theft at the University of Melbourne? It seems like a huge number of employees and a huge amount.

Ms Parker: Yes. We are doing an ongoing investigation into that. I suppose the positive, if there is one, is that it indicates that they are looking pretty much at their whole workforce, or at least at a very large component. What we often find with businesses that self-report an underpayment is they come to us with a 'we've identified an underpayment amongst a particular cohort of workers'. We then work with them. They announce it sometimes to the market—it depends on how they approach it—and then we sort of go down the track a bit, and then they come forward with another lot. It is a massive workload for us. I'm not asking for sympathy, but it does create a flow-on of more and more payments. But the positive is that the message is getting out there. Businesses are starting to take this issue really seriously and they are doing their own audits.

Senator FARUQI: I hope universities aren't businesses, but I think that is the way they look at themselves, unfortunately, and I guess that's part and parcel of that picture. I worked in a university for quite a long time and heard over the last few years and spoken to staff over the last few years who are overworked, especially casuals, that more and more of them are working more than the anticipated hours. What does that say about how universities are being run at the moment, it seems, on the back of overworked and underpaid staff? It seems to be a systemic issue, as we have seen, and I think you've acknowledged that. What kinds of systemic solutions do you have, or can you recommend to universities, to fix the problem?

Ms Parker: I've written to them and I will continue talking to them. I've been very public about the issues that have led to the noncompliance. Ultimately it comes back to culture. The fact that so many of them are doing this says that it's cultural as much as anything, but they also have, often, poor governance. They haven't focused on governance; they haven't employed the expertise they need. They haven't centralised their human resources functions, so they're operating across faculties and schools. A faculty will do it one way, and another faculty will do it another, and there's not a consistent approach. They haven't understood their own enterprise agreements and haven't had it pointed out to them that they're fundamental to the way they need to pay people. In the case of universities, most of them have enterprise agreements that require hourly rates, not piece rates. They also haven't appropriately invested in payroll or time-recording systems. When they've had HR and pay issues dealt with by academic managers, they haven't had that expertise they've needed to take it seriously or do it properly. It's a longstanding issue that's developed over quite a long period of time.

Senator FARUQI: You are obviously recommending that they change those systems.

Ms Parker: Strongly recommending, yes.

Senator FARUQI: In terms of poor governance, could you elaborate on that a little bit more? Is it governance at the university level as well?

Ms Parker: Yes. Governance starts at the top and it goes through. Good governance is at every level. In a company it starts with the board and the executive and how they set up systems to provide themselves with assurance that things are being done properly and within the law. They haven't been focused on that. They've been focused on a lot of other things. We know they're really busy—most companies have got a hundred things they're doing—but this part of it has not been prioritised.

Senator FARUQI: I would say again that universities are not companies; they are public institutions.

Ms Parker: Of course, but they have quite similar issues.

Senator FARUQI: The board should be responsible. I agree. It has been raised with me, over a number of years, that the university governance structures are less and less populated by people from within the university, and more and more from outside the university, and that is a problem as well.

Ms Parker: It could well be.

Senator FARUQI: We were just talking about Melbourne university and the \$30 million that we know, at the moment, needs to be paid back to staff. In the cases of other universities that you are investigating, is their wage theft to the same scale? I'm just thinking about the huge number of universities that are being investigated and thinking that, even if the scale within those universities is smaller than Melbourne uni, that's probably still hundreds of millions of dollars that has been stolen from staff. Could you tell us a bit more about that?

Ms Parker: It's probably too early to say. When they first come and self-report, we always say, 'How much?' They often don't know until they've done their audits. It's very difficult for them to know the extent of the issue. That's a big university, Melbourne university, and it's a very large underpayment. The others have not had such large underpayments. For example, Charles Sturt University was \$3.2 million. Relatively, you could say that's small. University of Newcastle was \$6.269 million. I hope we don't get any that size, but it's certainly possible.

Senator FARUQI: What role do you think vice-chancellors of universities have in improving the governance that you have highlighted as being poor?

Ms Parker: They need to take responsibility—there's no question. We know how boards or the equivalent operate. They can't be there checking everything. They can ask for assurance, and they can ask for evidence that there have been annual audits and governance arrangements. That's what they should doing, but ultimately the executive, the vice chancellor or the CEO equivalent is responsible.

Senator FARUQI: So the buck stops with the vice chancellor, in many ways.

Senator CASH: Ms Parker, I'd like to go back to the role of the inspectors. How many inspectors does the Fair Work Ombudsman currently have? I'm also going to table three articles that'll form the basis of the question.

Ms Parker: I'm going to give you a slightly nuanced answer to this, but I'll give you the number you're looking for.

Senator CASH: But I thought it was just a number.

Ms Parker: I do want to say that we have 194 inspectors, but we also have 61 lawyers who work in partnership with them. So it's a team based approach. They're also supported by our intelligence reporting media. We often get asked why the number is only 194 when there are these many million workers. We do have all the other teams, but our inspectors are the centre of our agency—

Senator CASH: Are those 194 inspectors the ones that go out, though? For example, they could go—

Ms Parker: Yes.

Senator CASH: So the lawyers, I understand, are part of a team—

Ms Parker: That's correct.

Senator CASH: but it's the inspectors who would actually go out to the site—do you use the word 'site'?

Ms Parker: That's right, although a lot of work is done at the desk.

Senator CASH: Yes, exactly. Will you increase the number of inspectors as a result of assuming the functions of the ABCC?

Ms Parker: Yes.

Senator CASH: By how many?

Mr Scully: We haven't determined the number yet, but I'm expecting that it'll be in the order of 40, I think.

Senator CASH: Okay. I will get you to confirm that. Is there a reason that you haven't confirmed that number yet?

Mr Scully: We're having some internal discussions around the allocation of the additional funding that came in as to what parts of the organisation that that funding will be directed to.

Senator CASH: Do you recall how many the ABCC currently have?

Mr Scully: My understanding is that it's largely an equivalent number.

Senator CASH: What type of training do your inspectors undertake?

Mr Scully: I might need Mr Ronson's assistance with this, but we require our Fair Work inspectors to have practical training—

Senator CASH: Did you say practical?

Mr Scully: Practical—as in on-the-job training through experience. We also put them through a cert IV training program, which I might ask Mr Ronson to provide more details on if you would like.

Senator CASH: I want to understand: is it different in any way to the training that the ABCC inspectors undertake?

Mr Scully: I might need to take on notice the training that the ABCC inspectors undertake, because I'm not familiar with that, but Mr Ronson might be able to talk a little bit about the cert IV training that we provide to our Fair Work inspectors.

Mr Ronson: Even before we get to the cert IV training, when a new officer arrives at the Fair Work Ombudsman to become an inspector they won't get to their inspector appointment, mostly, until around six months into their role. The reason is that they have to do an induction program and be trained in the elements of workplace law and then the beginnings of workplace investigations. They do begin as what we call a Fair Work officer: they are part of an investigation team, and they are learning from inspectors. They are, if you like, beginning to do their job from the start, but they don't hold an inspector appointment for some time. Of course, under the act they've also got to pass what's called the 'good character test'. That's in the actual Fair Work Act. So there's that induction program. Then they're given what's called investigative, if you like, tradecraft training, so the elements of investigative interviewing. Then they're put through a certificate IV of investigation. Some can do a diploma in investigations. It is a very thorough investigative program—unless there is some recognised prior learning.

Senator CASH: Understood. How many of the 194 inspectors are female or identify as female?

Mr Ronson: I can take that question on notice, but the majority I think would be female.

Senator CASH: The majority of the Fair Work Ombudsman inspectors are female? If you wouldn't mind taking that on notice and actually confirming that. In terms of the training that they undertake, and in particular the certificate IV, what part of the training deals with being verbally abused onsite?

Mr Ronson: For some time we have had a range of programs dealing with what is effectively called resilience training.

Senator CASH: Resilience training?

Mr Ronson: Resilience training. We have been offering that training and support for probably well over a decade now. It may not come as a surprise, but workplace relations tend to be fairly emotional and conflict based, and so as a consequence, our inspectors have to learn techniques of, if you like—I think Mr Campbell referred to it before the break—diffusing particular emotional or volatile settings. All inspectors receive training in what we call resilience training. Plus there is also, allied to that, training which relates to persuasion, negotiation, conflict management. We have a whole bunch of programs around that.

Senator CASH: Excellent. Given this resilience training, I want to refer to the article that I have tabled from the *Sydney Morning Herald* 'The trail of union intimidation of women must be stamped out.' It refers to behaviour undertaken by union official Luke Collier. It says:

Collier has a criminal record, a long history of intimidating women, and his history also includes a trail of protection from his union and, indirectly, the Labor Party.

... while he was on the Barangaroo construction site in Sydney last July he called a female inspector from the FWBC a "f--ing slut".

He also used a megaphone to broadcast the name and phone number of another FWBC official, in front of scores of CFMEU members, and encouraged them to call the number. He then shouted at the official, "You think all I got is your phone number?".

Collier spat at another FWBC staff member, then said "Lick it up you f---ing dog".

What specific unit in the resilience training deals that type verbal abuse and, I would say, assault given the person was spat on?

Mr Ronson: In terms of the actual specifics of the particular program, I would have to take the question on notice.

Senator CASH: Is this the type of behaviour your fair work inspectors, given that the majority are female, currently experience when they go out to site?

Mr Ronson: I have been doing this job for about 20 years and I would present that as an outlier.

Senator CASH: An outlier? That's very interesting because it's not an outlier. We will go through a bit more in terms of what you are about to take on. I have serious concerns, and I would like to address these further with you, Ms Parker, in relation to what the government has discussed with you by way of training, in particular for these female inspectors who are about to be exposed to this type of behaviour, and in particular, from the most militant union in the country. Ms Parker, do you expect that, and I am going to say the majority are female, inspectors will be visiting construction sites in Australia?

Ms Parker: Yes.

Senator CASH: How many individuals are likely to visit the construction sites?

Ms Parker: It's difficult to say. We will be enforcing compliance with the Fair Work Act in the commercial building and construction industry as we do other sectors. In line with the policy, we will be treating the sector the same as other sectors. We will assess each matter, as I outlined earlier, in line with our compliance and enforcement policy. In terms of whether an inspector will go out to a site—the ABCC had a KPI, and I think it was in their legislation or their regs that they needed to visit a certain number of sites per year. We don't have that.

Senator CASH: You won't be visiting sites? I hope that's not what you are saying in terms of assuming this function?

Ms Parker: We have discretion around proactive visits, if you like. Our work is a balance of reactive and proactive. Proactive is when we decide to go out to look at or investigate something. It's usually—or always, actually—because of intelligence, so it won't be random visits. There's that part of it, and then reactive is when an issue happens and we need to assess that in the same way we assess any other issue. If it's unprotected industrial action, for example, then we would assess it against our compliance and enforcement policy and make the decision of our response. It may or may not be going out to a building site.

CHAIR: Can I just remind Senator Cash that this matter appears to be a matter before the courts. I appreciate that you've got a line of questioning. I have read the assertions from the discredited ABCC. We saw last night how they're performing. So you just might be mindful when you're asking your questions that we're not—

Senator CASH: I am quoting directly from media articles that I have tabled. Are you aware of comments made by senior union official John Setka in 2017, where he publicly threatened ABCC employees as set out in the article that I have tabled: 'CFMEU boss John Setka threatens to hunt down ABCC officials as rallies disrupt sites'. I will quote from it:

"We will lob in their neighbourhoods, we will tell them who lives in their house and what he does for a living, or she. We will go to their local footy club, we will go to their local shopping centre."

"They will not be able to show their faces anywhere. Their kids will be ashamed of who their parents are when we expose all these ABCC inspectors."

"So if they think they're going to walk around and desecrate construction workers, take away our rights and then ride off into the sunset and there's going to be no consequences, well, they're in for a big surprise."

He said people could not avoid three things in life—death, taxes and construction unions—"because when we come after you, you better be careful."

So, Mr Ronson, in terms of the 194 inspectors—the majority of which are female—how many have been subjected to that type of threat previously? I'm hoping you are going to say none.

Mr Ronson: It's probably safest I take it on notice.

Senator CASH: Is there a reason you need to take that on notice?

Mr Ronson: There might be instances of extreme intimidation and abuse that I am not aware of, so—

Senator CASH: Ms Parker, would you know how many have been subjected to this type of behaviour?

Ms Parker: None since I've been in this role.

Senator CASH: Thank you. Ms Parker, as the Fair Work Ombudsman, do comments like these against public servants just doing their jobs concern you, given that you are assuming the role of what the ABCC inspectors were undertaking?

Ms Parker: Obviously, the comments are of significant concern. I would say we won't be doing the same as the Building and Construction Commission were doing. For example, a lot of the site inspections were around code related matters. We're not doing that; we won't be doing those inspections. We will be doing our activities in response mostly to issues as they arise. And we will train our people.

Senator CASH: That's what I'd like to get to. As I said, given that your agency is taking on the responsibility for keeping law and order on building sites, what steps are you taking, and what steps have the Prime Minister and the minister asked you to take, given this behaviour has occurred time and time again by senior union officials against ABCC inspectors, and in particular female inspectors, to ensure that they will be safe on these sites—and we'll shortly get to another quote—but also when they are not at work? What instructions have the minister and the Prime Minister given to you to ensure the safety of your 194 inspectors, the majority being female?

Ms Parker: I would hope that, given our long experience as a regulator of workplaces, there would be some confidence that we will manage the additional sector. One of the things we do need to do for anyone who is going onto a building site, is that they will be required to get work health and safety certification as well. That's additional, so our inspectors will have that. I mentioned earlier that we will have a slight restructure and we will have industrial matters, where we will have the opportunity to look at this area and decide whether additional specific training is needed, but we're only getting some of the functions tomorrow. So we're in very—

Senator CASH: So no training's been undertaken, with your female inspectors in particular?

Ms Parker: There will be separate teams for this. We will have an industrial matters team with inspectors in it. We don't need to train all our inspectors on all activities, because they're not all going to be going to building sites—

Senator CASH: They won't all be going out to be abused.

Ms Parker: No, that's correct. It will depend, but absolutely we will look to additional training if we think it's needed, and support and rights—

Senator CASH: Will you undertake a risk assessment about the safety of the female inspectors, in particular, for the construction sector, given the abuse that ABCC female inspectors have been subjected to? This is actually a really serious issue.

Ms Parker: The answer is yes.

Senator CASH: I'd hate to come back here next year and find out that, given this issue has been raised, female inspectors in the Fair Work Ombudsman have been verbally abused and spat on while doing their job.

Ms Parker: So the answer to your question is yes, risk assessment and determination of additional training that we will need to provide our inspectors.

Senator CASH: How will you undertake the risk assessment?

Ms Volzke: Perhaps I could add to Ms Parker's answer as well. As we said, the function stands up tomorrow, and we are in the intensive recruitment stage, but certainly we are working on reviewing our risk assessment to look at work health and safety risks and what are the appropriate control measures. It may well be, in the examples that you've used, that would constitute a criminal offence under the Criminal Code for intimidation of a Commonwealth public official. It may well be that there would be escalation points to police, if that was to become an issue. Those are all matters that we're considering in that review, to make sure that our risk assessment is fit for purpose taking on these additional functions.

Senator CASH: There was an article yesterday, and again, I've tabled it, which highlighted that the CFMMEU was already flexing its muscles in Adelaide. The article is by David Penberthy and reads:

State of alarm as John Setka-led CFMEU flexes its muscles on building sites

An Adelaide property developer is threatening to pull the pin on a \$27m apartment project amid the growing militancy of the South Australian CFMEU under the leadership of John Setka.

Three months after Mr Setka took formal control of the branch, a picture is emerging of the impact the Victorian takeover is having in the historically calm SA construction industry.

Building companies are being threatened with rising labour costs and demands for pre-existing EBAs to be replaced with more generous union-sanctioned agreements, and subcontractors are being frozen out or confronted over use of non-union labour.

City building sites now bear "No Ticket No Start" signs declaring that non-CFMEU members are barred from entering, and sites where work is under way and being performed in part by non-union members are receiving impromptu visits from Construction Forestry Maritime Mining and Energy Union officials demanding entry on safety grounds.

Does that concern you, Ms Parker, given that the article was only written on 7 November and this type of behaviour is occurring?

Ms Parker: Yes. We'll obviously monitor the situation.

Ms Volzke: Can I add to Ms Parker's answer as well. Given that it was only an article yesterday, it would seem to—and we can never generalise—

Senator CASH: You don't have anybody monitoring the behaviour going on currently—

Ms Volzke: No, no, no.

Senator CASH: on building sites, given your female inspectors may well be subject to this behaviour?

Ms Volzke: What I meant was that it was only written yesterday. It was recent in that respect. I'm certainly aware of it, but I just meant that this this was an article from yesterday. What I would say in reading that is that it seems to raise potential general protections, 346, 'no ticket no start' and freedom of association types of issues. Those are already matters that we do investigate. In fact, we have a matter on at the moment in court, FWO and CFMMEU, in relation to the Oaky North mine. That does relate to adverse action and coercion during protected industrial action as well and involves various allegations. Sorry—I should say it's not the construction division; I think it's the mining and energy division. It involved 'scab' signs, social media abuse and verbal abuse as well. That matter is currently, as I understand it, listed for a case management hearing for 22 February 2023. I guess all I'd say is, this is not necessarily new work. I understand absolutely the point about the challenges, but we also have—

Senator CASH: It's even worse that it's not new work. Good God! It's even worse. There's a pattern of behaviour here that you've just confirmed. Ms Parker, will you be directing any resources to Adelaide, given that their construction sector appears to be being targeted?

Ms Parker: We do have an Adelaide office.

Senator CASH: Yes, I know. That's why I asked if you were directing any further resources to Adelaide.

Ms Parker: We will if we need to. What I would say is that we do also operate on a national basis. Adelaide based people don't just do Adelaide based work. We can send people to various sites, cities or regions if we need to. We have 22 offices around the country, and they do operate quite flexibly, so we can move resources as needed. Do you want to add to that, Mark?

Mr Scully: I was just going to add that at 30 June we had 92 people in our Adelaide office, of which 16 were Fair Work inspectors, so it's quite a substantial presence we have in Adelaide at the moment.

Senator CASH: How many are female?

Mr Scully: I'd have to take that on notice.

Senator CASH: Could you please take that on notice for me. Ms Parker, what discussions have you had with Minister Burke, or what discussions has Minister Burke had with you, regarding that you have the ability and the appropriate resources to ensure that female Fair Work Ombudsman inspectors who are going to building sites will not be subject to this type of behaviour but also are basically protected?

Ms Parker: We haven't, and I wouldn't expect to have that sort of level of discussion with a minister.

Senator CASH: Can you then guarantee that your female inspectors will be safe when they go to building sites in the future and will not be subject to this type of behaviour?

Ms Parker: I'd love to give you a 100 per cent guarantee that everyone in my agency is safe. We absolutely implement work health and safety requirements. The law as it stands says, 'Do what's reasonably practicable to provide a safe workplace.' We will do that. We will take it very seriously, as we do with everything around health and safety. But, like anybody, I can't ever guarantee 100 per cent that something isn't going to go wrong.

Mr Ronson: I'll help flesh out that answer. As a fundamental part of the training, Senator, which is where you started: before every site inspection, before every field investigation—at the beginning of every investigation there is an investigation plan. That brings into what Ms Parker was just talking about. A full assessment is taken of 'what is the workplace?'. That will include an assessment of the workplace health and safety aspects. Each investigation is different.

Senator CASH: What will you do in the event that an issue arises and a safety plan is one that says, 'We cannot send inspectors to this site'?

Mr Ronson: As Ms Parker said, we can't give, here today, a 100 per cent assessment.

Senator CASH: I'm asking you a question. You've put forward that there is a safety plan. You undertake that prior. So what do you do in the event the safety plan says it is not safe to go to site?

Mr Ronson: There's no case in front of me, but, if the past is a guide, you can also look at parallel regulation. For example, chief counsel has just said that if a particular instance appears to be criminal in nature then it might be appropriate for a parallel regulator to be involved and to receive advice in that sense. I haven't got a particular case study in front of me here. One thing I was going to add before was that from time to time we'll be conducting investigations—it could be in the security sector; it could be in the horticulture sector—where you will come across—

Senator CASH: It's not the same. Let's talk about the building industry. They are not apples with apples.

Senator Watt: Senator Cash, I assume you would be just as concerned about incidents of abuse or harassment from employers on construction sites.

Senator CASH: Absolutely, and they should not occur.

Senator Watt: Would you like to ask some questions about that?

Senator CASH: The bad news is, in particular, given the evidence from the ABCC last night, there is one union in town that consistently—

Senator Watt: Well, we know the ABCC only ever focused on one union.

Senator CASH: If you want to run a protection racket for them, Senator Watt, you do that.

Senator Watt: No, no. I'm just questioning whether you're being even handed, because the Fair Work Ombudsman has done a huge amount of work about recovering wages for employees who have been underpaid—including on construction sites—but you don't seem very interested in that.

Senator CASH: I'm more worried at this point in time about the abuse that female inspectors of the Fair Work Ombudsman, I hate to say, will probably be getting very near into the future.

Senator Watt: I share your concern about behaviour on worksites.

Senator CASH: Minister Watt, given the behaviour of John Setka, given the behaviour of Luke Collier—I could go on and on and on—can you guarantee that female inspectors, or any inspectors, of the Fair Work Ombudsman will not be subject to this type of abuse and harassment?

Senator Watt: I would answer the question exactly the same way that Ms Parker did.

Senator CASH: You cannot guarantee they will not be subject to vile abuse and harassment.

Senator Watt: I would answer the question the same way as Ms Parker, but I would absolutely hope and expect that no worker experience harassment on any worksite, whether it be a Fair Work Ombudsman inspector or a construction worker. I don't think people should experience harassment at work from their employer, from a union official or from anyone.

Senator CASH: So you would call out the behaviour of John Setka?

Senator Watt: Yes. I have absolutely no time for John Setka.

Senator CASH: Ms Parker, if your inspectors are at a building site and are subject to threats from the CFMMEU or any other individual, what is the advice that you have given to these inspectors? Do you advise them that their safety should always come first?

Ms Parker: We get the functions tomorrow. We're working through, at the moment, how we will train our people and what we need to do. Mr Ronson said we'd need to do a risk assessment on each particular matter, and it will vary, but of course we're not going to put our people at risk.

Senator CASH: This is what really concerns me in terms of the evidence that was given prior to lunch—that you do assume responsibilities tomorrow. You are clearly aware, all of you—blind Freddy could sit here and tell you—about these cases, because they happen time and time and time again. Yet you are telling me neither the Prime Minister nor the minister has raised any concerns in relation to whether Fair Work Ombudsman inspectors—given the majority, in particular, are female—are prepared and will be safe on site?

Ms Parker: As I said, it's ultimately our responsibility to ensure that, as far as reasonably practical, we keep our people safe. That's something that I need to do and to assure myself of as the agency head. If there's a risk of someone being injured and we can foresee that risk, then, of course, I wouldn't be allowing them to go onto site.

Senator CASH: Have any of the inspectors raised any concerns, in terms of potentially going onto site in the future?

Ms Parker: Not with me, but we are still determining who will do which work.

Senator CASH: In the event that someone does raise a concern, what will you do?

Ms Parker: Mr Ronson, this won't be a new issue, I don't imagine.

Mr Ronson: No. It's always horses for courses. There are different investigations that require different skill sets, different approaches, different capability levels you'd experience. If an inspector feels that they're not able to participate in an investigation, for whatever reason, that request or aspect is taken very seriously. I can't recall anyone being compelled or forced to do an investigation if there are good reasons why they shouldn't.

Senator CASH: Minister, if the Fair Work Ombudsman were to come to the government and request additional resources, to ensure they have the ability to train their inspectors and keep their inspectors safe on site, will the government be forthcoming with those resources?

Senator Watt: We would, of course, consider such a request. I'm not going to sit here and commit funding in a portfolio that I'm not even the minister for, but we'd consider any sort of reasonable request like that.

Senator CASH: Ms Parker, how will the Fair Work Ombudsman communicate to the more than 400,000 small and family businesses, in the construction sector, about the new arrangements that are about to be in place?

Ms Parker: I have already sent letters to—

Senator CASH: To 400,000 businesses?

Ms Parker: No. We will be putting information on our website. We expect that associations of which employees are members will cascade the information and the information will get out there. I don't write to the million workplaces now that we regulate. I do it through peak bodies and organisations that can spread the word; that includes through legal firms and the people they would generally work with, like accountants.

I have already written to stakeholders, on 27 October, setting out the changes, the changed arrangements from the 10th, and what that will mean.

Senator CASH: In terms of the list of stakeholders that you referred to, are you able to table that or provide it on notice?

Ms Parker: Yes, that's fine.

Senator CASH: Another really concerning issue is going back to the Luke Collier comments and the fact that he used a megaphone to broadcast the name and phone number of an FWBC official in front of scores of CFMMEU members and encouraged them to call the number. How will you ensure that, at all times, the personal details of your inspectors, including your female inspectors, are protected?

Mr Ronson: One of the practices we've adopted now for well over a decade, at least since the inception of the Fair Work Ombudsman, is to advise and recommend to all inspectors to practice private security as well—for example, names to be removed from electoral rolls, these are advice points, and so forth. It used to be the old phone book, of course; I'm carbon dating myself there. These are just practical measures.

I can speak for myself as an inspector that I have practised those methods as well. I can't compel those but these are practical tips that inspectors, in all regulatory functions, practice.

Senator CASH: I certainly hope that by the next estimates your practical tips to inspectors to ensure their personal details are not broadcast through the CFMEU have worked.

Senator O'SULLIVAN: I want to go to the funding, please. Minister, can you please advise the committee how much funding the Fair Work Ombudsman will receive once the once the Fair Work Commission takes over the ABCC's caseload?

Senator Watt: I think Ms Parker has already provided that evidence.

Senator O'SULLIVAN: What I'm trying to figure out is the difference between the funding of the ABCC and the Fair Work Commission. I note that by my calculations there is \$68 million difference. Can you confirm if that is correct?

Senator Watt: Obviously the Fair Work Ombudsman is only taking over certain functions of the ABCC, and resources have been provided to the Fair Work Ombudsman for that portion of the work. But why don't I get Ms Parker and her colleagues to give you that figure again.

Senator O'SULLIVAN: By my calculations, it appears to be about half the amount.

Ms Parker: Of the ABCC?

Senator O'SULLIVAN: Yes.

Ms Parker: We're receiving \$69.9 million, 80 ASL, average staffing numbers. We mentioned earlier that we are not getting all the functions of the current ABCC—we're not getting the code work and a whole range of other things they do. We did receive the funding that we assessed that we would need in order to do that new functions.

Senator O'SULLIVAN: You are taking on a considerable number of existing cases. We have seen a pattern and history of recidivist behaviour by a particular union, so the workload by taking on the construction industry, you must be considering that to be high. But you're receiving half as much funding as the ABCC.

Ms Parker: With funding we always have to do an estimate when we put up a policy proposal for budget or otherwise. That is what we have done. We will keep a very close eye on this, and if we believe we are under-resourced and need more funding, we can ask government to assist. There's no obligation, obviously, for them to do that, but we would put it through. We would talk to the department; we would talk about issues; we would see if we could deprioritise other work. There is a whole range of ways you can do things within an agency. We do have discretion over a whole range of activities, and I do set priorities and put more effort into those areas where there is priority. Obviously we will keep a close eye on this, and we will keep reporting back on how it's going.

Senator O'SULLIVAN: You've discussed the priorities. Have you formulated any methodology in terms of triaging and determining those priorities?

Ms Parker: Yes.

Senator O'SULLIVAN: Can you talk us through that briefly?

Ms Parker: We set annual priorities. There is a whole range of work we get that's what I call reactionary. People phone and say, 'I've got a problem, I've been underpaid.' We assist each of those.

Senator O'SULLIVAN: I might just be clear with my question. I want to ask you about the existing cases that the ABCC have, in determining the priority with regard to which ones you will carry forward.

Ms Parker: Legislation needs to go through for us to receive the litigations that are currently on foot at the ABCC. We will assess them in line with our own compliance and enforcement policy. It sets out the criteria about how we will treat a matter. So we do have to prioritise. If we assess it, for example, as being in the public interest to take it forward—if it's going to test the law, if it's egregious behaviour, if it's systematic, if there's no contrition—all of those things come into play in us determining the approach.

If a matter comes to us and it's clearly an issue, but the parties all say 'We're really sorry, we're going to fix it, we'll show you how we will fix it', there's little point in litigating it, as you would probably understand. We can sign them on to enforceable undertakings, which allow us to audit them for the next couple of years, make them do certain things without going to court, which is a benefit for everybody—much lower cost, much quicker, money back to workers quicker.

Litigation obviously needs to be a higher bar. We have to be a model litigant. We also have to have a positive chance of being successful in court. You can't run spurious matters just because it looks interesting; you have to demonstrate that it has a good chance of being successful. We're using taxpayers' money, so we have to be careful. All of those things will be factored in.

Senator O'SULLIVAN: No doubt the other thing to consider is that the Building Code is not continuing.

Ms Parker: That's correct.

Senator O'SULLIVAN: So you'll be working under your act.

Ms Parker: That's correct.

Senator O'SULLIVAN: There are some cases that are currently being pursued by the ABCC that, just because they're under the Building Code, you won't be able to carry them forward anyway—is that right?

Ms Parker: Eventually, yes. We will assess each one. There may be some that we consider are not in the public interest, and we won't continue those. Again, I'm speculating.

Senator O'SULLIVAN: I want to explore some of these cases with you. There are quite a number.

Ms Volzke: If I could just add, obviously, as we have spoken about earlier, these cases haven't come across to us yet, so they won't land into the Fair Work Ombudsman's lap until at least the day after royal assent. Then there is a two-month transition period. So in a sense we are talking about, at this stage, hypotheticals. We have started the work in undertaking those assessments, but it hasn't been done in a comprehensive way. I guess if I were to use an example, we could talk about the case that was discussed last night, the Lendlease matter, which we understand the ABCC discontinued by consent because the Building Code which underpinned the allegation, or at least many of the allegations in that matter, obviously is gone. There is a question about the utility of the Commonwealth spending money in the event that there has been a change in the law. That's not to say that that

will be the approach that we will necessarily adopt. As Ms Parker said, we will need to assess everything, including against our other priorities and other work. But right now it's premature to talk about that.

Senator O'SULLIVAN: Okay. But I do want to take you to a selection of cases that are currently being or have been pursued by the ABCC. I have got them and provided them for the committee to be tabled. I just got these off the ABCC's website, so they are in the public domain. I'll run through a couple of them.

CHAIR: Before we start that, I will just thank Minister Watt. Now joining us is Senator Anthony Chisholm, Assistant Minister for Education and Assistant Minister for Regional Development, representing the Minister for Employment and Workplace Relations.

Senator O'SULLIVAN: I would like to go to a number of these cases. There are quite a few here. We would be here all day if I went through every single one of them. I'm just going to take a pretty random selection, I have to say, because I could spend time on each one. To me they seem quite egregious, the particular situations. I will start with the case known as the Huntington apartment project. The applicant is the ABCC and the respondents are the CFMMEU. By way of summary, the ABCC commenced court action on 8 September against the New South Wales division of the CFMMEU. This is in relation to a picket which was allegedly organised when the principal contractor of the \$42 million Huntington project refused to sign an enterprise agreement with the union. The ABCC is alleging in a statement of claim that during the period 7 October to 12 October 2021:

- Workers attempting to access the site were subjected to abuse, including being called 'f***ing scabs, dogs and grubs'.
- During the dispute up to 40 picketers led by CFMMEU NSW state secretary Robert Kera and organisers: Brendan Holl; Mark Cross; Joseph Uati and Karl Hitchcock, chanted slogans, waved CFMMEU flags and constantly used megaphones and sirens to intimidate the workers.
- The picket resulted in several crane companies engaged to lift concrete decks into place and erect site lifts refusing to work, as did a number of scaffolders.
- Workers of the head contractor who continued to work were continually harassed, received abusive text messages referring to them as 'scabs' and told they would never work in Newcastle again.
- The picketers' actions caused anxiety and distress to the workers and discouraged and prevented them from working on site.

Given that picketing is not covered under the Fair Work Act—I know you took on notice before that there were certain attributes of the code that won't be carried forward, and I think you've cited picketing as one of them straight up—would this case be pursued by the Fair Work Commission?

Ms Parker: It depends whether there are other issues. We will assess them each, as I said, when we receive them. So I would have to take it on notice if you wanted more information on that. That will be the answer to all of them, really—

Senator O'SULLIVAN: Okay.

Ms Parker: because we don't have them and so we haven't had the chance to assess them. But you're right: picketing isn't—

Senator O'SULLIVAN: Minister, this sort of behaviour—

Ms Volzke: Can I also add that these are matters that are obviously on foot at the moment and, as the regulator, we of course will have deliberations about how we pursue matters and what decisions are made internally as well. So there may well be public interest considerations that might be relevant as to why we might not be able to provide you with details of those deliberations when we actually get to the point of having those cases. But right now we just are not in a position to be able to advise what steps we might take in relation to a particular case. For example, a matter might be discontinued or whatever—consent orders made—so it really is hypothetical. I just don't feel like we can answer that question.

Senator O'SULLIVAN: It's not hypothetical, though. I appreciate what you're saying. But, Minister, are these the sorts of actions that are acceptable in workplaces? What is the government going to do to ensure that this sort of behaviour is not able to continue, given that we heard evidence earlier that picketing, for example, is not going to be carried forward to the Fair Work Act?

Senator Chisholm: I think you've been given an answer. I've got nothing more to add than that.

Senator O'SULLIVAN: The government doesn't have an interest in ensuring that people in workplaces, as they're going about their jobs, are not called 'fing scabs, dogs and grubs'?

Senator Chisholm: We think everyone should be treated respectfully on the workplace.

Senator O'SULLIVAN: So, with picketers' actions causing anxiety and distress to workers, you'd want to see that distress and anxiety stamped out, would you?

Senator Chisholm: I think everyone should be treated respectfully on workplaces all over the country.

Senator O'SULLIVAN: Let me go to another matter. This is known as the 443 Queen Street matter. The respondent is the CFMMEU. The ABCC commenced Federal Circuit Court and Family Court action on 1 September 2022. This is a case that would need to be carried forward if it was going to, because it hasn't been completed yet.

As at the time of the officials' 15 December 2021 incursion onto project site, each of the three access gates in use had signs directing all visitors to report to the site office.

The ABCC is alleging in its statement of claim filed in the court, that CFMMEU official ... contravened section 500 of the *Fair Work Act 2009* by:

- acting in an improper manner when they unlawfully entered the construction site while ignoring safety requirements for all visitors to attend the site office and sign in,
- did not show their entry permits when requested to do so,
- failed to give notice of their entry,
- held unauthorised discussions with the subcontractors' employees.

The ABCC's statement of claim further claims Mr Moloney behaved in an abusive and intimidatory manner towards the senior site manager when he responded to a query about what was going on by saying words to the effect:

*"If you f***ing speak to anybody, it will be the last time you work in the EBA industry."*

Would this be the sort of case that might be prosecuted, might be pursued, by the Fair Work Ombudsman?

Ms Volzke: With respect, I will repeat what we said previously. I know that you're reading off a media release and that's the case as alleged. There may well be a defence that we would—we need to look at—

CHAIR: Sorry, Senator O'Sullivan. Again, you'll have your opportunity to ask questions. Is this a current matter before the courts? I'm very mindful of—

Senator O'SULLIVAN: I'm reading off a publicly available document. I'm not sure if it's a media release, but it's on the ABCC's gazette.

CHAIR: But is it appropriate for these officers to be making comments about an existing case that's actually—there may be different ways you can ask the question. But if you're asking for details about the existing case it's inappropriate.

Senator O'SULLIVAN: To avoid that, let me go to another case. I'll just refer to it in its—

CHAIR: I'm sorry. I didn't want to break your train of thought. I'm just mindful of time as well. Please go on.

Senator O'SULLIVAN: We have another case here where it's alleged that language has been used against—intimidating and offensive comments to site management by a CFMMEU official who said, 'This is a small industry. I can make your life hard. Get this C away from me. Get fed, you C. You are nothing but a piece of...'. And on several occasions they referred to the site manager as a C. It alleges that while exercising the right of entry there was a contravention of the *Fair Work Act 2009*. That would be then—

Ms Volzke: Is that current matter as well, Senator—before the courts?

Senator O'SULLIVAN: It is, but I have spoken in general terms, haven't I? Without going to a particular—

CHAIR: In fairness to the witness, you've asked an opinion on specific matters—

Senator O'SULLIVAN: I'm trying to get a picture of—in terms of your triaging, the hierarchy of priorities—what sort of cases are going to be dealt with? Have you got the resources to do it? Senator Cash has taken you through questions on the resources, the training and the facilitation. That's been provided. What capacity have you got to deal with it?

Ms Parker: It is frustrating for people to understand the triaging because each case is different. I couldn't say to you, for example, this kind of case will always end up in court or this kind of matter will end up as an enforceable undertaking or this matter we would drop, because they're all different. But there's a list of criteria, that we provide in our compliance enforcement policy, that's public and on the website, that sets out the factors we will take into account. The senior leadership team in the Fair Work Ombudsman will assess each matter—on advice from our expert lawyers and people from our compliance and enforcement teams—to say what it is that's happened, what the matter is, what's been done to date, what information we've received from the ABCC in transfer of that matter, and then what are the factors we might take into account in assessing it? What other information might we want to seek et cetera? Each of them will have to go through that triaging process, if you want to call it that. It will be done very carefully and thoughtfully.

One of the things that could happen before those cases get transferred to us is they could get settled or the ABCC might take a different approach to them, given they still have those matters. Until we actually receive them we won't be able to do that fulsome assessment. We can do a preliminary and start thinking about them, which we are doing. But in terms of saying what we will do with each matter I think it's too early. I would say that I believe we are resourced appropriately but, of course, we'll monitor that very carefully.

Ms Volzke: I've pulled up our compliance and enforcement policy. Those public interest factors are listed from page 12 onwards: nature, seriousness and circumstances of the alleged contravention, characteristics of the person alleged to have committed the contraventions, characteristics of the alleged person who's been the subject of that contravention, the impact of that contravention, general deterrence, administration of justice—there is a whole range of things. It is the case—and I understand what's being raised in terms of these particular cases, and, certainly, if it happens that, as this jurisdiction progresses, we need to revisit our compliance and enforcement policy to make sure of whatever matters need to be taken into account, of course we can do that. We did that in 2019 after the Migrant Workers' Taskforce firmed up our compliance posture. There were amendments to the C&E policy there, so it's not a static document either.

Senator O'SULLIVAN: I appreciate you've taken the earlier question on notice, and so did the ABCC last night, in terms of providing us with a table that will give us what's in and what's out—what's being carried in and what the difference is between the Fair Work Act and what's going to be missed with the abolition of the building code. I'm just trying to get a bit of an understanding of the types of cases that are going to be carried forward and that would be prosecuted by the ombudsman. Clearly, I don't think anyone—well, there are obviously some—would think that this sort of behaviour is acceptable. And I could keep going. I think there are about 39?

Ms Volzke: I think it is 39 cases. Have you got a breakdown of the subject matter of each of those litigations?

Senator O'SULLIVAN: Most of them are right-of-entry. There's a few other ones—

Ms Volzke: All I would say about that—and Ms Parker has spoken about our finite resources—is that we do try and make sure that we exercise our statutory powers in a way that we get the most bang for our buck. So it may be that perhaps we wouldn't run as many right-of-entry cases because we've got other subject matters that we'd be looking at as well. I'm just saying that off the top of my head, on the basis of what you've just said.

Senator O'SULLIVAN: With my reading of them—obviously, these are on the website; anyone listening can have a read on the ABCC's website—most of the right-of-entry cases still involve quite significant intimidatory behaviour. They're not trivial issues. They involve a lot of intimidation and, in many instances, coercion and real issues of freedom-of-association aspects as well.

Workers and employers across Australia, particularly in the construction industry, are concerned about what the changes will mean with the abolition of the ABCC and not carrying forward the code and not giving the power to the ombudsman to be able to pursue certain issues, because he won't have the powers to do it. And I guess, Minister, as you've said, you don't think it's right or fair that anyone should go to work and experience any sort of intimidation. What assurance can you give us with regard to steps that the government is going to take to make sure that this change that's about to be made is not going to lead to people feeling intimidated, people being intimidated and people experiencing harassment in the workplace—particularly women?

Senator Chisholm: From what I've heard, the Fair Work Ombudsman have given a good appraisal of how they intend to operate and the resources they have to operate. As a government, we certainly don't stand for any bad behaviour or illegal behaviour on workplaces throughout the country. I'm confident that the Fair Work Ombudsman will be able to do their job effectively and appropriately as a result.

Senator O'SULLIVAN: I hope so. Thank you.

CHAIR: As there are no other questions, I'll release the Fair Work Ombudsman and ask the Registered Organisations Commission to come up and join us.

Registered Organisations Commission

[15:45]

CHAIR: Welcome, Mr Bielecki. Do you wish to make an opening statement?

Mr Bielecki: No, thank you.

Senator O'SULLIVAN: I understand this is likely to be your final appearance.

Mr Bielecki: It could well be. Part of the omnibus bill is the abolition of the ROC. That will really involve transfer, thankfully, of all my staff to another agency. The primary casualty of that change will be me.

Senator O'SULLIVAN: That's where I wanted to go with my questions, primarily. Firstly, can I put on the record, thank you for your role and the role of your agency and the work that you've done. I speak on behalf of the former government in relation to that, and I thank you very much indeed. Commissioner, what consultation process has occurred with you in regard to the ROC being disbanded?

Mr Bielecki: There's been no consultation with me about that particular outcome. Post the election I had one meeting, with some members of the department, where I was told that the government was going to pursue a machinery-of-government move in relation to its policy about us. But I wouldn't really classify that as a consultation. It was just really saying this is going to happen.

Senator O'SULLIVAN: Was there any engagement with the minister or the minister's office?

Mr Bielecki: No engagement in terms of consultation. I have received one letter from the minister that was dated 30 October and provided to me the following day. That letter advised that the bill was introduced into parliament on 27 October and that my functions would be transferred to the general manager of the Fair Work Commission, that my role would be abolished and that all staff and budget of the ROC would be transferred to the Fair Work Commission, and that transitional arrangements would be put into place to ensure that the general manager can, in due course, request information from me to enable a transition to take place.

Senator O'SULLIVAN: So that transition can't occur until the legislation passes, I take it?

Mr Bielecki: That's right. At the moment, all the powers and functions under the registered organisations act are vested with me as the commissioner.

Mr Enright: Excuse me, just to assist you in relation to that consultation process—

Senator O'SULLIVAN: Thank you.

Mr Enright: the department engaged in a series of consultations with a range of organisations, as I understand it, including the ombudsman, the Fair Work Commission and me. It sought input and advice in relation to the government's proposed machinery-of-government move from the Registered Organisations Commission to the Fair Work Commission. I was given that opportunity to provide feedback in a consultative way, to answer your question.

Senator O'SULLIVAN: So in terms of the MoG change and your discussions with the department, I think you said that all staff are able to be transferred, or absorbed by—

Mr Bielecki: That's my current understanding. They will be eventually moved to the Fair Work Commission together with the budget that the ROC had. As to when that might happen and whether that happens and how it happens and so on, I have no information about that.

Senator O'SULLIVAN: Okay, but as far as you're aware all employees of the ROC would retain a job.

Mr Bielecki: Yes. And just a point of clarification: the employees who assist me in discharging the functions of the ROC are actually employees of the Fair Work Ombudsman, who are made available to me to assist in those functions.

Senator O'SULLIVAN: Like on a secondment-type arrangement?

Mr Bielecki: Yes. So the transfer will be, technically, legally, from the FWO to the FWC.

Senator O'SULLIVAN: Okay. It's pretty seamless, then. Has a handover procedure started so the ROC's work can continue to be delivered by the Fair Work Ombudsman?

Mr Bielecki: No handover procedure has been—

Senator O'SULLIVAN: You don't want to be pre-emptive?

Mr Bielecki: discussed with me. I'm aware that one of the agencies that are involved—because there are three of us, the Fair Work Commission, the Fair Work Ombudsman and the ROC—has suggested that some committees be formed to start looking at issues, but I think that's just a preliminary suggestion.

Mr Enright: Tomorrow I'm meeting with the Fair Work Commission in relation to these proposed changes—how they might be done, the sorts of resources, the sorts of issues, IT people—and anticipating all of the things that would need to be done to effect a seamless transition. I suppose the introduction of the bill has been what's been holding us up in terms of that. Now that the bill's been introduced, that formal process will start tomorrow and then that'll be subject to how the bill transpires through the parliament.

Senator O'SULLIVAN: Okay. I just want to ask about any current investigations and litigation that you've got. I appreciate that it's all subject to the bill passing. Will the Fair Work Ombudsman continue any investigation which is currently underway with the ROC?

Mr Bielecki: Our functions, if they're transferred, will be transferred to the Fair Work Commission, so the question would be whether they would continue. The answer is: I don't know; we're currently conducting three inquiries and two investigations.

Senator O'SULLIVAN: Have I got that wrong? It's the Fair Work Commission that takes over?

Mr Bielecki: Everything is being moved to the Fair Work Commission.

Senator O'SULLIVAN: Will the Fair Work Commission, then, continue any litigation which is currently underway? Do you know?

Mr Bielecki: My understanding from the bill is that the general manager would step into my shoes as a party to that litigation. What he might do with it would be a matter for him. I have no information as to his attitude to that. We have one current matter in court, which will actually go to trial at the end of this month, and one other matter that we're about to commence.

Senator O'SULLIVAN: That's all I have. Thank you very much.

Mr Enright: It might assist you, Senator, that the investigation and inquiry powers that are currently available to the Registered Organisations Commission are being transitioned in total. There's no diminution or change to any of those powers, other than to assign the power to the general manager, who's able to delegate in the way that the commissioner can now delegate. So, there's no reason to suggest that those matters won't continue.

Senator O'SULLIVAN: Okay. Thank you. I thank you for your time; thank you for hanging around for that.

CHAIR: There are no further questions, so I now release you and thank you for joining us this afternoon.

Proceedings suspended from 15:53 to 16:11

Australian Skills Quality Authority

CHAIR: Welcome. Do you wish to make an opening statement?

Ms Rice: No, thank you.

Senator GROGAN: I want to take you to the Chisholm TAFE and online courses, where there've been some challenges. Can you explain the time line of the complaints raised about the Chisholm TAFE?

Ms Rice: In relation to the Chisholm Institute of TAFE, it's worth noting that ASQA has been engaging early in particular in relation to a pilot across all Victorian TAFEs in relation to renewal of registration. We began engaging with all Victorian TAFEs approximately 12 months ago—late last year. In the context of that engagement with all Victorian TAFEs we were engaging with Chisholm Institute and we undertook monitoring activity and engagement around their preparedness to make their application for renewal of registration. In the context of that engagement—this is right across all those TAFEs—we worked with them around a range of matters that they were identifying. And we understood, with all that engagement, that there was ultimately a finding of compliance in relation to the consideration of the renewal-of-registration application. I'll just check the timing of that registration renewal-

Senator GROGAN: Yes, I was going to say—as you said, you were engaging early with those TAFEs about their renewals. When was that? And when were the renewals due? And then when did these issues start to come out regarding Chisholm?

Ms Rice: We were engaging between June and December 2021 with all Victorian TAFE providers, including Chisholm Institute. That was prior to their renewal-of-registration applications falling due.

Senator GROGAN: So, it was due in December 2021?

Ms Rice: No, it was actually due in 2022 but it was considerably prior to their registration falling due.

So, we understand, as part of that overall engagement, that Chisholm Institute had identified that there were issues relating to its own quality assurance processes, and they decided to suspend delivery of the certificate IV in mental health in order to address those issues they'd identified. That self-identification is an area that we have been working on as the regulator of providers right across the sector—that is in terms of enabling their own self-assurance of their systems and processes and of their achievement or focus on quality outcomes. In that sense, it was that model in action where Chisholm Institute was able to identify those issues for itself and take action.

Senator GROGAN: And then, six months later, they were in a situation where they had quite a lot of media attention around complaints raised by students. If they had gone through that process and done all of that self-identification in December 2021 but then had quite a storm kick up in July 2022, what were they doing in the meantime? I'm concerned that you're saying that the process of self-identification of issues and such is a really good thing when it doesn't appear to have done a very good job here. Or maybe I'm seeing it wrong. Maybe you could just step that out for me?

Ms Rice: Certainly. I will just check the timeline of when Chisholm identified those issues for themselves.

Senator GROGAN: Great.

Ms Rice: But I believe it was around about February 2022.

Senator GROGAN: That was when they self-identified that they had an issue?

Ms Rice: That's right. In terms of why that is reflective of an effective system of governance, that is what we are really seeking, in the context of some of the underpinnings to the broader reform agenda that ASQA is implementing in relation to our own regulatory practice—to build that capability and capacity of the sector in relation to their own self-assurance, which is not self-regulation. We want to work together with the sector so that they can be clear on their regulatory obligations and our expectations as the regulator and, in doing so, be able to have the systems and processes in place to be able to assure themselves that they are delivering quality outcomes for students. It's in the context of that process being undertaken by Chisholm Institute that they identified the issue with the certificate IV in mental health. After identifying an issue, they rightly then took the necessary steps to address the issues that they had identified, which resulted in some of those implications for students during the period when they were addressing the issues.

Senator GROGAN: As the regulator, how does that role interface? What is your relationship role with an organisation like Chisholm? What's the oversight piece that you have on those organisations, particularly Chisholm?

Ms Rice: I might ask Deputy CEO Christina Bolger to respond.

Ms Bolger: Traditionally, applications for renewal of registration were focused on point-in-time compliance. We are seeking to engage with providers through a whole range of mechanisms. In this instance, we actually met with TAFE CEOs on a number of occasions, made clear the expectations of the regulator in relation to their obligations and engaged with them over a period of time. That included conversations to support their own self-assurance so that we could move from that cliff edge, if you like, in terms of compliance at the point of assessment and actually start to build those sustainable systems of governance, feedback and evaluation within organisations. We have undertaken this with TAFEs because they had a large number of renewals that were occurring at the same time, which gave us an opportunity to really test that approach. We've also undertaken evaluation to seek to learn from that and apply those learnings more broadly.

Senator GROGAN: So then they would be accredited for another seven years. Is that right?

Ms Bolger: In this instance, each of the TAFEs had a risk assessment of their performance, and the regulator, ASQA, was satisfied and was able to renew those registrations. I would need to check whether all the TAFEs received a seven-year period.

Ms Rice: Certainly, in relation to Chisholm Institute, it was a seven-year renewal of registration.

Senator GROGAN: And they would have received that renewal prior to these issues coming to light?

Ms Rice: I'd have to take on notice.

Senator GROGAN: That's the kind of time line that I'm interested in. If you could take that on notice, that would be great. Have you finalised your strategic review into online learning? My understanding is that the issue with Chisholm—and I should be careful; I don't mean Minister Chisholm but Chisholm TAFE!—was an online issue. Can you tell me where the review that you were undertaking into online learning is currently at?

Ms Rice: We have finalised the report, and it's currently with the minister.

Senator GROGAN: Has it been completed?

Ms Rice: Yes, the report has been completed.

Senator GROGAN: Has it been released?

Ms Rice: Not yet, no.

Senator GROGAN: I was going to say—I haven't seen it.

Ms Rice: Apologies; it's currently with the minister. We perform our strategic reviews under a specific section of our functions under the act, so I've provided that report to the minister, and we're engaging in that sense prior to publication. We will be publishing the final report, though.

Senator GROGAN: Cool. I suppose it's inappropriate for me to ask you what's in it.

Ms Rice: Throughout the course of the strategic review, we have provided information. It was an evolving space at the time. It was very much in response to the rapid move that many providers were required to make as a result of the COVID-19 pandemic—being able to respond and still deliver quality outcomes for students. There is

a variety of information available on our website in relation to some of those progressive outcomes and the way in which we were considering and engaging around both the risks and the opportunities associated with online delivery throughout that period. The final report, though, is not yet publicly available in terms of some of those final outcomes and next steps.

Senator GROGAN: How did you find that transition through that COVID period? Obviously it would have been a very challenging period of time. From a regulatory perspective, what were the challenges that you were facing there?

Ms Rice: It was engagement with providers who were at varying levels and stages in their implementation of delivery online or through blended methods. For some providers it was a method of delivery that they were very cognisant in and were able to upscale in many areas; for others it was a new area. So we were particularly emphasising our educative, supportive and guidance function around our expectations, regardless of the method of delivery, in relation to delivery of training online and really being able to support providers around that transition. I think that's part of the reason why we took the approach with this strategic review. We wanted it to be iterative in order to be able to support the sector as it continued to evolve.

I recall that we sought a lot of information from providers at the time as to the number that were delivering online at the outset of the pandemic and the number that transitioned. I have some information here that the number of subjects being delivered via an online-only mode increased by almost 24 per cent in 2020 compared to 2019. We know that hundreds of providers transitioned to some form of that method of delivery during that period. There was some great innovative application of that method of delivery throughout that period. That is one area that we had sought to highlight. From an opportunities perspective in the delivery of vocational education and training, we also obviously encountered or were alert to poor practices and were keen to draw those to the attention of the sector as well to be clear about our expectations. I can certainly provide you any detail on notice of the number of providers that have advised us of their move to delivering all or part of their training online.

One of the areas that was encountered with some difficulty was training packages that require work placements. In those instances, we were supporting providers to understand how they could reorganise the delivery of the training to be able to deliver the theoretical aspects up front with a view to the opportunities around lockdowns being lifted and resuming face-to-face delivery of the course. Students being able to access those workplaces was a particular challenge in some of the health industries.

Senator GROGAN: How did that wash up in the end, because it was quite a lengthy period of time and some of those courses wouldn't run over multiple years?

Ms Rice: That is right. I can give you some high-level information around some of the challenges that were encountered around the delivery of some of those qualifications, particularly in the health space. I think it was also encountered in the hospitality area as well, with a resulting in a backlog of work placements needing to be able to be worked through. It is something that we were certainly engaging with peak sector bodies about at the time, with industry more broadly and right across government with the department in supporting the Australian industry skills emergency response subcommittee in order to not only be able to facilitate—facilitate is probably not quite the right word—our role but be able to support those potential solutions to that backlog of work placements at the time. I understand that is less of an issue now. It certainly hasn't been raised as one of those critical issues by the sector in recent months.

Senator GROGAN: I might have a look at that strategic review and chat again in February.

Senator BARBARA POCOCK: I only to have a tiny part of your enormous area to ask a question around, and my colleague Senator Rice has already questioned you on it, so I'm not hoping I'm overlapping. It is the carer workplace initiative to which, I understand, the department has allocated \$2 million of its own money within budget over the next three years. Have I got that right?

Ms Rice: It is not for ASQA but for the department.

Senator Chisholm: We've just started with the Australian Skills Quality Authority of which Ms Rice is the CEO. The department is due to start when Ms Rice finishes.

Senator BARBARA POCOCK: I am in the wrong spot.

Senator Chisholm: You are just ahead of schedule.

Senator BARBARA POCOCK: I have been running between committees; my apologies, Chair.

CHAIR: That's okay. It happens to all of us too often.

Senator O'SULLIVAN: I have a couple of questions. I was elected three years ago and I have to say I receive a lot of representations from training providers who felt that the regulator was more regulatory rather than educative and played what they felt was a bit of an adversarial role. I have to say, I haven't had that complaint as much of late in recent years, so has there been a shift in the role that you are playing in providing an educative role for providers to improve their performance and meet the requirements?

Ms Rice: Taking you back a couple of years, as you say, ASQA has been on something of a regulatory reform journey. Really, that has been centred around emphasising and improving our best-practice approach to regulation essentially. That was certainly an expectation of skills ministers back in 2019. As a result of the engagement of skills ministers at that time, they were very much seeking ASQA's expansion of our educative function and ASQA was provided with additional appropriation to be able to expand that particular function.

We also then undertook an independent Rapid Review of ASQA's functions, our culture and our governance. That review identified areas in which we have since that time been working through a very systematic and planned approach to improvements in our regulatory practice. That has, as I say, certainly emphasised and expanded our educative function, which is what I was talking to Senator Grogan about earlier in relation to our support to the sector about being able to understand and being able to clearly articulate our expectations of provider obligations so they are very clear around all of those but also support them in what we expect of them in their understanding of self-assurance, which is around how they understand their own systems and processes.

It is very much about us focusing in on our intelligence and being risk based and data driven and improve our intelligence through our understanding of risk. As we have been undertaking these improvements, it has all been at the same time as ensuring that we have that focus on maintaining safeguards in the system. But it was very much a recognition that a traditional audit of a sector that we regulate of more than 3,800 providers is not an efficient or effective sole treatment for risk, so we were looking to, and are currently still working through, a program of implementation of broadening the full use of our regulatory tools. We are very much still maintaining a focus in relation to audit or performance assessment, as we refer to it, but also extending beyond that into a broader range of monitoring activities separating out market entry from the entities in the market and a variety of other measures, including that continued and ongoing focus around our educative function and being able to engage in our understanding of risk and our regulatory impact, and creating those feedback loops for providers around that.

Senator O'SULLIVAN: Do you regularly survey providers? Do you have a mechanism for getting feedback from them?

Ms Rice: We do. We certainly survey providers annually as part of understanding our broader performance. We have also reintroduced surveys that undergo an audit or a performance assessment with us, so we have certainly undertaken both those mechanisms.

Senator O'SULLIVAN: What are the headline results of the survey? What is it instructing you to do?

Ms Rice: I will ask Ms Bolger to return to respond to that.

Ms Bolger: Yes, we are certainly starting to see increasing confidence in our regulatory processes and how they are overarching, promoting quality outcomes and helping to build the sector capability. We have some key measures in our performance report that are reported in our annual report. Eighty-five per cent of providers responding to an independent survey that was conducted around our regulatory processes really confirmed that that is supporting and ensuring quality outcomes and building capability for self-assurance in the sector. There's also been evidence through the way in which we're seeing the regulatory program as a whole and moving to be more effective in supporting providers to understand their own risks, and the information that we are providing back to the sector about risks and risk mitigation is supporting those providers to take action themselves to address those risks, rather than waiting for the actions of the regulator.

We have a range of those indicators that are reported in our annual report. Probably the other outcome that is worth mentioning is how we have really been seeking, through a planned program of work, to provide greater clarity of the requirements. Our assessment reports and our focus on those clauses of the standards that require providers themselves to understand, evaluate and continuously improve are starting to shift the behaviour of providers. Rather than focusing on point-in-time compliance, those measures are increasing providers' focus on how they're understanding compliance themselves and striving for continuous quality improvement. We're seeing also that we're starting to shift from what was historically a very high disputation culture in the sector, and, through affording earlier opportunities for dispute resolution, including through the establishment of an internal review function in ASQA, that we're able to resolve those issues faster. That then means that we can pursue—through the courts and the AAT—those matters where we are most concerned about risks to quality VET.

Senator O'SULLIVAN: In the feedback you've had from providers, where are they calling for more support or greater improvement on your side? What do you need to be doing?

Ms Bolger: I think some greater transparency around reporting—that was probably one of the indicators that was lagging behind the others. We do have some recommendations in the suite of recommendations from the rapid review that relate to that, which are on our work plan. Through that planned program of work, we hope to be able to provide greater transparency of our regulatory outcomes but also to feed back the results of our regulatory activity in a way that both supports providers to understand what's required and acts as a deterrent by providing greater visibility of the regulatory program.

Senator O'SULLIVAN: Do you perform any performance-reporting role with providers—do you do an assessment of how they're performing at all?

Ms Bolger: Yes, we do. We undertake performance assessments against the standards, and in doing so we prepare an audit report or a performance report that provides feedback to the providers on any non-conformance with the standards and areas identified for improvement.

Senator O'SULLIVAN: What's that measuring? Is it just the courses and that they're compliant with what's in scope, or do you actually look at the outcomes of students and that sort of thing?

Ms Bolger: It looks across a whole range of evidence, but underpinning it is their compliance with the standards for delivering assessment of vocational education and training, which has regard to the qualifications framework and what specific requirements there might be in those training packages.

Senator O'SULLIVAN: Do you seek feedback from industry and employers with regard to the performance of that provider? To use a bit of a cameo, if someone undertakes a course and they get a job, do you get feedback from employers with regard to the quality of the training that was delivered by that particular training provider?

Ms Bolger: Yes. We have a range of mechanisms to engage with industry, including our environmental scan, where we will reach out to industry and a range of other stakeholders to understand issues and performance in the sector. We also have complaints and matters raised with us, so we get that feedback. Perhaps there are some other mechanisms.

Ms Rice: I'd also add that the standards themselves go to industry engagement and all of those sorts of things. So it's entirely conceivable that, in the context of a performance assessment, those are some of things that our assessment officers might be engaging with the provider about, in relation to the provider being able to demonstrate that engagement with industry and those outcomes.

Senator O'SULLIVAN: You're not the only regulator though, are you? Some states have their own. I think in Western Australia, there's another one. Am I right?

Ms Rice: That's right. We are the national VET regulator for all states and territories except Western Australia and Victoria.

Senator O'SULLIVAN: We do like to do things a bit differently over there.

Senator RICE: We do regulate providers in Western Australia and Victoria if they deliver outside state boundaries or to international students.

Senator O'SULLIVAN: Is there any difference in performance between a private provider and a public provider like a TAFE? Are there any standout differences?

Ms Bolger: None of our e-scanning, environmental scanning or compliance data would suggest that that is a differential in terms of the performance of the provider. ASQA's approach is really looking at those risks that operate across the sector irrespective of the status of the entity, we will see those same risks pop up in the full range of providers and our focus is on ensuring that all providers are taking action to mitigate those risks.

Senator LIDDLE: Some of my questions relate to the questions that you've already been asked around assessment and consistency of assessment across providers. You mentioned that you actually assess those providers. Who has access? If I'm one of the 180,000 potential students who are going to take up fee-free TAFE—it might be free, but it's not my free time; I'm contributing a lot of my energy and effort to getting an education—where do I get access to information so that I can choose who the provider of choice is for me?

Ms Rice: The My Skills website provides information in relation to all providers and the courses that are delivered by all providers.

Senator LIDDLE: When you say courses, I'm talking about the detail. I'm wanting to know about completion rates—not just completion rates, but student attainment, student performance at the end of their qualification.

Because in the education system, you see this word all the time that's about participation, which is actually a completely irrelevant, erroneous performance indicator. It should actually be about completion outcome.

Ms Rice: In relation to ASQA's information and the information that we publish, we have a register that connects to the training.gov.au website which articulates any of the decisions that we have made in relation to our regulatory activity. Part of the forward program of work, in relation to our implementation of the recommendations from the Rapid Review, involve the publishing of both more information about the performance of the sector as a whole as well as the publishing of audit reports or performance assessment reports for providers. There's a number of intersecting aspects to the delivery of those specific recommendations that are all in-train but that are part of our forward program of work. We are certainly, in the context of this financial year, looking at the ability to begin that publishing of greater information around the performance of the sector as a whole.

Senator LIDDLE: How important would that be for, say, a student, who's thinking about taking up TAFE education? I've just seen, in the last few days, the *5-year Productivity Inquiry: From learning to growth interim report*. That's obviously quite detailed. A lot of government reports are quite detailed. I want something really simple that I can just go to and say, 'Why would I go there or catch a bus or a train to the other side of town to go to that TAFE as opposed to this TAFE? Or to that private provider as opposed to a TAFE?'—something simple.

Ms Rice: I'm certainly aware of the work that's been going on across government in relation to this. It is an intent in relation to being able to provide much more consumer information. It is certainly that intent from ASQA's perspective. There is work in train in relation to being able to provide that information for consumers, for students and, inevitably, for parents working with their children around selecting the provider that they would like to undertake training with.

Senator LIDDLE: You've said the intent is there. What sort of time frame do you understand is going to happen, given we've got current students but also 180,000 potential fee-free places being offered to people who would want to make a decision about that?

Ms Bolger: I was just going to respond within the scope of ASQA's role in terms of the publication of regulatory decisions. We have some short-term, medium-term and longer-term goals. In the short term, this financial year, we're really looking at providing more information on our regulatory decisions. I mentioned before that that was an area that we were receiving feedback on in terms of transparency. That would include information around the decision and improvement of the transparency of ASQA's decision-making in relation to the performance of the sector. There are some longer-term recommendations that we are working with the department on, because they relate to that broader range of information that might be available to inform students, from a consumer perspective. It goes well beyond the regulatory information that we can provide.

Senator LIDDLE: Senator Chisholm, I'm not sure whether you're the right person to ask this or if there's someone else, but what does 'fee-free' actually mean to a potential student?

Senator Chisholm: I'd be happy for the department to add more to this, but my understanding is that it'd be fee-free TAFE, as we promised in the election.

Senator LIDDLE: Does that mean the course is free? Are there any additional costs associated with that tutorial cost? Is anything to do with that free?

Senator Chisholm: I'd have to get the department to add more detail on exactly how that would work.

Senator LIDDLE: Are you committed to providing that detail?

Senator Chisholm: Yes. The department will be up next.

Senator LIDDLE: And the department will provide some detail? I've got some questions around when these places will become available and what the breakdown is in each state and territory.

Senator Chisholm: I think that was ongoing, but I'm sure they'll be able to relay some of that.

Senator O'SULLIVAN: I have a couple more questions. In relation to the budget, what I can see is that there's been a reduction in your budget. I'd like to understand how you're going to deal with that. Firstly, have you got a reduction in your budget?

Ms Rice: Yes, we have in this financial year.

Senator O'SULLIVAN: Of how much?

Ms Rice: Overall, it is a reduction in this financial year of just under \$3 million.

Senator O'SULLIVAN: Are you still expecting to perform the same work?

Ms Rice: No. That reduction relates to the transition of the training product assurance function to the Department of Employment and Workplace Relations. That's not a function that ASQA will be performing, so that reduction in funding is relative to not performing that function.

Senator O'SULLIVAN: Is someone else picking it up?

Ms Rice: It's transitioning to the Department of Employment and Workplace Relations. It's been indicated as being a transfer to the department on an interim basis.

Senator O'SULLIVAN: Are you aware why the government is making this change?

Ms Rice: That might be better directed to the department. But the change has been announced as being one to facilitate the implementation of the other aspects of the broader reform agenda in relation to industry clusters and to enable the establishment of Jobs and Skills Australia and for further consideration to be given to the placement of that function.

CHAIR: A follow-up question—this is very helpful—

Senator GROGAN: Can I just confirm: are you saying that there's an element that was taken out, so it's a redirection—it was taken from you and put into another area?

Ms Rice: That's right. The funding has transferred to the department.

Senator GROGAN: Okay, so there was no cut—it was basically just taking a function and placing it into the department?

Ms Rice: It was transferred from ASQA to the department. So for us as an entity, it's a change in our budget. But my understanding is that the allocation of funding has remained approximately the same. It's just transferred from our budget to the department's budget.

Senator O'SULLIVAN: Can you explain what's been transferred? I'm not quite up with that.

Ms Rice: Earlier this year the former government announced that the training product assurance function would come to ASQA. This is part of the broader VET reform agenda. It was transitioning to ASQA, which is a component of providing assurance over the development of training products in accordance with the standards for training products. That was going to transition as a new function to be performed by ASQA, together with education and capacity building for the new industry clusters. In October 2022 the government announced that it had decided to transition the function to the department, for the reasons that I outlined previously.

Senator O'SULLIVAN: So for you the reduction in funding won't mean too much because you obviously won't be performing that function, but it's not going to impact any other area within your operations?

Ms Rice: No. We retained funding for the work undertaken during the period that function was given to us, and we have been working very closely with the department throughout that period in that transition and have continued to work closely with the department in this transition to their performance of the function. We retained the funding that accommodated the work that we'd undertaken during that period. But the funding that's now transitioned to the department would, in effect, be future funding for us had we retained the function.

Senator O'SULLIVAN: Given ASQA is an independent agency, what does it mean for the industry cluster reform? Who is in charge of this now?

Ms Rice: I'm not sure that I can really comment on that beyond the transition of the function having moved over to the department.

Senator O'SULLIVAN: The department would be responsible for that?

Ms Rice: That's right.

Senator O'SULLIVAN: Are you familiar with the Productivity Commission's From Learning To Growth interim report?

Ms Rice: Yes.

Senator O'SULLIVAN: Does ASQA agree with the Productivity Commission's assessment that free TAFE policies, such as those by the Victorian government, did not increase quality of outcomes for students and so were unlikely to provide community-wide benefits, and funding would be better allocated elsewhere, including by supporting students to access training at industry-led registered training organisations?

Ms Rice: Our focus is on the quality of the outcome. As Ms Bolger was indicating previously, in terms of risks of poor quality outcomes being identified based on the funding attached to the delivery of those outcomes, it tends to be in relation to the actual delivery occurring in high-risk industry areas, as opposed to—I think the way

in which the Productivity Commission has conceived of it there. So it's not the kind of area I think that ASQA has a view on in terms of what has been seen through our information and intelligence.

Senator O'SULLIVAN: About a decade before I came into parliament three years ago, I was involved in recruitment and finding jobs for long-term unemployed Aboriginal people, placing them into work, and tens of thousands of people across Australia. I worked a lot with businesses, with industry. There was a real desire among them to have a much greater say over the courses, over the content, so that off courses they had people who were skilled for the jobs that they had and existed. Certainly the experience that I had and certainly feedback that I got from lots of employers, from big and small, was that the agility provided particularly by private providers, or they themselves wanting to run it themselves, meant that they could deliver those sometimes bespoke programs and courses. If we go to a model where you've got essentially just the TAFEs providing, there's real concern among employers that they might lose that agility to get the bespoke and tailored training to their needs. It seems that the Productivity Commission's assessment that just going down that single track path of TAFE only seems to cut across what industry is looking for. Do you have a view on that at all?

Ms Rice: Just to make a comment around the way in which we understand risk in this sense. You really just mentioned it there, and Ms Bolger was alluding to it before. The nature of the provider that delivers the training hasn't sprung up necessarily as a specific risk area for us. But, notwithstanding that, as I said before, the nature of funding programs inevitably raises a level of risk for ASQA as the regulator in any way in which they're being delivered. So in the nature of funding, it can always incentivise particular behaviour depending where that is directed. We seek to engage early around being able to identify those risks so that we can be alert to them.

In relation to the current announcement of funding programs or the delivery of any funding programs, we're engaged very closely with state and territory governments. We work very closely with the two state based VET regulators in order to be able to identify where quality outcomes might not be being achieved. So in the context of the most recent funding measure, it's also the case that we obviously are engaging with the providers concerned in order to be able to continue to seek their assurance around the delivery of quality outcomes.

So from ASQA's perspective, that's the approach that we take, recognising that there's always the potential for risk and therefore it's in our engagement in our detection intelligence and understanding of that risk and the way in which we go about treating it.

Ms Bolger: Irrespective of the funding, I think the point that you're making around diversity in the sector, through our regulatory functions, we can see the opportunity through a self-assurance pathway to be engaging around those outcomes with providers, how they are seeking those outcomes in the communities that they're serving, and the ways in which they are assuring quality in a way that is flexible enough to support those outcomes and not over prescribe the way in which that's done by providers. We really see our role as regulator in being able to support diversity in the sector and promote those more equitable outcomes across vocational education and training.

Senator O'SULLIVAN: The issue that I see—it's probably more of a political statement, so I don't expect you to respond—is that the government is prescribing their skills agenda around TAFE, and it seems to me a very one-track pathway. Whereas, in order to meet the full needs of the labour market, we need much more diversity and capacity. Can we go to the question of capacity?

Senator Chisholm: I think the relevant point is that the TAFE system, across the country, suffered from almost a decade of the previous LNP government. We accept that there is a big rebuilding job that we have to do with TAFE. We're absolutely committed to doing it. We think they're the right partner and a valuable partner that can not only deliver on our election promises but also help to solve those jobs and skills crisis that we inherited as well.

Senator O'SULLIVAN: Thank you, Minister. What percentage of students are currently enrolled in TAFE versus private providers? Do you know?

Ms Rice: I don't have that figure handy but I'm happy to take that on notice.

Senator O'SULLIVAN: I've got a figure here of about 87 per cent with private providers. Does that sound right?

Ms Rice: I'm certainly aware that there are significant numbers of students that are enrolled with private providers.

Senator O'SULLIVAN: Right. Yet they only receive 22.9 per cent of funding. Do you know if that's correct?

Ms Rice: I don't. The information I have in relation to the percentage of students enrolled with private training providers in 2021 is 74.1 per cent.

Senator O'SULLIVAN: That's very high, and yet they receive less than a quarter of the overall funding. Do you have any idea as to why students and employers are choosing private providers more?

Ms Rice: I'm not sure that that's something that the regulator comment on.

Senator O'SULLIVAN: There have been some big announcements by this government in terms of delivering 180,000 places across Australia through TAFE. Have any state governments or TAFEs raised any concerns about their capacity to deliver on that, quite significant, number of places?

Ms Rice: I'm not aware that they have, no.

Senator O'SULLIVAN: You haven't had any state government raise any concerns?

Ms Rice: I can take it on notice. I can absolutely check, but not that I'm aware of.

Senator O'SULLIVAN: And any TAFE provider as well?

Ms Rice: As I say, I can take it on notice, but not that I'm aware of that.

Ms Bolger: I don't think so. I've just done a round of site visits and engagement with state based training authorities and that issue hasn't been raised.

Senator DAVEY: Just relevant to that, are you also working with private registered training organisations? If so, what level of involvement are they going to have in meeting this increased demand?

Ms Rice: I can advise you the way in which we work with private training providers across the sector. That's at a variety of levels, in the sense of our engagement with the peak sector bodies. We have a provider roundtable which includes representatives of all the peak sector bodies that we engage with regularly. We also have a stakeholder liaison group which includes a diverse representation of providers from across the sector, which includes a number of private providers. In relation to the second part of your question, though, it's probably more appropriately put to the department in relation to the implementation of that funding.

Senator DAVEY: That's great you are working with them.

Senator O'SULLIVAN: Minister, are you able to guarantee that all 180,000 places the government has announced will be delivered through TAFE?

Senator Chisholm: That's our intention to deliver on next year, yes.

Senator O'SULLIVAN: Is that guaranteed? An intention is not quite—

Senator Chisholm: That's our intention to deliver on. We know that Australia has a skills challenge—

Senator O'SULLIVAN: You're not guaranteeing.

Senator Chisholm: that we inherited from our predecessors that really lacked any plan to actually deal with it.

Senator O'SULLIVAN: It's easy to announce a big figure like that, but to have it—

Senator Chisholm: We had the Jobs and Skills Summit, where we brought Australians together where this was highlighted. We've worked collaboratively with states and territories to actually put this package together. We're committed to delivering it because it's the right thing for the country and it's the right thing to do for the economy as well as we confront those jobs and skills challenges around the country.

Senator O'SULLIVAN: I look forward to asking you in 12 months if 180,000 places were delivered through TAFE.

CHAIR: There are no other questions, so I will release ASQA. Thank you very much for your time this afternoon.

Department of Employment and Workplace Relations

[17:08]

CHAIR: I now ask for the Department of Employment and Workplace Relations in relation to Outcome 2—Skills and Training. Thank you very much for joining us. Ms James, would you like to make an opening statement?

Ms James: I have nothing to add from my opening statement yesterday, other than I might mention one thing, if you indulge me, in relation to the deputy chair's letter to us seeking certain matters ahead of the hearing. On item 16 on your list relating to training apprentices and trainees, Deputy Secretary Nadine Williams has some information here that we would be happy to provide you now, if you would like, or we would also be pleased to take it on notice.

Senator LIDDLE: Ms James, can you explain what 'fee-free' means for the 180,000 students that are going to take up this opportunity?

Ms James: I'll ask Deputy Secretary Williams to talk you through the government's commitment in relation to the fee-free TAFE places.

Ms N Williams: 'Fee-free' means, essentially, that the student is not charged a fee for the tuition for the training they are undertaking. As you'd be aware, most courses attract some sort of fee that covers the costs of the training. In this instance fee-free means exactly as it says, that the student won't be charged a fee.

Senator LIDDLE: So there's no skin in the game for the person who might take up that opportunity. I talked before, in the question I asked, about completion rates. You would know that the 5 Year Productivity Inquiry: From learning to growth, which is timely, says:

Some students face higher risks of non completion due to factors that can be mitigated through better supports and guidance.

What's being done to ensure that what we don't end up with is a large number of people who are enrolled but don't actually complete?

Ms N Williams: In terms of skin in the game, as you noted earlier, the students do invest quite substantial time, effort and energy into studying, and that does represent a personal investment on their part. In the fee-free TAFE measure, and the agreement that we've negotiated with the states and territories, we've ensured that there is funding available for those sorts of wraparound supports that a student might need, particularly students that may be more vulnerable, who may not have studied before or who may have particular challenges with learning. We've ensured that there is funding available to ensure that that level of support is also available, and that's really fundamentally important in terms of ensuring completions and helping the student progress through the full course in order to complete it.

Senator LIDDLE: With the number of opportunities that have been made available, what modelling was done in terms of the need for a larger number of people to actually teach these courses?

Ms N Williams: We are working very closely with the states and territories on the capacity of the TAFE system—I think you mentioned earlier—to deliver the places. We're confident that the places that we've negotiated with the states and territories will be able to be delivered and that the TAFEs will be in a position to do so. We're very cognisant, however, of the workforce challenges that exist across the economy and that those workforce challenges are also present in the delivery system, whether that's in TAFEs or more broadly. We are working very closely with a range of people within the sector on a workforce blueprint. I think that was announced by the government following the Jobs and Skills Summit. That blueprint is designed to examine these particular challenges that you're describing. I'm happy to go into more detail around that. With respect to these particular places, we're very confident that we have the arrangements in place with the states and territories to ensure that they will be delivered.

Senator LIDDLE: Coming from South Australia, it was interesting to hear the Victorian government talk about increasing the number of students in Victoria, but the week later we saw a whole heap of ads on television that were about offering incentives for South Australian teachers to go to Victoria and teach. I'm interested to understand, if we're talking about more teachers we're talking about more courses, where are we going to get those from in a place like South Australia, which has a smaller population and a different geographic structure in terms of some of those other states? It's not as centralised as South Australia. What happens to a state, like South Australia, that's smaller?

Ms N Williams: I think you're right about the challenges. That piece of work that I was describing around the VET workforce blueprint is designed to examine what sort of solutions might be available. Senator, as you'd be aware, the VET workforce is slightly different from the teaching workforce. It is usually drawn from industry. Teachers tend to be practitioners or former practitioners.

Senator LIDDLE: You still need qualifications though.

Ms N Williams: Yes, certainly. And you do need a qualification in the vocation or the occupation that you're teaching, as well as teaching qualifications, through VET qualifications. But generally they are practitioners. So they're practitioners who have a qualification in the thing that they're teaching, and they are people who've generally worked in that occupation. Finding people with those sorts of skill sets has always represented a challenge. I think, as you say, with the pressures on the workforce, we are looking very carefully at how we can start to alleviate those challenges. I think there's certainly a role for industry in this. Industry is the source of those teachers. They are also the recipients of the students once they are trained. That close partnership with business is going to be really fundamental as we go forward in ensuring that the sector itself is supported to keep training workers.

Senator LIDDLE: I talked before—and I think you were in the room—about student choice. My view is that it's important that students have good information to help them determine where they're going to invest their skin

in the game. How soon will we see some improvement in that, given that even this report, that's very recent, talks about improving the information available for students to make a choice?

Ms N Williams: There are a number of avenues for students to make those choices. I think Ms Rice, in her evidence, mentioned the My Skills website and the Your Career website, where all of that information is aggregated. That is the central or single source of advice for students. Where they're keen on studying something it allows them to locate the sorts of courses that they're interested in. It allows them to see who within their area is offering those courses. It provides some fee information and allows them to compare.

That sort of information is really crucial. I've provided evidence previously that we've commenced some work, to start to bring that together so it's more consolidated and we have the opportunity to ensure that students are provided with better information and advice. That is a piece of ongoing work that we're undertaking.

Senator LIDDLE: In the work that I've done previous to coming into parliament, I've helped well over 1,000 disadvantaged young people move into employment and education. One of the things that's really clear is the support that's required to assist them to be successful as students. Given we've heard from Senator Chisholm about where the VET sector is currently, in its capacity to respond, this report talks about the choice in higher education remaining deficient in VET, in terms of the information being available.

What will we see in improvements to TAFE, currently, to make sure that if there are students who want to go into TAFE they can be confident of being successful? The last thing you want to do is have a whole heap of students, not that all people who take up a TAFE opportunity would be in this category, who are looking for an opportunity to join the workforce, at a time when the economy is where it is—making sure they're not unsuccessful because the structures that they're going into, that are offering them an opportunity, aren't ready to receive them.

Ms N Williams: No, I completely agree that that's fundamental. The fee-free TAFE initiative is targeted at a range of people who may not have studied previously or have a unique set of vulnerabilities. As a result of that, we're focused very carefully on ensuring that the design of the fee-free TAFE initiative includes that wraparound support that some of those particularly vulnerable students might require. I think TAFE is well placed to provide that sort of support. TAFEs have a long history of providing teaching and learning to the more vulnerable cohorts of our society. The fee-free TAFE initiative is designed to provide those learners and students with access to that sort of learning.

The measure will be explicitly focused around, for example, First Nations people, young people, people who are out of work or who are receiving income support, unpaid carers, women facing economic insecurity and a range of people with disability. The measure is designed to ensure that those students, as they go into those courses, receive the additional support that comes with training. So the funding is not purely focused on the places and delivering the places. There's funding also in there to ensure that those students are able to be successful in completing that training.

Senator LIDDLE: So there's a bit of work to do, in terms of talking to industry, to turn it towards the opportunities, in the future, across the range of sectors that graduates might go into.

Ms N Williams: Absolutely.

Senator LIDDLE: TAFE itself, I guess, would be responding to that demand. You've got providers out there already, that are working pretty closely with industry, that are doing that. What do we say to students in terms of who's ready to go now, given the announcement of 180,000, and being able to respond to what you need in terms of training?

Ms N Williams: Are you asking about the timing of the measure and when the training will be available?

Senator LIDDLE: I'm asking about timing of courses that would respond to market need, given that we've got an announcement now, we've got a heap of people that are probably keen to take up these opportunities and we've got providers that sit outside of TAFE that are already engaged with industry. They're quite nimble, from my experience, and accessible, when you actually pick up the phone and call them to help students and people wanting to go into training. My concern here is the readiness to actually respond to these potential consumers.

Ms N Williams: I think there are a couple of points there. I'd probably start by just noting that the fee-free TAFE funding is additional to the existing funding in the system. So it will build on the quite significant funding that the Commonwealth provides to the states and territories currently. And it will build on the current training places that are available in the system.

To go to the question of need, I think it's important to remember that this is a 12-month agreement that we have with the states and territories, so it is responding to the short-term needs that have been identified currently within

the economy. The jurisdictions have 12 months to ensure that this training flows into the TAFE system, and enrolments will be able to commence as soon as each jurisdiction comes on board. It will run across the course of 2023. The arrangements that we have negotiated with the states and territories are for that funding and for those courses to be in areas of high national need. So that includes things, for example, such as the care sector, technology and digital, hospitality and tourism et cetera—so in a range of areas, but really focused down on those areas of high need within the economy.

I think, in summary, that funding will be rolled out immediately. The states will start opening up enrolments into these courses. Those courses will be in areas of really high economic need that we're seeing the skills pressures in currently. And that arrangement will be in place for the next 12 months.

Senator O'SULLIVAN: Just as a supplementary: it's exclusively in areas of high labour market need?

Ms N Williams: It's focused on the areas that I was just running through then—areas that we would describe as a national priority. It is a national funding arrangement. There is scope, of course, as there is with any of these arrangements, for the states and territories to identify areas of local need. That would be areas of explicit concern to a particular state. But, as you would expect, national need and state need often align, so it's not inconsistent. Every jurisdiction has pressures—for example, the care sector, construction, or technology and digital. So the funding will flow into those areas of priority.

Senator O'SULLIVAN: And where's your data coming from? How are you assessing that?

Ms N Williams: As you'd appreciate, we have quite sophisticated datasets that are available to us, through the National Skills Commission and elsewhere, to identify those sorts of areas of priority.

Senator O'SULLIVAN: And that's now the role of Jobs and Skills Australia?

Ms N Williams: That's correct.

Senator LIDDLE: Given, as I understand, the places will become available early next year, are you able to provide an outline of the breakdown of those courses by state and territory? And how soon would you be able to do that?

Ms N Williams: We're still in the process of negotiating with jurisdictions. I would anticipate that we would be able to provide that at the next hearing, potentially, or out of session, if and when that becomes available.

CHAIR: Senator Liddle, last question for this round, but we'll come back to the opposition.

Senator LIDDLE: Okay. I'll just throw these two in together, then. When will the 15,000 places for aged care, as announced, be available? And are they the same positions that were already announced and committed by the coalition?

Ms N Williams: The 15,000 places are part of the overall package of fee-free places. They will roll out progressively in each jurisdiction as each jurisdiction comes on board with the agreement. But, as with the other places, they will be available from the first signatory until over the course of 2023. So they will be available along with the rest of the measures, yes, that's right.

Senator LIDDLE: I need clarification: is 15,000 the amount already committed for aged care, or is there an additional amount in there for aged-care places?

Ms N Williams: There was a budget measure in the previous budget that related to the extension of the JobTrainer Fund. You'll recall that the government was of the view that it would be appropriate to honour that commitment and to continue to negotiate with states and territories as part of this new arrangement for the delivery of those places.

Senator LIDDLE: Thank you.

CHAIR: Thank you. Senator Faruqi.

Senator FARUQI: Good afternoon, everyone, and thank you for coming here to answer our questions. I want to continue with the fee-free TAFE places. In the recent federal budget, the government allocated \$493 million to deliver 180,000 fee-free TAFE and vocational education places, but, in the election promise that Labor committed to, it only referred to fee-free TAFE places. So I just want to know what has changed, and how many of the places will be delivered by TAFE?

Ms N Williams: The majority of the places will be delivered by TAFE. It is a fee-free TAFE initiative.

Senator FARUQI: Okay. Do we have a number on that?

Ms N Williams: As we were just discussing, a range of additional places have been added to that commitment. We're working with each state and territory at present to work through the actual application.

Senator FARUQI: So it will be more than 180,000?

Ms N Williams: The first phase is 180,000, and that will be delivered through this 12-month arrangement. The arrangements that we have in place allow for some flexibility where that makes sense.

Senator FARUQI: The department's Portfolio Budget Statement said:

Fee-Free places will be made available through public TAFEs and public dual sector providers and other providers in exceptional circumstances ...

I'm presuming the VET providers will be used in exceptional circumstances.

Ms N Williams: Exceptional circumstances would include, for example, an Indigenous RTO, where it would make sense for that delivery to First Nations people to occur through an Indigenous owned organisation. I also mentioned, a little earlier, the care places, where there's a predominance, for example, of care places delivered currently outside of—and inside of—TAFE. Where there's that additional commitment, it would make sense to potentially provide that.

Senator FARUQI: It also says:

... where TAFE does not have adequate existing capacity.

Ms N Williams: We're negotiating that with each state and territory at present. We would expect that to be the exception. The bulk of this funding is going into the TAFE system as intended.

Senator FARUQI: What will be the process of allocating the places? Will that be transparent? Will the public know where the places are going and what the process is?

Ms N Williams: As I said earlier: once we've negotiated it with the states and territories, we will be able to provide some of that information.

Senator FARUQI: We were just talking about the 15,000 of the 180,000 fee-free TAFE and community based vocational education places dedicated to aged care. How many places have been dedicated to early childhood education and care—have there been any as yet?

Ms N Williams: We are still working through that with the states and territories. We're in a slightly awkward position where we are still negotiating. These sorts of details around the break-up or the allocation of the number of places across courses or across sectors is still being worked through with each state and territory, but I would hope to be able to talk to you about that at the next hearing.

Senator FARUQI: I think Senator Little asked a question about when this will be completed, but I don't know if I heard the answer. So when do you expect the process of these places being allocated to end?

Ms N Williams: We're in active negotiations with the states at present. The states are working through the implementation arrangements. We would expect that the majority of those would be settled very, very shortly. These places need to roll out in 2023. We would expect that rollout to occur as part of the enrolments at the beginning of the year. So we're working very closely with the states and territories to finalise these arrangements ASAP.

Senator FARUQI: Okay. Will the government then release a full breakdown of where these places end up?

Ms N Williams: You'd be familiar with the way in which VET delivery works. We've talked about this before. The states and territories will work through the allocation of these places within their TAFE systems. We are working very closely with the states, and we'll have a very good relationship in terms of receiving information on where they're allocating those places and, in particular, on the breakdown of the types of courses and the sectors, such as child care or aged care.

Senator FARUQI: So you can provide that to us?

Ms N Williams: We'll certainly be able to do that.

Senator FARUQI: Minister, as you very well know, over the years, TAFEs have been decimated through privatisation, contestable funding, rorting of funding by for-profit providers and other things. Is there a plan that the government has for improving TAFEs' capacity in all parts of the country and all types of courses?

Senator Chisholm: It is a significant job, and I've highlighted it here today already. We do have a commitment in the budget for \$50 million over two years to establish a TAFE technology fund which would go some way towards that, and the department might be able to provide more details for that. Obviously, it's traditionally been something that the states have been responsible for, and I'm not aware of what all states are up to, but I know that some states have been focused on that as well. So there is a fund that we have through the budget, but Ms Williams might be able to add more detail to that.

Ms N Williams: I'm happy to add detail to that. Before I do that, though, I would point out that the agreement that we're talking about is just the first phase of the investment that the government has committed to in the budget. The full investment into the fee-free TAFE initiative is \$921 million over five years, so that is a substantial investment. And as noted, there is also the investment in TAFE infrastructure: the \$50 million TAFE tech fund. In addition to that, we are working with the states and territories on what a longer term funding arrangement would look like and what that investment would look like going forward. There are substantial pieces in the pipeline that will go to enhancing the capacity of the system.

Senator FARUQI: TAFE is particularly what I'm asking about.

Ms N Williams: Enhancing the capacity of TAFE, that's correct. I'm happy to provide more detail on the TAFE tech fund as well, if that's useful.

Senator FARUQI: Sure.

Ms N Williams: The TAFE tech fund is essentially a capital fund. There is \$50 million set aside to improve TAFE facilities, in particular IT facilities—workshops, laboratories, telehealth simulators et cetera. It's that really critical capital that a TAFE needs in order to operate. A number of projects that have been committed under that fund already, and we are now going through the process of working with the states and territories to identify other areas of critical need. As I was saying, though, that's not really the end of the story. We will be working with the states and territories very closely to look at funding of the delivery system as a whole, in particular at TAFEs, and that will be a longer term funding arrangement over the course of the next five years, starting from 1 January 2024. That really is the opportunity to look at whether the investment is right.

Senator FARUQI: Minister, Labor promised that they would end privatisation by stealth, ensuring at least 70 per cent of Commonwealth vocational education funding is for public TAFE. I'm wondering—or the department might know better—what is the current proportion of Commonwealth vocational education funding for public TAFE. What is the plan to get to 70 per cent

Senator Chisholm: The department might be able to add some of the detail. We're unashamedly pro-TAFE. That includes the policy that we took to the election and that's what we've been delivering on in government. We announced in the budget some of the changes around how we deliver on some of the things. Probably a good example of that is the Northern Territory, which doesn't really have a TAFE system, to my understanding. Obviously, we want to ensure that the skills shortage that we have around the country doesn't impact everyone. That's where some of the private organisations and community training organisations, and the Aboriginal owned RTOs as well, will play a role, but overwhelmingly, our focus will be on ensuring that the TAFE system is strengthened and they're the ones that are delivering the important skills solutions that we need across the country.

Senator FARUQI: Do you have a proportion of Commonwealth vocational educational funding for public TAFE?

Ms N Williams: There are a couple of different ways of looking at that. The VET system is a shared system. We run the system with the states and territories. When you look at funding levels across every single jurisdiction, the level of funding into the TAFE system versus other sources does vary, but on average, in 2021 it sat at around 71 per cent. That's all sources of funding. That doesn't include universities or dual-sector providers.

Senator FARUQI: So is 71 per cent already going to public TAFE?

Ms N Williams: In 2021, the art is to ensure that future funding flows reflect that and that we do see more investment going into the TAFE system. With the most recent agreement with the states and territories, well over 71 per cent will go into TAFE—the majority of it will. We will be working on this commitment with the states and territories as part of the broader agreement that we negotiated, which I mentioned to you. Notwithstanding that being the average, it's fair to say that in different jurisdictions you see much higher levels of investment in the TAFE system. For example, in Western Australia you're looking at 80 per cent. In some jurisdictions, you see much lower investment. But that does reflect, I think, the different types of delivery that occur. The Northern Territory, for example, has a very different delivery model due to its remoteness, and that's a challenge.

Senator FARUQI: I understand that. But, if 71 per cent of the funding is already going to public TAFE, could you commit to providing more funding, because obviously it's not enough?

Senator Chisholm: That's certainly our intention. That's what we talked about during the election campaign, and that's what we—

Senator FARUQI: During the election campaign, you said 70 per cent, but that's already there.

Senator Chisholm: intend on delivering in government.

Senator FARUQI: Could you increase it to 90 per cent or 100 per cent?

Senator Chisholm: As Ms Williams said, we're still negotiating that. There is a skills crisis that we are confronting, and we want to make sure that we're training as many people as possible. Our priority is to do that through the TAFE system.

Senator FARUQI: So you promise that more than 70 per cent will go to TAFE?

Senator Chisholm: That's my expectation.

Senator FARUQI: Excellent, thank you. Could I hand over to my colleague?

Senator DAVEY: I've just got a directly relevant supplementary question. So 71 per cent is already going to TAFEs, and that's funding for student places—separate to capital funding. Can you tell us what percentage of vocational education students go to TAFE compared to independent RTOs?

Ms N Williams: It's not separate to capital, so that's a full amount. It's both delivery and capital funding. It doesn't include, for example, dual-sector universities, where you do see public provision—I think it's important to ensure that that's clear. The number of students that go to TAFEs versus the number of students that go to private providers is a difficult statistic to unpick. You need to start by thinking about, in the first instance, the type of training that people are doing in the public and the private system. A lot of students who study in the private system are doing what we describe as short courses or courses that are maybe just a single unit. Think of the difference between, for example, first aid training and a full cert III in individual support. There are a lot of short courses and the like that tend to go through the—

Senator Chisholm: Responsible service of alcohol too.

Ms N Williams: That's another example, yes. While we look at there being a high volume of students that may go through the private system, the nature of what they're studying is very different. When we look at it, we tend to think about it in terms of the type of training that we are funding. Do you have some figures, Mr Conn, that may be able to assist?

Mr Conn: As Ms Williams was outlining, there's a difference between the types of training. When you look at all students involved in the VET sector in 2021, from fee for service through to people doing a first aid course, a full diploma or a certificate, there were 778,000 at TAFE, 3,561,000 at independents and 248,000 at other institutions. But when you look at government funded students, who the government is providing support and a subsidy for, then TAFEs are supporting 652,000 students, independents, including privates, are supporting 601,000 students and other institutions are supporting 172,000 students.

Senator BARBARA POCOCK: Can you just say those again, Mr Conn—I was just trying to get my head around that—the TAFE private, the first set and then the second set.

Ms N Williams: Before Mr Conn goes into that, I think the distinction that he was making is that the market is very diverse. When we look at this question of funding, the proportion of the market where we see government funded students is much smaller, of course, than the entire market. There are quite a number of students that self-fund, like they'll pay for their own training, and quite a number of employers that will then pay for their workers to undertake training.

Where that occurs you see quite a lot of activity, particularly with private providers, or with enterprise-owned RTOs. So a business may have their own RTO, for example, that falls into the private provider category. They are putting their workers through that RTO. It's still an RTO. The students are still counted towards that count of private students. What we are interested in, for the purposes of the stats that we look at, is where the government funds the student, funds a proportion of the course, subsidises the course et cetera. So the numbers that Mr Conn was talking about were in that government funded category, where we are putting government funding or public funding into training.

Senator GROGAN: Can I interrupt for two seconds, and you can interrupt me later. We'll trade. With those private providers, you're talking about first aid and those kind of programs.

Ms N Williams: Yes, absolutely.

Senator GROGAN: It would not be appropriate for the government to fund those. They're appropriately funded by employers and suchlike.

Ms N Williams: Well, this does go back to what I said earlier about this being a shared system. That's quite right. So it is appropriate for employers to fund the training of their employees, particularly for those short courses. In many instances individuals are also undertaking those courses. A responsible service of alcohol unit is a perfect example of that. Before someone goes to search for a job in hospitality, they may decide to do that themselves, or, equally, like you said, there's a raft of fee-for-service training that occurs both in the private sector but also in some TAFEs which is paid for purely by the employer or by the student themselves. When we're

talking about government funding, however, the numbers are a little different for government funded courses and government funded students.

Senator BARBARA POCOCK: I'm wondering if you could, just on notice, give us those figures, as you spoke them, in writing? And would it be possible to get them by gender? I think that that would be interesting as well. Anyway, I don't want to go down that rabbit hole but it's very important, of course. Thank you for being here and thank you, Chair. I've got two rounds of questions and I'll stick with apprenticeship and training to start with, and then I would like to go to employment programs if I get a spot later.

I'm involved in a select committee on work and care which has asked a number of questions on notice about apprenticeship training, particularly the participation of women in apprenticeship training and traineeships and so on. I want to refer you to a few programs and then ask some questions in relation to them.

The first is the Australian Skills Guarantee, which I understand assures us that one in 10 workers on major projects will be an apprentice or trainee or cadet in the coming period. The Jobs and Skills Summit said that sub targets would be set for women, at least; there may be others. I'm interested in whether you're setting sub targets for other disadvantaged groups. But I wondered if you could illuminate what level of target you're looking at for women. And then I've got a couple of follow-ups.

Ms N Williams: Certainly, we're happy to answer that question. You're quite right. The government has announced that the guarantee will include targets, and we are going through a process now of working through what those targets might look like. I might hand to Ms Sharp to answer that question.

Ms Sharp: We are working through what the targets are. I know that you asked some questions of the ombudsman. We haven't set them yet. We're going through a pretty detailed design process and we're just about to release a discussion paper. How we go about setting the targets will depend a lot on what the definition of a major project is and particularly what sectors we pick up. Major projects in the states and territories where they have similar types of policies are in the construction sector. I think it's pretty clear we'll certainly pick up the construction sector, and we're looking at where the states and territories have set theirs and also how they've defined them. Some states have definitions that pick up the entire workforce. I think New South Wales has their target set at two per cent, but it's for their entire workforce on that project.

Senator BARBARA POCOCK: Two per cent of women?

Ms Sharp: Two per cent of the workforce working on that project are women, yes, for a certain New South Wales government projects.

Senator BARBARA POCOCK: For example, the construction of a major road project?

Ms Sharp: Pacific Highway upgrade or something like that.

Senator BARBARA POCOCK: A two per cent target for women?

Ms Sharp: I think that's—let me just—

Senator BARBARA POCOCK: I'm sorry, my jaw has fallen to the floor.

Ms Sharp: That's for projects over \$100 million; that's their target.

Senator BARBARA POCOCK: That's probably lower than the current rate of apprenticeships in non-traditional areas held by women. Is that correct?

Ms Sharp: Yes, it is.

Senator BARBARA POCOCK: That's a target that's not worth aspiring to.

Ms Sharp: This is the challenge. As we go about setting these targets, we are looking at where the targets are sitting in other jurisdictions and trying to set a pathway for a target. The government's language has been that we're likely to have targets, because we need to make sure that we're driving meaningful change by sector, which will—

Senator BARBARA POCOCK: 'Meaningful change' means an increase. I'm informed by the industry that, at present, women make up five per cent of electrical apprenticeships.

Ms Sharp: That's correct.

Senator BARBARA POCOCK: So to say a two per cent target is on the low side would be an understatement.

Ms Sharp: That's across their trades workforce. You will see differences within the trades workforce, depending on which one, but, yes, absolutely. It's quite complex. I guess what I'm trying to say is that we're doing a detailed design process. We're going to take the next few months to figure out both what the definition of 'major

project' is, what the level of the target should be and what a sensible time horizon is that will allow industry to adapt their workforce and their hiring patterns and create a pipeline. Addressing this issue, and I've listened to your questions and the Office for Women's evidence, is really going to take—I know this has been going on for many, many years, but we are going to have to start from the beginning with careers education and increase the number of girls picking these up and seeing this as a viable career pathway to really shift the dial on those numbers.

Senator BARBARA POCOCK: I have no doubt your heart is in the right place on this. I admire you and I know how hard the work is, but the target was two per cent in Newcastle in 1981, 40 years ago, when I worked on exactly this kind of program. I must say, I am very, very disappointed that you are countenancing a target of two per cent—it makes my blood boil—because women deserve better than that. We need to be more ambitious. I'm not putting this on you, Ms Sharp, but I would say to the department and the minister: we need some ambition in these targets. We do not want to replicate the past, and we do not want to go lower, which is what this target would deliver.

Senator Chisholm: I think Ms Sharp gave that as an example of what she'd discovered when looking up what New South Wales were doing, rather than what we're contemplating, but we certainly think it's important. In the process that we went through in terms of the 180,000 places, we obviously had a focus on ensuring that there was opportunity for women to be upskilled. But, obviously, you're focused on the non-traditional trades in this, and I understand that that needs to be a significant part of it. I think work is underway on the discussion paper. I'm sure the minister would be happy to engage directly, as part of that process, with you as well.

Senator BARBARA POCOCK: Okay. I'll calm down now.

Ms James: Senator, I may not be adding anything to what the minister said, but my reaction is the same as yours. I'm somewhat surprised the New South Wales target is so low. The New South Wales government has done some good work around women in construction, including some trials on worksites for five-day construction sites. Many of us think a five-day week is normal, but in construction it is not. There's some good work going on in New South Wales. I think it's absolutely important to understand what targets might be set in other states but also to understand what other activities are going on and, as Ms Sharp said, to understand what's going to impact on that pipeline. As we know, gender norms are one of the things that sit behind women's choices—so, too, whether there is a toilet on site. I think we got to that at some point in the proceedings over the last couple of days. So there are both practical and deeply embedded social issues at play here. I hope I'm not sticking my neck out when I say I promise you—I undertake to you—that the target will be more than two per cent.

Senator BARBARA POCOCK: That's good to know.

Senator GROGAN: That's a relief.

Ms James: And no-one's kicking me under the table; it's my prerogative, as a person at the table, to make that kind of statement.

Ms Sharp: We're looking carefully at the data for the main trades and seeing where they're at. As you said, electrical is at 5.1 per cent. We know that in construction generally it's at 4.9 per cent. So we are aiming to drive change and move towards closing the gender pay gap. That means that the targets actually have to be higher than that.

Senator BARBARA POCOCK: I don't think that's sticking your neck out, Secretary. It's great to hear that the ambition is there. It takes leadership. When I worked in Newcastle, I was a direct appointment of the Premier. It was crazy, two people to sort that out, and we got it up. And in this territory, the ACT, we have a group training scheme. I have had nothing to do with it, but I admire it. It has apprenticeships in electrical trades up to 15 per cent. That's through leadership and wrap-around service supports and all of that. I'm telling you how to suck eggs, but that's what it will take. Which takes me to the next program that I wanted to ask questions about. It's a continuing question around apprenticeships.

CHAIR: We'll come back to you.

Senator GROGAN: Can I go to the national skills agreement. The Labor government was elected in May. At what point did negotiations start on the new national skills agreement?

Ms N Williams: There are two pieces to this. I think we've talked about the 12-month arrangement. On the new national skills agreement, we have only reset negotiations very recently. This is a very recent piece of work. The intention is to negotiate on this over the course of the next 12 months with a view to having that new five-year arrangement in place by the beginning of 2024. In terms of the timeline, you'd be familiar with the negotiations that the previous government had with respect to the national skills agreement.

Senator GROGAN: All I'm aware of is that it was quite protracted and there was no agreement reached. Is that right?

Ms N Williams: That's right. There was no agreement reached ahead of the election. No state and territory government agreed to the Australian government's offer.

Senator GROGAN: My understanding is that there was a letter provided by the states and territories at that time outlining their issues. Are you familiar with that?

Ms N Williams: I feel like there may have been a few letters! I may need to take that on notice and determine which one you're speaking of there.

Senator GROGAN: What were the key sticking points? I'm projecting forward: what can we learn from what went so badly wrong previously?

Ms N Williams: I think I've provided evidence on this previously. The former government was seeking to introduce what was described as an efficient price and a range of other measures around the harmonisation of fees and prices and subsidies et cetera.

Senator GROGAN: Is that code for 'cut'?

Ms N Williams: No, not at all. It was essentially a funding model, a funding arrangement. It was also seeking to have the then National Skills Commission play a very fundamental role in determining areas of national need or national skills need. Those are very difficult negotiations. You'd be familiar with that general tension between the question of state autonomy to direct funding and to direct courses and to direct activity versus the Commonwealth's desire to have a greater level of control and direction over that. So this is not an unusual set of circumstances for the Commonwealth and the states and territories to find themselves in. As you noted, those negotiations became protracted, and the former government was not able to land them prior to the election.

Senator GROGAN: But we have an agreement in place now—that 12-month thing?

Ms N Williams: We have the 12-month arrangement in place.

Senator GROGAN: Is everyone happy with that?

Ms N Williams: We are finalising negotiations on it, but yes, state and territories are comfortable with that agreement, and we are satisfied that we'll be able to land that.

Senator GROGAN: Going forward, you anticipate having the five-year agreement in place quite swiftly?

Ms N Williams: We have restarted negotiations. You'd be familiar with the fact that on 31 August first ministers, the National Cabinet, agreed to commence work on the new agreement, and they also agreed a vision statement and a set of guiding principles that would frame or guide the negotiations and the discussions with the states and territories. Skills ministers have met several times to talk through the process of starting those negotiations, and certainly at the officials level we have commenced those discussions with the states and territories around how those guiding principles might be translated into a new set of arrangements between the Commonwealth and the states.

Senator GROGAN: Thank you. I heard a brief element of the questioning around the JobTrainer program. I'm just trying to understand what the fee-free TAFE is looking like? What's the difference? That's now gone and we're bringing in other pieces. When we're looking at the fact that the Labor government is very clear that TAFE is the bedrock of the VET system—they're big fans. That move from a JobTrainer-type scenario—what is the fundamental shift there?

Ms N Williams: JobTrainer was fundamentally a pandemic measure. It was rolled out during a period of high unemployment. As such, it was really targeted at people who were out of work or unemployed or young people under the age of 25. It encouraged people to study either a short course or a full qualification, but it did tend to skew towards short courses fairly strongly, probably because of the economic conditions at the time and people's desire to study things that could assist them to go back into work.

The fee-free TAFE initiative has a much broader reach in terms of eligibility, as I went through a little earlier in my evidence. The eligibility is really focused on a broad range of cohorts. It's no longer simply people who are unemployed, although they are, of course, a critical cohort of people who are able to access the fee-free TAFE initiative. But it is also available to First Nations people; people with disability, as I noted earlier; women who are facing economic security or who are training in non-traditional trades; unpaid carers et cetera. So the eligibility requirements are very different.

The fee-free TAFE obviously is predominantly delivered within the TAFE system, as opposed to being available more broadly across the board. And of course the areas of priority are really focused at present on those

critical skills areas of shortage that we are seeing in the economy at present. So it's designed to meet the needs of our current situation.

Senator GROGAN: Excellent. Thank you so much.

Senator BARBARA POCOCK: Thank you for your answers thus far. On notice, for the purposes of keeping to time, could you provide progress on how the target unfolds in the Australian Skills Guarantee, the process that we heard is under way. I'd really appreciate some information about that. Similarly, I want to commend the government on the Australian Apprenticeships wrap-around support that you have invested in. That's so important to make any target come true to help people find pathways in there and get support on the way through. I wonder also if you could talk a little about the \$100 million that's been allocated to new energy apprenticeships. That's public money. It's not asking a large construction company to employ a carpenter. It's our money, and it's a lot of money. If we have a two per cent target in that, that will mean \$98 million going to young men and \$2 million going to young women. So I'd really love to hear about the positive target or where you're at in terms of setting a target so that a fair allocation of those resources are going to young women—women of all ages, actually.

Ms Sharp: The new energy apprenticeships measure is a little different to the way that we run most of the incentives in that the \$10,000 per apprentice will go direct to the apprentice. No money is going to the employer. It will go to apprentices who choose to train in occupations that are directly relevant to the clean energy sector. We'll be asking that they're assessed, that they're in a relevant occupation and that they're employed in a job where they're working on new energy projects or clean energy projects.

In terms of the gender split, electrical is a really good example. We expect that quite a lot of the jobs will be taken up by people doing electrical traineeships, because they're such an important part of the powering transition plan. As we've talked about, of electrical apprentices, 5.1 per cent are currently women. The way we see the two measures running is—with the women in non-traditional trades measure that you mentioned, the \$38.8 million that is now rolling out, a woman who takes on an electrical apprenticeship will get support via that measure with specialist female mentors. They will also get support through the new energy mentoring program. We're trying to load in as much support as possible to maximise those people's access and success. We're throwing all we can at completions for that group, particularly women, so that electrical apprentices in clean energy are getting as much support as possible to help them maximise their prospects of success.

In terms of whether we're tilting the system, there isn't a gender target within the 10,000 places but there is a lot of effort going in, at the moment, to encourage more women into those industries. We're seeing some reasonably good trends, I think, that more women are starting to move. It's slow, and we're hoping to turbocharge that, but there is a bit of movement, that more women are moving in. Electrical for women, certainly, is in the top five.

Senator BARBARA POCOCK: Perhaps we should retitle this program the 'new energy apprenticeship program, 95 per cent of which will go to men', unless we set a target that is more ambitious. I would request that the department consider setting, for such a large amount of public money, a target that will require reach and make sure that wraparound program successfully unfolds. I'm just making the wish there.

Senator Chisholm: The other thing, Senator Pocock, to consider though is the other measures that we have in the system about encouraging women into those non-traditional trades as well. We think it will work in conjunction with that.

Senator BARBARA POCOCK: I'll look forward to estimates next year when you bring forward a great success story. I can go on with questions about employment programs or defer to others.

CHAIR: Thank you, Senator Pocock. Senator O'Sullivan?

Senator O'SULLIVAN: Ms Williams, before I go on, that data you referred to, question 16, is that a table? I don't want to take up time going through it. Could you table it?

Ms N Williams: Yes. We certainly could table it, if that would assist. It is in a form that we could table, if you wish.

Senator O'SULLIVAN: Great, then I can come back and ask questions on that. You mentioned that there are some exceptional circumstances where a private provider may be funded. If the priorities are key areas of skill shortages—for example, aged care, the care sector—where an employer has an agreement with a provider, if that happens to be an existing agreement with a provider, where they've done all the heavy lifting in terms of making sure that the course that's delivered matches their needs so it's very much industry and employer driven, is that an exceptional circumstance if that employer who's got jobs, has got demand, has already got an existing arrangement? Could that training provider be funded?

Ms N Williams: I think the important thing to remember with the fee-free TAFE initiative is that it is in addition to the training that currently exists within the system and the really good arrangements, like the ones you've described, where a training provider would have worked closely with a business or industry sector to develop training. This training is in addition to that. It's predominantly in the TAFE system. The exceptions that I talked about previously are the ones that would apply here. They go to circumstances where a TAFE may not be able to deliver for a range of reasons or where delivery by another organisation, such as an Indigenous RTO, makes more sense with respect to the circumstances. This is first and foremost a TAFE initiative and the majority of the funding will flow into the TAFE system. The exceptions are exceptions.

Senator O'SULLIVAN: What if that arrangement that that employer has with the provider is funded through JobTrainer and that comes to an end? What would happen there?

Ms N Williams: I couldn't speculate on that. There is a lot of funding in the system, as you would be aware. In addition to things such JobTrainer or the fee-free TAFE initiative, states and territories flow quite a substantial amount of funding—both the funding that the Commonwealth provides them and their own funding—into subsidising training. There are a range of contractual arrangements that they have in place with training providers based on need in those jurisdictions and their own criteria for what is important to subsidise and what is not important to subsidise. As I said, those arrangements are going to continue and states will direct their funding to areas of importance. That is a fundamental way in which the VET system works. These states are responsible for making those decisions around delivery.

Senator O'SULLIVAN: The agreement is destined to be in place by the beginning of next year, so 1 January. That's six or seven weeks away.

Ms N Williams: I anticipate that it will be in place well before that.

Senator O'SULLIVAN: Okay. So you are quite advanced in terms of the negotiations?

Ms N Williams: Negotiations are proceeding extremely well. All ministers have agreed to the arrangements. We are now working on the implementation details with jurisdictions.

Senator O'SULLIVAN: What are the expectations from the states? Are you requiring that training only for jobs that are in those high-demand labour market areas?

Ms N Williams: The agreement is focused around those areas that I provided evidence on a little earlier. As I said earlier, there is also scope and flexibility for the Commonwealth and the individual state to come to an agreement on areas of state priority where that makes sense. As I said, for the most part Commonwealth and state priorities tend to align, particularly around those areas of high need in the economy. I expect that, even though we will have those conversations with the jurisdictions as part of implementation, the variations are going to be minor.

Senator O'SULLIVAN: Ms Williams, you know that I am a stickler for not doing training for training's sake, that there be real focus on jobs that exist. Can we be guaranteed that every place will be for a job that is in need, that there is a career opportunity for someone if they are undertaking training?

Ms N Williams: I can guarantee you that they will undertake training in those areas of the economy where we know there is demand.

Senator O'SULLIVAN: Sure.

Senator LIDDLE: I'll just do a supplementary to that. One of the things when you see these kinds of announcements, particularly in the Aboriginal employment training field, is the proliferation of people who have got great ideas about what people should be doing. I really don't want to be back in a year's time to hear that there is a proliferation of courses that are titled 'Aboriginal and Torres Strait Islander forklift driving', 'Aboriginal and Torres Strait Islander caring for whatever' as opposed to just a qualification. The people who come with that qualification already have those things that form their identity, their culture and their language that don't need to be defined by qualification. You can add bits into that like some of the university courses have done. Whether you're an architect, whether you're a teacher, you put Aboriginal teaching components into it, but you don't confine people to having a qualification that they can't take more broadly—and stick on a table with a whole heap of other jobseekers. I have seen this over and over again when there are these kinds of announcements, where there are all these people who have got these great ideas and the people that we intend to help the most are the people that are the least advantaged by good intentions.

Ms N Williams: We will be agreeing the courses with the states and territories on a one-on-one basis.

Senator LIDDLE: That doesn't give me any comfort.

Ms N Williams: The states and territories will be proposing which courses or which units will be captured by the arrangement and the agreement. As you would be aware, training is part of the national training system and, therefore, there is really strong integrity around the type of training that is offered. I'm confident that the states and territories will be putting forward only courses that are appropriate. And I'm confident that, as we look at those courses, we will be in a position to agree only to the training that is going to be appropriate and meets the right criteria. Like I said, it will be training in areas of specific need. I think that we have the controls in place to ensure that this is going to work in the way that we intend it to.

Senator LIDDLE: I'll certainly be very excited, alongside you, when I see that.

Senator DAVEY: I want to come back to the commitment of 180,000 additional training places. My understanding or my reading of it is that these will be additional fee-free TAFE and vocational education places from January 2023.

Ms N Williams: No, Senator. The commitment is for a combination of some new places—additional places—and some top-up of existing places to essentially make places which currently attract fees and which students would have to pay for free. So they will all be newly free, if that makes sense, but some will be new or additional places, and some will be existing places that are topped up.

Senator DAVEY: Okay. The minister's media release of 25 October said that the \$1 billion 12-month Skills Agreement will support access to the 180,000 fee-free TAFE—which I accept you've just said is a combination—from January 2023 and is part of a commitment for 480,000 places over four years. Previously, we've done year-by-year agreements with the states. Over the last two years, under the JobTrainer package, we delivered 448,000 places, is my understanding. Really, the commitment to 480,000 is only 40,000 extra over and above what we were delivering under JobTrainer.

Ms N Williams: I might ask Mr Conn to talk a little bit about the number of places, but it's not like for like. The cost of a short course that takes a couple of months to complete is very different to a full three- or four-year qualification, as I provided evidence on a little earlier. JobTrainer contained quite a number of short courses. It was designed during the pandemic, and the primary objective of JobTrainer was to quickly reskill or upskill people so that they could move into work. We were most concerned at that point in time with the potential for people to stay in unemployment and for the scarring effect that would occur, particularly for young people. A lot of the JobTrainer places, even though there seems to be a lot of them, many of them, about 40 per cent, are short courses or single units. The sorts of training that would upskill or reskill someone very rapidly are not the qualifications. What I would expect under the fee-free TAFE initiative are some short courses, of course, but the majority of that training is going to be in full qualifications. That's partially because of where we are at currently within the economy, but partially also because, for the cohorts that this training is available for, the more vulnerable cohorts of our society, access to full qualifications is really fundamental. It's important for them to be able to move into full-time work or work, but also important for a range of other reasons. So it's not a like-for-like comparison, and I'd be hesitant to suggest that it is.

Senator DAVEY: The minister's media release of 24 October outlined some of the areas identified for fee-free places, which include care, aged care, early education, technology, digital skills, hospitality and tourism, and construction. I think Senator Faruqi asked before if you had a breakdown of those places and you said you were working through it and were still in negotiations with the states. When will we expect that breakdown, given that the program is due to start on 1 January?

Ms N Williams: As I said, I anticipate that we will finalise these discussions with the states very shortly—and well ahead of January. As you'd appreciate, most enrolments will need to start by that time. As soon as those negotiations are finalised we'll be able to provide you with a better sense of some of those things.

Senator DAVEY: That would be great. Does the \$550 million skills package that was announced in the national skills agreement include the \$50 million for the TAFE technology fund that you mentioned earlier?

Mr Conn: Are you talking about the \$550 million for the 12-month skills agreement? Yes, that does include the \$48.5 million, I think it was, that was provisioned for the aged-care boost from JobTrainer.

Senator DAVEY: Does it also include the \$100 million for new energy apprenticeships?

Mr Conn: No.

Ms N Williams: No, it does not.

Senator DAVEY: That's separate?

Ms N Williams: Yes, it's separate.

Senator DAVEY: How much of the \$550 million is specifically for training places?

Mr Conn: Of that \$550 million, \$493 million is to support the fee-free TAFE training places, \$7 million for improving data infrastructure and \$50 million for the TAFE technology fund. That's the Commonwealth contribution. For the fee-free TAFE training places there is the expectation of the states and territories matching funding.

Senator DAVEY: So close to \$500 million is for subsidised training places?

Ms N Williams: Noting that the states and territories committed to match that funding, it's double that, essentially.

Senator DAVEY: We've been speaking a lot about this going to TAFEs. The minister's press release is quite specific in saying fee-free TAFE and vocational education places. I note that you explained earlier that the Northern Territory is quite different and across jurisdictions it's quite different.

In regional areas, often TAFEs have left town and the only people left are RTOs or the like. Have you got a breakdown of how many of these placements will go to regional areas yet, and a breakdown of the difference in TAFE places compared to independent training providers?

Ms N Williams: As I've said, we're still working through those details with the states and territories—they're the implementation arrangements that really do need to be settled before the states are finalising their sign-on to the agreement.

Senator DAVEY: Does this also include group training providers?

Ms N Williams: The initiative is predominantly targeted at TAFE. Like I said, there are some exceptions and we are working through those exceptions with the states and territories—but they are exceptions, as I outlined earlier.

Senator DAVEY: I want to come back to the JobTrainer program. I accept what you said that a lot of those were short courses. We had for 445,000 people over two years who accessed some form of training through JobTrainer. Some of it was short courses. Have you worked out what the equivalency would be, or done a conversion factor for what was delivered under JobTrainer compared to what will be delivered by these longer courses and longer placements, to try and compare a like-for-like?

Ms N Williams: That's a little difficult. As I said, we're still working through the composition of the 12-month agreement with the states and territories, so that mix of short courses versus full qualifications is not entirely settled. I think it's a little early to be able to work out what the comparability would be.

I think the important thing to note as well is that, for this, the 12-month agreement is the first step in the government's discussions with the states and territories around the delivery of training. As I noted earlier, the residual of the fee-free TAFE arrangement needs to be rolled out. In addition to that, we are commencing negotiations with the states and territories around a longer-term five-year arrangement. There's much to work through in that, but the delivery of training will be a core component of those discussions with the states.

Senator DAVEY: Can I just clarify—the JobTrainer program is no more?

Ms N Williams: It ceases on 30 December.

Senator DAVEY: In 2020-21, the coalition and the states delivered \$1 billion for the 300 JobTrainer places. Then, again in the following year, there was another. This \$550 million is—call me a cynic—the same state-Commonwealth agreement under a different name with longer-term targets as far as longer-term courses being delivered, but not necessarily with any new place or any new funding arrangements?

Ms N Williams: As I outlined earlier, the intent of the agreement is very different. The students who receive access to free training are very different. JobTrainer was a combination of free and fee-free, so it's slightly different in terms of the arrangements whereby the funding is delivered. The prioritisation in terms of areas of need differs. Similarly, we would expect that the mix, as I said, of courses, and that mix between short courses and full qualifications is going to be significantly different as well. I don't think that they're comparable at all. It's apples and oranges, from my perspective.

Senator DAVEY: I think one of the keys, though, is that the Prime Minister clearly said 180,000 additional places—

Senator Chisholm: Additional free places.

Senator DAVEY: Right, okay. So it's 'free' that's the key word, not 'additional'.

Senator Chisholm: There are significant new places, but the 180,000 was the number of free places.

Senator DAVEY: Lastly, because the focus is on longer-term courses—diploma-style courses, or career courses, some would say—this is a one-year agreement with the states that's been negotiated. What happens for

someone who's entered into a multi-year diploma course? Are they guaranteed that the whole course will be fee free, even though your agreement is only one year?

Ms N Williams: The agreement with the states is for a year, but the funding is for the full course.

Senator DAVEY: That will be good to know for all of those people. Once you've finished your negotiations with the states, please provide that information back to us on notice. Could you also take on notice a breakdown of numbers between states that this funding will deliver, and also could you break down regional versus urban numbers to the best of your ability?

Ms N Williams: We'll do the best we can. As I said, once we've finished those discussions with the states, I think we'll be in a better position to talk to you about some of that detail.

Senator LIDDLE: Senator Chisholm, when the question was asked about whether these are 180,000 additional fee-free places, you said that the fee-free component is the additional. I'm assuming what you mean is that, for somebody who would normally be going into TAFE next year, 180,000 places will be fee free. How many new places are there as a component of that?

Senator Chisholm: Sixty-thousand.

Senator LIDDLE: I was asking earlier about timing, because obviously timing is really important where, six to eight weeks out from the start of the new year, there are potential university students who already probably tick the boxes. There are people coming to the end of the student year shortly—year 11 and year 12—who probably would have already made their choices. How much impact will this have, or do TAFEs have to be even more flexible—my experience is that they're not known for being flexible—and nimble in terms of when they start delivering these courses, to give a bit more time for people to get their head around the opportunities that are being presented here?

Ms N Williams: A couple of things. As I said earlier, states and territories run the TAFEs. They manage the delivery of training. This commitment has been on the table since the government was elected. The states are fully aware of it and have been working very closely with their TAFEs to prepare them for this. We would expect, as I said, that this agreement will be in place very shortly. States and territories are already gearing up to ensure that these courses will be available. It's also important to note—notwithstanding the obvious influx of students that occurs at the beginning of the year, particularly as school students start to think about what their choices are—that VET is really flexible in terms of the fact that people enrol at various points within the year. We would expect that the way in which the states and territories plan the rollout of these courses will accommodate those sorts of trends and what we see around when and how people enrol.

Senator LIDDLE: I think there might be jurisdictional differences in the level of flexibility. That's really clear in my experience. Can I continue on with more questions?

CHAIR: Yes.

Senator LIDDLE: I want to talk about the national skills agreement. What are the terms and conditions of the one-year national skills agreement that was announced in September?

Ms N Williams: Sorry, could you repeat that?

Senator LIDDLE: The terms and conditions of the one-year national skills agreement announced in September. What are the terms and conditions? Are you able to provide those, to table them?

Ms N Williams: The one-year agreement is the agreement that we've been talking through, the one that we're negotiating with the states at present.

Senator LIDDLE: Are we able to have that tabled? Are we able to see that or not?

Ms N Williams: As I said, we are in the process of negotiating. As soon as we finalise those negotiations, then that will be available.

Senator LIDDLE: That's fine.

CHAIR: Senator Payman has a couple of questions as well.

Senator PAYMAN: According to the Organisation for Economic Co-operation and Development, three million Australian adults lack the fundamental skills required to participate in training and secure work. Do you guys have the number of participants for the Workplace English Language and Literacy program before it was cut in 2014?

Ms N Williams: I'll just get the relevant officers to the table but, yes, we are able to help you with that.

Ms Sharp: Sorry, you were after the number of participants in the WELL program?

Senator PAYMAN: Before it was cut in 2014.

Ms Sharp: Certainly. The participant numbers in 2013-14 for the Workplace English Language and Literacy program were 12,458.

Senator PAYMAN: Quite a lot of people. What is the participation target for the Foundation Skills for Your Future Program?

Ms Sharp: The Foundation Skills for Your Future Program, which is currently operating, has a target per annum of 2,750 participants.

Senator PAYMAN: What is the actual number of participants currently?

Ms Sharp: In 2021-22 we're expecting a minimum of 1,277 participants. I would note that COVID-19 has had a substantial impact on the Foundation Skills for Your Future Program. That program delivers workplace based training. With the very tight labour market we are seeing that, for employers, finding the time to release staff to participate in training has had a knock-on impact on this program, as have the various shutdowns we've experienced, which has meant that people aren't there to be trained.

Senator PAYMAN: That's fair. Over the past 10 years, what initiatives have the government implemented to improve foundational skills in adults?

Ms Sharp: In terms of new initiatives, I can take you through programs that were implemented. Probably the key ones were in the 2019-20 budget. That was when the Foundation Skills for Your Future program was announced alongside the remote community pilot program. Foundation Skills for Your Future was a \$52.5 million program announced in the 2019-20 budget targeting workplace based LLND training—language, literacy and numeracy digital skills training. The remote community pilot program was a program that invested \$9.9 million in four remote communities to deliver community-led and -based training in remote Australia. We also saw some further investments in the 2021-22 budget, with further funding going into the SEE program.

CHAIR: Ms Williams did you have something you want to add?

Ms N Williams: I think you asked for a longer time series. Those are the most recent investments. As you mentioned, there were several programs that were in place before that. Probably the most significant was the Workplace English Language and Literacy or WELL program, but the Skills for Education Employment program, as Ms Sharp mentioned, has also been in place for a number of years, tracking back to 2001. That program, which provides literacy and foundation skills support to jobseekers, has been in place, as Ms Saunders said, for a substantial number of years. There are a range of other programs that have been in place over the years, including the National Foundation Skills Strategy for Adults and the Language Literacy and Numeracy Practitioner Scholarship program. There have been quite a number of foundation skills programs that have been in place over the course of the last 10 years or so.

Senator PAYMAN: Can you please detail for the committee the savings from foundation skills between 2014-15 and 2017-18.

Ms N Williams: A number of those programs I mentioned would have been subject to a series of savings. Was it 2014-15?

Senator PAYMAN: Yes, and 2017-18.

Ms N Williams: In 2014-15 the WELL program, which you mentioned earlier, was terminated. We also saw some savings in that year to the SEE program, as well as some further savings to some of the other programs that I mentioned—the National Foundation Skills Strategy for Adults and the Language Literacy and Numeracy Practitioner Scholarships Program. There were subsequent savings in both 2015-16 and 2017-18 to the SEE program. The SEE program has gone through substantial changes. As Ms Sharp noted, however, there were some additional spends across the years—particularly in 2019-20—that related to the SEE program.

Senator O'SULLIVAN: I'd like to ask about the Jobs and Skills Australia transition, please. Can I start with the National Skills Commissioner? What is the current status of Mr Boyton's role as commissioner?

Ms N Williams: Mr Boyton remains the commissioner. You'd be familiar with the legislation that introduced Jobs and Skills Australia and abolished the National Skills Commission. That legislation is yet to go to Royal Assent. When that occurs, the National Skills Commission's role will no longer exist.

Senator O'SULLIVAN: It must be soon because the Senate passed that legislation—

Ms Angus: On 27 October.

Senator O'SULLIVAN: During the Senate deliberations on the Jobs and Skills Australia Bill 2022, Mr Chisholm, you confirmed that Mr Boyton would not be continuing in the comparable role in JSA; is that correct?

Senator Chisholm: That's my understanding.

Senator O'SULLIVAN: Does anyone else want to confirm that?

Ms Angus: Would you mind repeating the question?

Senator O'SULLIVAN: Mr Boyton is not going to continue, even in a comparable role, with Jobs and Skills Australia; is that correct?

Ms N Williams: That is our understanding.

Senator O'SULLIVAN: Minister, were there any considerations given to that decision? Did the government not have confidence in the performance of Mr Boyton?

Senator Chisholm: I'd have to take that on notice, but my briefing at the time was that Mr Boyton wouldn't be appointed to the new role.

Senator O'SULLIVAN: Mr Boyton is very well respected; I'm sure you'd agree with that. He brings an extraordinary skill set to the role and was respected across industry. Was he determined to be unsuitable for the role of JSA director?

Senator Chisholm: I'm happy for the department to add more, but, when it comes to Jobs and Skills Australia, we are focused on a broader role in terms of what we want this organisation to undertake in terms of workforce planning and the big agenda that we have to deliver on our promises from the election campaign. That was the motivation for setting up Jobs and Skills Australia and needing someone who could fill the new role. It was determined that it should be someone with a different skill set.

Senator O'SULLIVAN: Is there some sort of severance package being paid? He was contracted for a longer period.

Ms James: Mr Boyton is engaged under a Remuneration Tribunal determination, so the circumstances of him no longer being in the position, because the role has been abolished, would be set out in that Remuneration Tribunal determination.

Senator O'SULLIVAN: I'm not completely familiar with that determination. My question is: is there a severance package?

Ms N Williams: Yes, and that severance package is, as Secretary James noted, usually set out in the Remuneration Tribunal determination. It's a pretty set formula, as a rule, and it generally relates to the length of time that the individual has left within their role within the office, with a couple of parameters around that.

Senator O'SULLIVAN: Can that be provided?

Ms N Williams: I'm happy to provide that on notice.

Senator O'SULLIVAN: That's fine. What will happen to the staff at the National Skills Commission?

Ms N Williams: All staff at the National Skills Commission will transfer into Jobs and Skills Australia.

Senator O'SULLIVAN: All of them—100 per cent?

Ms N Williams: All staff and all positions will transfer into Jobs and Skills Australia.

Senator O'SULLIVAN: Minister, you mentioned in the deliberations in the Senate that there were two lead candidates for the role of JSA interim director. Are you able to go into any detail as to who those individuals are?

Senator Chisholm: No, I can't provide an update on that.

Senator O'SULLIVAN: Can the department tell us what the requirements are for the role? What are the qualifications that you're seeking?

Ms Angus: The appointment of the JSA director will be in line with the act and will also comply with the *Cabinet Handbook* and the APS Commission's Merit and Transparency policy requirements in terms of how the appointment will occur. It will also follow the approval by the Prime Minister or cabinet, as relevant. The qualifications, skills and experience that are expected from a JSA director include knowledge and experience to the minister's satisfaction in line with the act and the role of Jobs and Skills Australia.

Senator O'SULLIVAN: Minister Chisholm, you mentioned, in relation to the permanent model of JSA, that consultation is under way and you expect the legislation to be released early next year. What consultation has occurred?

Senator Chisholm: I'm happy for the department to give an update on that.

Ms N Williams: Quite significant consultation occurred in the first draft of the legislation. We spoke widely to a broad range of stakeholders, including the states and territories, around the Jobs and Skills Australia model

that currently exists within legislation. In terms of the next stage of development, to get the final model into place, we will be continuing that process of consultation. Certainly, what we heard and what we learnt from those discussions will be a really important consideration as we design the final model.

Senator O'SULLIVAN: Did you have to pause while the deliberations of parliament were going through for the legislation or was it ongoing?

Ms Angus: It was ongoing. We've continued to have discussions around a range of consultation mechanisms that we've used to inform the work that we're doing, and that include things like the legislative committee inquiry, the hearings and the submissions that were part of that, and roundtable discussions led by the minister feeding into the Jobs and Skills Summit. All in all, the Commonwealth has consulted and reviewed around 70 submissions from governments, business and unions to inform the program, the advice and the sorts of things that JSA might do, or just talking through the workforce planning and skills shortage issues more broadly. You would probably already be aware that the committee itself reviewed 55 written submissions and had 11 witnesses, including Ms Williams, to provide input and advice. So there's been a number of activities that have been undertaken over a period of time, and we continue to engage around people's thoughts and stakeholder views.

Senator O'SULLIVAN: And is the minister and his office involved in those consultations?

Ms Angus: The roundtables were led by the minister in terms of the consultations. Some of them, with our colleagues across the Commonwealth, we've had inter-departmentally, if you like. So there's been a mixture.

Senator O'SULLIVAN: What's the time frame for the new legislation? What are you aiming for?

Ms Angus: We're anticipating introducing the legislation in the autumn sittings.

Senator O'SULLIVAN: Ms Williams, you were with the department when the former government was implementing the recommendations of the Joyce review, as I recall. Can you please go into how the National Skills Commission model was informed by that review?

Ms N Williams: The Joyce review had a range of recommendations, as you'd be aware, Senator, and the establishment of an evidence or a database body such as the National Skills Commission was one of those recommendations.

Senator O'SULLIVAN: I think most of us here sat through the inquiry into the new body and stakeholders, by and large, mostly supported it. But one of the things that I struggle to really understand clearly is: what is the difference between the two bodies? How would you describe that difference?

Ms N Williams: I think one of the key lessons from the National Skills Commission model, and certainly one of the lessons over the last couple of years, has been that one of the real gaps in the national data and evidence base that exists or has existed is the availability of broad workforce planning data, both at a national level and also at an industry level. And also that sort of data at a cohort level. So better understanding, for example, the workforce impacts for women, or for different cohorts of society. That workforce component is a really strong feature of the new Jobs and Skills Australia model. It will be really fundamental to tackling some of the real significant economic challenges that we have at present and particularly the skills shortages within the economy. It is going to be crucial, when it comes to some of those big areas of transition that we are seeing emerge. One of the first pieces of work that Jobs and Skills Australia will undertake will be the clean energy capacity study, and that capacity study really goes to that workforce function.

The other key difference around Jobs and Skills Australia is the intention behind the design. It will be a tripartite engagement model that will have a much wider and deeper reach into the sector, and its work will be informed by a deep sectoral engagement across all parts of the skills system. As I was saying earlier, the skills system is very much a shared model. It's shared not just between governments—between the Commonwealth, states and territories—but also with employers, unions and a whole raft of delivery experts. Being able to bring that expertise and knowledge into the work of Jobs and Skills Australia is going to be really fundamental and important way for how the organisation goes forward.

Senator O'SULLIVAN: You're searching at the moment for an interim commissioner—is the job description for the commissioner likely to be different from the interim? Is their role informed by the consultations that you're undergoing right now?

Ms N Williams: We would expect that individual to have good, broad experience in both the VET and the higher education sector. This is a tertiary model—it's agnostic, in some ways, to the delivery mechanism. We expect a level of expertise in the sorts of work that the organisation will be doing around economic modelling and workforce planning, but also the capacity to do that outreach and that engagement that I discussed. It is an interim position—it is a position that that is in place until the full model comes into play. We would then expect to go

through a process of selecting the final commissioner, the person that is in charge. This is only an interim role. It's a very important role; it's going to be fundamental in establishing the entity and turning Jobs and Skills Australia towards the critical set of work plans in place; in determining what the work program needs to look like in the future; and in getting started on that critical clean energy capacity study and some of the other work that it will be working on. It's going to be an important role, and we will be looking for someone who has the ability to lead the organisation through that complexity.

Senator O'SULLIVAN: It sounds like you need someone with a bit of a combination of that CEO and management experience but with that specific labour-market understanding, particularly during the period of change; is that right?

Ms N Williams: Without pre-empting the process of selection and the like, it is certainly going to be an important role during an important transition period for the organisation.

Senator O'SULLIVAN: Some of the key roles that we've discussed—and that we went through when we were examining the legislation—one that comes out is developing the skills priority list. While we're in this transitional phase, that's an ongoing role—is that still being developed and is there any distraction from that work?

Ms N Williams: There are a number of pieces of work that you'd be familiar with that the National Skills Commission has had carriage of those over the last couple of years. Those are all critical and important pieces of work that will continue. That piece of work is a really fundamental one that we will look to continue.

Senator O'SULLIVAN: One of the outcomes of the Jobs and Skills Summit that we saw was that the Jobs and Skills Australia will have an analysis of skills shortages and set priorities for the skill migration program. Has that work already commenced, or is that waiting?

Ms Angus: The National Skills Commission, as it becomes JSA, will continue to engage very closely with Home Affairs around migration issues, and in providing support and input into that sort of work. The migration review is being conducted by Home Affairs—I'm sure you are aware of that. Part of that role will be to look at the various inputs they use, how they are best used and how they are most fit for purpose. We will provide support to that review process, and we will continue to work closely with JSA once it is established.

Senator O'SULLIVAN: The new body hasn't been established yet. Is anyone working on that?

Ms Angus: There's an existing role where we provide support to the home affairs department around those issues. That is continuing and ongoing.

Senator O'SULLIVAN: Can I ask about the industry training hubs, please? My understanding is that they're being cut—there's no more funding for the industry training hubs. Is that correct?

Ms Sharp: There was a save taken from the industry training hub program budget for 2022-23, but there is funding still in the program. The government reduced the administered budget for the training hub by \$9 million as part of the October 2022-23 budget process. That reduced the administered budget from \$16.735 million for the year to \$7.735 million. There is a departmental component, so the total budget for the industry training hubs for this year is \$8.388 million.

Senator O'SULLIVAN: That was a program aimed at youth. What programs are replacing that?

Ms Sharp: The program is still running, and our judgement is that there is sufficient funding within the program that remains to fully run it as it was running, if not more activity than there was in previous years.

Senator Chisholm: My understanding is that it's more a realignment about what the expected expenditure would have been, so the program continues on and there's enough funding for it to run.

Senator O'SULLIVAN: So time frames haven't changed?

Ms Sharp: No, not at all.

Senator O'SULLIVAN: How much was the save?

Ms Sharp: \$9 million. Last financial year the program spent \$3.387 million in that administered budget. There is for this financial year \$7.35 million available. So there's some headroom on what we spent last year remaining in the project budget.

Ms N Williams: I think we provided some evidence on the training hubs previously. They are pilots. As we've worked through the pilot it's become increasingly clear that the model is less resource-intensive than anticipated when originally designed. As Ms Sharp said, we're confident that we can deliver the activities the hubs have been contracted to deliver within that smaller budget envelope.

Senator O'SULLIVAN: So the government is committed to retaining the hubs beyond the pilot phase?

Ms N Williams: The hubs remain funded for the length of the pilot program.

Senator O'SULLIVAN: Minister, beyond the pilot program, can we expect to see funding?

Senator Chisholm: No decision has been made. We accepted the realignment, but no decision has been made on the future funding.

Ms N Williams: As you would expect, with a pilot program, we will be conducting a full evaluation of the model. That will tell us something about how useful it has been in achieving the outcomes. That's perfectly appropriate with a pilot.

Senator O'SULLIVAN: Absolutely. Can I ask about the VET-FEE HELP debt recovery? When did the department become aware that the ATO had been raising historical VET student training debts?

Ms N Williams: Maybe I could just take us back a little bit. The department first became aware of these historical debts shortly after 2 and 3 August. These are debts that had been sitting pending in the department's IT system. They are not debts that had been raised by the ATO. They are loans, or records of loans, that the department transferred to the ATO and had then become apparent within the ATO system.

Senator O'SULLIVAN: But some of them are quite historical.

Ms N Williams: The records that have been transferred to the ATO relate to loans that were taken out by students between 2017 and 2022. The majority of these loan records relate to study that students undertook in 2017.

Senator O'SULLIVAN: What was the IT glitch that we're seeing reported?

Ms N Williams: There was an update to the IT system. Like I said, these were loan records that were sitting in the department's IT system as 'pending'. When this update occurred, those loans went from pending within the IT system to being transferred over to the ATO. I might ask Ms Livingston to provide a bit more detail on that point.

Ms Livingston: To add to what Ms Williams said, there was an update made to our system in July this year, which was done to recognise that our student loan records that related to training undertaken prior to 2021 did not need to contain certain information that wasn't mandatory at the time. The unexpected result of that update was, as Ms Williams has explained, the transfer of records that were pending in our system to the ATO.

Senator O'SULLIVAN: Did the department put out a media release on this, or did it only send notices to the individuals?

Ms N Williams: As you'd appreciate, our first priority was to ensure that the students themselves, or the former students, were appropriately informed and understood what had occurred and what steps the department was taking. So we provided information on our website fairly immediately, on 2 September. We set out information on the issue and advised them that the department would be contacting them and directing them to an online inquiry form. We then went through a process of issuing correspondence by both email and letter to each individual student, which provided them with further information over essentially a nine-day period, and then we followed that up where necessary with phone calls to some students.

Senator O'SULLIVAN: Was any public communication option ever considered?

Ms N Williams: We placed that information on our website. That's correct. That was absolutely the case.

Senator O'SULLIVAN: If you put something on your website, does that get pushed out as a release to media, or does someone have to be proactively going to your website to find out what's going on?

Ms N Williams: It is available publicly on the website. Then, as I said, we were very active in ensuring that individual students were contacted as soon as possible, and we went through a raft of channels to do that, via both email and snail mail. In the event that people's emails change et cetera, it's useful to use both mechanisms. So we were very active in moving pretty rapidly forward on that. Our highest priority obviously was to ensure that the students were contacted, if they were seeing these loans appear on their ATO record, that they understood what they were and that they understood what they were able to do in response to that, who they could contact and that their department was looking into this matter.

Senator O'SULLIVAN: Was the risk of historical debts being issued known?

Ms N Williams: The existence of the historical records within our system was a matter that we were made aware of when students contacted us. This was the first instance we became fully aware of it. Subsequent to this the department has commissioned an external review of this situation so we can better understand what occurred. We're looking to see why these historical loans were marked as pending within our ITS and not sent to the ATO in a timely manner as we would expect. We're examining the full raft of technical and other elements that would sit around that.

Senator O'SULLIVAN: Was the minister's office made aware?

Ms N Williams: Certainly, as soon as we were aware we were concerned to ensure the office and the minister were aware as soon as possible.

Senator O'SULLIVAN: What date was that?

Ms N Williams: I wouldn't be sure about that. Ms Livingston, do you have any detail?

Senator O'SULLIVAN: It wasn't today, though.

Ms Livingston: We first became aware of the transfer of those pending loan records to the ATO on 9 August, and we provided briefing to the Minister on 24 August.

Senator O'SULLIVAN: Did the minister have anything to say about it publicly at that point?

Ms Livingston: As Ms Williams has advised, we did put information up on our website as quickly as we could and as soon as we were able to ascertain the full extent of the issue. It was a particular priority for us to also understand what the impact was for students. There was a lot of work that needed to happen, particularly in partnership with the ATO, so we could see from a student perspective what was turning up in their account. So yes, certainly from our perspective that was a key priority, to make sure that that information was readily available as quickly as we could on the website. Then as soon as we were able to contact students individually we provided the same information to them as well.

Senator O'SULLIVAN: The minister was made aware on 24 August, but it was only today, 9 November, that the minister put out a media release on the matter. My understanding is that that has come as a result of media inquiries to the minister. Was there any other explanation? Why is the minister only putting out a media release on this today, when he was made aware on 24 August?

Senator Chisholm: As you've heard from the department, there was a thorough process going on in terms of how the department handled it. They put information on the website. You can't get any more public than that, I would have thought. The minister made an announcement today because there was some details around waiving the indexation of those debts, which I think is an appropriate thing to do. That's why the minister made the announcement as he did.

Senator O'SULLIVAN: When was the decision made to waive the debt?

Senator Chisholm: I would have to take that on notice and come back to you. But I know the announcement was made today.

Senator O'SULLIVAN: Why are you extending the scheme for a year?

Ms N Williams: That is the redress scheme that is being extended. The VET FEE-HELP student redress scheme was due to end at the end of this calendar year. The government has made a decision to extend the scheme, should students require access to it as a result of these historical debts appearing within their ATO records.

Senator O'SULLIVAN: Was that funded in the budget?

Ms N Williams: Funding will be made available for that, so yes.

Senator O'SULLIVAN: How much will it cost?

Ms N Williams: We are still working through the finer details of that, but funding will be available for it.

Ms Livingston: We're still working through the costings with the Department of Finance, but, as Ms Williams said, the funding will be provided.

Senator O'SULLIVAN: How many remaining debts does the government believe remain out there?

Ms N Williams: We have done a thorough examination of our systems and we have undertaken quite a deep reconciliation process. As a result of that process, there are a further 26,000 debts or thereabouts—Ms Livingston may wish to confirm that—pending within the system. That's in addition to those that have been transferred to the ATO. Those are debts that date from around 2009 to the present.

Senator O'SULLIVAN: Ms Williams, when did the minister's office ask you to brief them on providing the waiver?

Ms N Williams: We would have briefed proactively. I'm not sure that we would have been asked specifically to brief on this, but I will have to take on notice exactly when we provided that briefing.

Senator O'SULLIVAN: Minister, are you comfortable with this level of transparency?

Senator Chisholm: Are you serious? You are going down this path?

Senator O'SULLIVAN: The issue became known on 24 August, a brief has been provided on how individuals would have the waiver on the indexation—that would have been provided at some point, and we'll get that on notice. Yet, after a media inquiry, there is suddenly a media release. It just seems that there is only ever transparency when there is a bit of scrutiny.

Senator Chisholm: That is just complete nonsense. The department identified a problem, the minister was alerted and he asked the department to treat it urgently, which they have done. I think you'd agree that they've been thorough in their investigation—

Senator O'SULLIVAN: I have no doubt about the work of the department—

Senator Chisholm: that they provided to us today. The minister made his announcement, and the reality is we are cleaning up the mess—another mess—that occurred under your government. That's when this occurred—under your government.

Senator O'SULLIVAN: We heard that the IT glitch happened in July.

Senator Chisholm: No, it started much earlier than that but you never picked up on it. That is the reality: most of these debts were incurred under your government.

Senator O'SULLIVAN: Debts can be incurred, that's correct, but the handling of it is what's important here. I have no doubt about the professionalism of the department, their timeliness and their proactivity. I have seen that exemplified many times, and I want to be clear that I'm not questioning them at all. It just seems a little strange that we have estimates and, all of a sudden, there's a media release. It just seems quite cute and convenient.

Senator Chisholm: You can engage in conspiracy theories if you want. I think you have a thorough explanation, and a minister that acted appropriately.

Senator BARBARA POCOCK: I'm conscious that I stand between this room and dinner, so I will try not to take too long, but I have some questions about employment programs that pick up on some questions on notice that I placed through the Select Committee on Work and Care. I'm really keen to hear about these employment programs, because when they're done right they can change lives. I want to focus on evaluation of programs and what your leadership team and the minister see as proper evaluation. These are programs run by the previous government, so I just want to hear your response to this.

The Mid-Career Checkpoint pilot is a program that—as I understand it—ran over two years at a value about \$56 million. It commenced in mid-2020 and I understand it has assisted about 1,584 people. That's not a lot of people to have been assisted for a very sizeable spend—\$56 million and 1,500 people. That's the first case I wanted to put before you and hear your reflections about.

The second one I wanted to draw your attention to is something called Career Revive, which the question on notice said assisted 58 businesses. The Career Revive program was actually run by KPMG, according to the answer I received. I'm very curious as to why a large consulting program is running a labour program, which I would see as a mainstream government business. I don't know the value of that program, but I'd like to know. It assisted 43 mainly large businesses. I'm curious about what the evaluation on that tells us and how much money was spent on it. It's a small number of large businesses to be assisted, in total 58. I'm interested in your comment on KPMG actually running a mainstream Labor program. The third one I'm curious to hear about is the Local Jobs Program, which was allocated \$62 million over two years. That's a lot of money in my world—in all of our worlds.

In the question on notice on evaluation, I want to read the evaluation, 'an analysis commissioned by the department in April 2021 found the collaborative nature of the program resulted in outcomes frequently being achieved indirectly through other programs and hidden to employment facilitators. As the focus of the Local Jobs Program is to improve the effectiveness of other local programs and regional supports, quantifying the effectiveness of the program is particularly challenging.' We're talking about over \$60 million here.

Then the evaluation goes on to say, 'Between January and August 2022 the employment facilitators reported details of more than 500 meetings.' My arithmetic is poor, but 500 meetings for \$62 million is \$125,000 per meeting. I want your reflections on the amount of expenditure in the Career Revive program so we can make an evaluation about that. I also want your view about value for money here and your view about a large consulting company contributing the whole of the program. Then, what is your commitment about future evaluation? I see this as a lot of public money with very limited outcomes and no systematic, in-depth review for large programs.

Ms James: I'm going to ask the team at the table to talk through the Mid-Career Checkpoint piece. That was a budget measure. As you say, it was impacted by low take-up of the program. That is the responsibility of this outcome, skills outcomes. Unfortunately, the other two programs sit within the employment part of our

department and the people who are relevant to that were here yesterday, not today. I'm going to have a look at what I have with me and see what I can give you.

Senator BARBARA POCOCK: Or could you take those on notice?

Ms James: I think I would like to take the substance of it on notice because your questions go to both the nature of the programs themselves and the nature of the evaluation. I know that our officers would be able to give you some detail about that so let's take those ones on notice and deal with the Mid-Career Checkpoint one.

Senator BARBARA POCOCK: Thank you, Ms James.

Ms Sharp: Mid-Career Checkpoint was a program announced, as part of the women's economic statement, in the 2019-20 budget. It rolled out on 1 July 2020, right in the middle of COVID. Just to be clear, we certainly haven't spent \$56 million on the program.

Senator BARBARA POCOCK: Good to hear.

Ms Sharp: To date, since the program commenced, the total expenditure on that program has been \$7,121,992, GST exclusive, since it launched. The figure you referred to—the \$56 million figure—is the saving. The government decided not to continue that program, as part of the October budget. It was running as a pilot. The pilot was due to end on 31 December 2022. It was due to move into a national rollout. But due to the low take-up the decision was taken that we wouldn't proceed with that model and instead that money would be set aside. We have been tasked with designing a new program to support more women into higher paying VET careers. That money is not going to continue rolling out through the Mid-Career Checkpoint after 31 December.

Senator BARBARA POCOCK: Thank you very much.

Senator Chisholm: [inaudible] an assurance that there will be consultation on that as well.

Senator BARBARA POCOCK: Terrific. Thanks, Minister.

CHAIR: There is a very brief question by Senator Payman.

Senator PAYMAN: It's just a yes or a no. It's just a point of clarification about my earlier question about the savings from foundation skills between 2014 to 2018. Can I confirm that that's a total of about \$428 million?

Ms N Williams: Yes. The programs that I walked you through, Senator, total over \$428.9 million in saves, yes.

Senator PAYMAN: That is half a billion dollars of cuts to a very significant program. That's all. Thank you, Chair.

CHAIR: Thank you very much for your time and answering questions tonight.

Proceedings suspended from 19:15 to 20:14

EDUCATION PORTFOLIO**In Attendance**

Senator Chisholm, Assistant Minister for Education and Assistant Minister for Regional Development

Department of Education

Dr Michele Bruniges, Secretary

Corporate and Enabling Services**Cross-Portfolio Matters**

Mr Marcus Markovic, Deputy Secretary

Mr David Pattie, First Assistant Secretary

Ms Gemma Smith, Assistant Secretary

Mr Craig Boyd, First Assistant Secretary

Mr Adi Smith, Assistant Secretary

Early Childhood and Youth

Mr Brenton Philp, Deputy Secretary

Mr Tristan Reed, First Assistant Secretary

Mrs Anne Twyman, First Assistant Secretary

Ms Michele Arcaro, Assistant Secretary

Ms Jacinda Still, Assistant Secretary

Schools

Dr Ros Baxter, Deputy Secretary

Ms Julie Birmingham, First Assistant Secretary

Mr Pablo Carpay, First Assistant Secretary

Mr Fabian Harding, First Assistant Secretary

Mr Bruce Edwards, Assistant Secretary

Ms Rachel O'Connor, Assistant Secretary

Mr Felix Donovan, Assistant Secretary

Ms Jessica Mohr, Assistant Secretary

Higher education international and research

Mr Tony Cook, Deputy Secretary

Ms Kelly Pearce, First Assistant Secretary

Mr Dom English, First Assistant Secretary

Ms Karen Sandercock, First Assistant Secretary

Ms Kate Chipperfield, Assistant Secretary

Mr Damian Coburn, Assistant Secretary

Mr Nicholas Post, Assistant Secretary

Portfolio Entities**Australian Curriculum Assessment and Reporting Authority**

Mr David De Carvalho, Chief Executive Officer

Ms Sharon Foster, Executive Director, Curriculum

Mr Russell Dyer, Executive Director, Assessment and Reporting

Australian Institute For Teaching and School Leadership

Mr Mark, Grant, Chief Executive Officer

Mr Edmund Misson, Deputy Chief Executive Officer

Ms Lisa Molloy, General Counsel and Company Secretary

Australian Research Council

Ms Judi Zielke, Chief Executive Officer
 Dr Richard Johnson, Deputy Chief Executive Officer
 Ms Sarah Howard, Branch Manager
 Dr Mel Southwell-lee, Branch Manager

Tertiary Education Quality And Standards Agency

Emeritus Professor Peter Coaldrake, Chief Commissioner
 Mr Alistair Maclean, Chief Executive Officer
 Mr Nicholas Riordan, General Counsel

Department of Education

CHAIR: I welcome back the Hon Anthony Chisholm, Assistant Minister for Education and Assistant Minister for Regional Development representing the Minister for Education. I welcome representatives from the Department of Education, including the secretary, Dr Michele Bruniges. Minister Chisholm, do you wish to make an opening statement?

Senator Chisholm: No thanks, Chair.

CHAIR: Secretary, would you like to make a statement?

Dr Bruniges: No.

Senator LIDDLE: My questions relate to understanding more about the ministerial responsibilities. I want to understand the roles and responsibilities of ministers Clare and Aly and Assistant Minister Chisholm.

Dr Bruniges: The education portfolio has three ministers. The Hon Jason Clare MP is the senior minister in the portfolio and a member of cabinet. His role as Minister for Education encompasses school education policy and programs, higher education, international education, research policy and programs. In early childhood education and care, Minister Clare's role is around the cheaper childcare plan, changes to the childcare subsidy, which was the election commitment; the CCS program administration including financial integrity; inquiries by the Australian Competition and Consumer Commission and the Productivity Commission into the childcare system; implementation of the early childhood transparency measures, which were an election commitment.

The Hon Dr Anne Aly MP is the Minister for Early Childhood Education and the Minister for Youth. Her role encompasses early childhood education and care policy and programs, excluding the CCS that we've spoken about. Minister Aly looks after the National Quality Framework, the Preschool Reform Agreement with states and territories, early childhood education and care, and Closing the Gap targets. She works very closely with the Minister for Social Services, the Hon Amanda Rishworth MP, to develop the early years strategy. That's a combination between portfolios. Minister Aly also looks after the youth engagement model and the Office for Youth and is lead for early childhood related matters at education ministers meeting, noting that Minister Clare is the chair. Minister Aly works closely with Minister Clare on the Preschool Reform Agreement, the early years strategy. Both ministers work closely around early childhood education and care workforce. So there's a combination of work there together.

Senator the Hon Anthony Chisholm, who is with us tonight, is Assistant Minister for Education. He assists Minister Clare on regional education and all things that cross regional education across the education portfolio.

Senator LIDDLE: I just want to understand this clearly. So Minister Clare is the senior minister as the cabinet minister, then there is Minister Aly and then there's Assistant Minister Chisholm, who reports directly to Minister Clare. Is that right?

Dr Bruniges: That's right, as Assistant Minister for Education.

Senator LIDDLE: Does Assistant Minister Chisholm have delegated responsibilities from Minister Clare or Minister Aly or both? It will be handy before we go to that—do you have a breakdown or a chart or something that has all those?

Senator Chisholm: No, just for Minister Clare.

Senator LIDDLE: Which minister has the final say on the administration of the department?

Dr Bruniges: The senior minister for the portfolio. Normally we would work closely with the senior minister in any structural situation.

Senator LIDDLE: Who is responsible for legislation? Or is that delegated based on those listed portfolio responsibilities that you explained?

Dr Bruniges: It can be delegated. The legislation on early childhood, the cheaper childcare plan, sits with Minister Clare but in close consultation with Minister Aly.

Senator LIDDLE: I haven't seen Minister Aly around recently. Why did she not introduce the legislation, given her role in child care?

Dr Bruniges: That would be a question for the minister, I guess. Those things can change. To be frank, over the experience I've had, often the senior minister—often there will be letters of expectation; there will be charter letters written; there will be a series of responsibilities that may vary during this year. Minister Aly, I can assure you, has been very closely involved, but Minister Clare would take the major carriage as the senior minister, the cabinet minister for the portfolio on legislation.

Senator Chisholm: I think the relevant thing to add to that is that obviously it was a real centrepiece of our election campaign and a significant achievement for us. It would have been appropriate for Minister Clare, as senior minister, will to be the one introducing.

Senator LIDDLE: So as the female minister responsible for child care, we will probably see more of her?

Senator Chisholm: I've seen lots of her around. It's very hard to miss Minister Aly. When she's around you know it—a very bright personality but also very capable as well.

Dr Bruniges: To reassure you, I've done a number of roundtables in Perth with Minister Aly in the child care area. Certainly in terms of responsibilities and the work we've been doing around child care, I and the team in the early childhood area have been engaged on the Preschool Reform Agreement, and all the ministers in each of the states and territories who have portfolio responsibility for early childhood would be working closely with Minister Aly on the Preschool Reform Agreement.

Senator LIDDLE: Were all three ministers given identical briefs from the incoming government or different briefs?

Dr Bruniges: We had a general overview brief. If you remember, we had a machinery of government change as the government came in, so we provided the portfolio overview to each of the ministers, in terms of the responsibilities of early childhood, schools, youth and higher education. That would have gone to ministers: a general overview about who we were in the portfolio; things like copies of the previous annual report; the initiatives; the election commitments that the government have made—we would have provided that.

Senator O'SULLIVAN: Is it as conventional as you've made out that the minister with the title, the minister for child care, is not the one actually delivering, out there front-loading—

Senator Chisholm: It's more conventional than having a side-lined minister, like we did for six months under your government.

Senator O'SULLIVAN: So we have a minister for child care, but she's not the one fronting the legislation or the announcements? I have a lot of respect for Minister Aly; I'm not—

Senator Chisholm: Minister Aly has been doing exactly that. As I said before, it's obviously significant legislation. The senior minister, Minister Clare, introduced that bill. Minister Aly has been active, as the secretary has gone through, and will continue to be so.

Dr Bruniges: It's not unusual. The previous form of the portfolio had similar arrangements around education.

Senator O'SULLIVAN: One of the issues that I've noticed across various portfolio areas is that the budget papers seem to be very light on the detail of programs that are no longer continuing—for measures that are being surrendered. In the Education portfolio, I'm trying to understand what offsets the department provided against each budget measure.

Dr Bruniges: Are you referring to the measures within the October budget papers?

Senator O'SULLIVAN: Yes. What offsets are there against expenditure? So I'm talking about anything that has been surrendered—it's not really clear from Budget Paper No. 2.

Dr Bruniges: There are very few, I think, but I'll ask Mr Markovic to go through it for you and make sure that we address that question.

Mr Markovic: Can I just clarify that you're referring to the efficiencies in our portfolio budget statement on page 30. There's a single line item there, and you're asking us to explain what those savings are?

Senator O'SULLIVAN: Correct.

Mr Markovic: I'd probably draw your attention to Budget Paper No. 2, which provides an itemised list of all those savings measures. I'm happy to read that out if you'd like.

Senator O'SULLIVAN: Yes, please.

Mr Markovic: For the committee's reference, that's on page 92 of Budget Paper No. 2. There are four savings measures. The first one is a \$5.9 million partial reversal over four years of the respectful relationships component of the 2022-23 March budget measure. The second measure is \$2½ million over two years from 2022-23 from the partial reversal of the 2022-23 March budget measure titled School Education Support. The third measure is \$2.4 million over two years through the cessation of the budget measure titled Endeavour Language Teacher Fellowships. The final measure is \$600,000 in 2022-23 from the partial reversal of the 2020-21 budget measure titled National Partnership Agreement on Universal Access to Early Childhood Education. Those are spelt out, as I said, on page 92 of Budget Paper No. 2 and itemised there and then aggregated in our portfolio budget statements into a single line item.

Senator O'SULLIVAN: Are there any measures that are being reviewed at the moment, so they're not listed and are currently under consideration?

Mr Markovic: These are the measures that were reviewed in the lead-up to the budget that has just gone. The Department of Finance facilitated a process of reviewing measures, and these are the ones that were identified through that process. Obviously, in each budget round, there is a review of expenditure measures and new policy proposals, which is normal practice.

Senator O'SULLIVAN: Okay. Thank you.

CHAIR: Thank you to Corporate and Enabling Services.

[20:29]

CHAIR: We will now go to outcome 1, Early childhood and youth. Senator Davey.

Senator DAVEY: I've got several questions on the new measures, particularly the Child Care Subsidy Reforms Integrity Package. Budget Paper No. 2 says one of the integrity measures will be the removal of the cash fee payments as an option for gap fees. Does the department know how many centres currently accept cash as a payment option?

Mr Philp: On our analysis, less than three per cent of the sector accepts cash as a form of payment for the gap fees.

Mr Reed: We don't know how many services accept cash, but we know that it is less than three per cent; about 2½ per cent of payments are made by cash currently. And, if you exclude family day care, it drops to around one to 1.5 per cent of payments made by cash.

Senator DAVEY: Have you done any work to establish where cash is used? My concern is that cash is still used quite regularly in regional areas, where we're losing access to our bank branches, and even ATMs are getting removed. So, when people go to the regional centre and they visit the bank, they're withdrawing enough cash to get them through for the next fortnight, and that's how they're doing business, because they're not comfortable using credit cards or cards—they can't control their budgets that way. We've also got a lot of people in lower socioeconomic circumstances who operate the same way. When they know they've got cash in their wallet, they know how much they're spending, whereas, using a card, they're not as confident. Have you done any work to see who's going to be impacted the most from the removal of cash?

Mr Reed: We have consulted with services that are in regional and remote areas about this measure and the requirement to only allow electronic funds transfer. We have done some consultation, and the advice we've got is that the majority of people, even in those services, would still use electronic funds transfers. So I think the important thing to note is there are a range of ways people can pay electronically, so it's not just through direct debits or with their card. They can set up, with their bank, other ways to do it. People can pay via Centrepay or BPAY, so there are multiple ways people can do it; it's not just through payment with a card or a direct debit. The other thing to note is that there are going to be exemptions for exceptional circumstances, which we're consulting on now. So, if there are very genuine reasons why people couldn't pay via electronic means and the integrity safeguards that this measure provides would not be jeopardised, there'll be provisions for us to make exemptions. That will be either at a service level, if there are remote services where there may not be the infrastructure or technology to enable electronic payment of the gap fee, or if there are individual circumstances, and then there are provisions in the legislation to exempt those people or services.

Senator DAVEY: The budget papers claim that this, amongst other measures, will claw back around \$34.3 million in this financial year alone. How are those savings going to be made? Is there that level of fraud through cash services? Have you got that data that backs up that claim?

Mr Reed: We do. We have an independent organisation that essentially verifies payment accuracy for us, which is the percentage of payments that are made based on the policy and per the legislation. We know that the most significant part of payments lost to fraud and noncompliance is as a result of the nonpayment of gap fees, and it's very difficult to audit the nonpayment of gap fees when we allow services to accept cash payments. So there is quite strong base to show that requiring gap fees to be paid electronically will have a significant and disruptive impact on fraudulent practices.

Senator DAVEY: The item also mentions that savings from this measure will be redirected under other government policy priorities. Can you confirm that those priorities will be back in the early learning sector? I've heard in other estimates with other departments that savings are going back into general revenue.

Mr Reed: Where funding is directed is a decision for government, but I would say that the savings from this measure do not outweigh the cost of the new spending in early education and care in this budget. It is a fairly small amount of the additional funding going into early education and care, but that's probably a decision for government around where savings go.

Senator DAVEY: I'm not confident. I'm also very interested in some of that new spending and the new support that is being provided for parents. What level of engagement did the department have in developing that policy? Was any research done into the impact and effects that additional financial support for parents will have on access to childcare places?

Dr Bruniges: Are you referring to the election commitment for cheaper child care?

Senator DAVEY: Yes.

Dr Bruniges: That was an election commitment of government. We would have had no input in that government election—the government went to the election with that commitment.

Senator DAVEY: But since the government has been elected has anyone come to the department to say, 'We've got this great idea and we're going to increase support for families to access child care, but has anyone looked at what actual impact that will have on the ability to access child care?'

Dr Bruniges: I think there's probably a range of researchers who've done a lot of work. There's Grattan research. There's Chief Executive Women, who are very much on the public record with their research about the positive impact it will have on women's workforce participation—they have done research. Some of that has been post-election and some of that was clearly pre-election.

We've looked at that research as we've been working through the election commitment. It's highly valuable and, I think, probably pretty fundamental to a whole range of things, not only the individual children who access childcare benefit but also women's workforce participation and the social and emotional growth of students who attend early child care.

I think the evidence is very, very clear. That is just from a number of organisations, but there are also individual researchers who've worked in the field of early childhood development.

Senator DAVEY: I take your point, Dr Bruniges, and I accept that the policy is good for women and encouraging of female workforce participation—absolutely. But as I'm travelling around the regions I hear things like 'child care drought' in regional areas. I'm talking to regional childcare centres and they're saying, 'We've got a waiting list of 200,' in a town with a population of only 7,000. They're saying: 'We are capped by the places we can offer. We don't have staff.' All of a sudden, we're going to be encouraging more women into the workforce. They can't get access. What work has been done to address the access issue?

Dr Bruniges: I misunderstood your question, sorry. I went to the policy development. I think it was the Grattan report that referred to childcare deserts. That was a significant one that we saw pre-election. But we in the department are working very hard to look at a regional level in particular—to have a look at what provisions are in regional areas, at what the population growth might be for zero- to-five-year-olds and at what training provisions are in those areas. We're going through the due diligence of trying to identify. We're working with some of the providers and their data very closely, because they're clearly on the ground. As you rightly point out, some of those providers will tell you they have long waiting lists. We're looking at the provision of services—not only centre based care and long day care but also family day care—and what we can do to facilitate greater access in some of those areas that you are clearly having a close conversation about.

Senator DAVEY: There is evidence that there is more incentive for providers, particularly trained providers, to operate in advantaged areas where they can charge higher fees, where there is greater competition, and where there is a greater population and more stability of service. This really impacts on disadvantaged areas with lower

levels of childcare accessibility. Is there any work being done within the department and with government to try to address those instances, as opposed to just addressing the 'getting women into the workforce' side of it?

Dr Bruniges: Of course. We know from the research and from the data that those students who are disadvantaged probably have the most to gain from access to early childhood education. I might ask the team to go through some of the programs that we've got in place and are looking to facilitate.

Mr Philp: The comment you made about metropolitan areas being more advantaged than regional areas is true in part. We also know that in some metropolitan areas there are increasing rents. We're also hearing of staff being unable to afford accommodation and other things in those areas. So there are trade-offs with some of those things.

In terms of the programs that we have, there is the Community Child Care Fund. There are about 900 services in thin markets, predominantly in rural and regional areas, that we support with that fund to continue those services. There is an ongoing measure from the May budget for about \$29 million to continue to support further services through that fund, particularly in disadvantaged rural and regional areas, and to ensure that access to market is available. That is in addition to all the workforce activity. It's one thing to have the infrastructure, but it's another thing to ensure that the workforce is present as well.

Within that workforce space, there are those measures that the government is continuing from previously—including the workforce strategy agreed with the states and territories in the sector—and then a range of further additional items like fee-free TAFE and VET programs and the 1,400 Commonwealth supported places that are being provided. That's in addition to supporting things like the minimum wage case, which has caused an uplift in wages in the sector for about 113,000 early childhood educators. We're alive to that issue, and there are a number of ways in which we are dealing with that and trying to bring that to bear.

Senator DAVEY: When it comes to workforce, as you quite rightly point out, it's not just an issue for early child care but also a broader issue. I've also had it put to me—and I'd be interested in whether the department has had similar feedback—that states like New South Wales have now adopted a policy to have an extra year of early childhood education as part of the school, but that early childhood teachers get paid more through a state school than they do at a childcare centre. Has that come up, and is that feeding into the considerations?

Dr Bruniges: Those are really important points that you raise. For example, under some education acts, preschool is included. Here in the ACT, it's P-10, for example, where preschool is a part of the schooling system. In other jurisdictions such as New South Wales, long day care, as I'm sure you are aware, is quite a big element, and they use a resource allocation model that funds on need, factoring in a disadvantage component. In Western Australia, they also attach preschools to schools—I'm sure Senator O'Sullivan will be aware of that. There is a preschool attached to a range of schools in WA to facilitate that continuity of learning. Those access points are really important.

In terms of the pay and conditions that you raise: where it comes to fully qualified teachers, they will be on an enterprise agreement that goes to teacher salary in the school setting, struck under industrial relations in the school setting. For early childhood teachers, there is a differential there, so we tend to get the drain. That's part of the rationale as to why some states have put preschools into their education acts, to try to get parity of salaries for those fully qualified early childhood teachers who can work in both sectors.

Senator DAVEY: Coming back to the family support policy, have you done any modelling on what impact that may have on the workforce, particularly when we're talking about getting more women into that workforce, when we've got a workforce shortage in early childhood? And how are we going to address that?

Dr Bruniges: We've got some pleasing results coming through the system. We know that in 2020 we had 13,589 students enrolled in early childhood teacher bachelor and sub-bachelor programs at Australian universities and other providers, such as TAFE—remembering that there are dual providers now, where TAFEs are offering university degrees and universities that are dual providers also offer diplomas and so forth. We have, in early childhood teaching programs, an increase of 19.4 per cent, to 16,224 students, in 2021. So we're seeing an increase in the number of people going into training for early childhood. In 2020 there were 99,975 students enrolled in early childhood education qualifications within the VET sector.

At this point we're monitoring that really closely in terms of the training, but some of those numbers look impressive. In fact, in VET early childhood, qualifications increased by 14.4 per cent, to 114,355 students, in 2021. So we're seeing a year-on-year increase. There'll be a lag effect, because those qualifications can be two years and so forth. Some can be up to four years, for a bachelor degree. But that is promising data coming through on workforce in early childhood.

Senator DAVEY: Are we doing any monitoring of where those students end up? The other thing that was raised with me at a regional childcare centre was that, because of the ratios that they now have to abide by—

they've got three people in one of the rooms for under-twos, say—they all have to be qualified; they can't have one as a trainee going through the system. So they feel that they're missing out on opportunities for attracting people into the system, because people have to pre-train, but they're in a regional area where they have to go away to do the training and they don't bother coming back. So is any work being done to address that and to look at ways that we can train in situ, on location, and to try to beef up particularly our regional workforce, where they're struggling to get people?

Dr Bruniges: Again, that's a big question. I think one of the avenues government has taken is to invest in microcredentials, which are online, in the early childhood area—short courses in universities and, in the VET sector, the concept of getting microcredentials whereby you can upskill from one level to the next by stacking microcredentials. That is a really important initiative. Do we know some of the answers to that? It's early days yet, in looking at some of those courses. I might also say that we're probably on the residual tail end of JobTrainer and what that put in place in terms of the courses, and early childhood had a really good take-up. Some of those qualifications that were out in JobTrainer go across the care sector. Looking at infection control, that would be a microcredential that could be used in disability care, aged care or child care. So you can get a pattern of things happening whereby people can upskill qualifications through microcredentials.

Senator DAVEY: I have one last question, because it's so relevant to what we were talking about just before. It would be good if that JobTrainer package carried on under the new fee-free TAFE courses that are being offered. We hope that's being heard by the minister who's listening. You can rotate the call, Chair.

CHAIR: Thank you. Senator Grogan.

Senator GROGAN: Has the availability of childhood education places plummeted in the regional areas in the last five months?

Mr Philp: No.

Senator GROGAN: Has the balance of the availability of places between regional and metro areas changed markedly in those five months?

Mr Philp: Not that I'm aware of—outside of closures because of floods and natural emergencies. No.

Senator GROGAN: So, the issue we're seeing in terms of availability of places is something that has been going on for a few years. Many years? Ten years?

Dr Bruniges: Yes. It'd be fair to say that there have probably been skill needs and workforce shortages in a number of areas—including child care—over at least the last five years.

Senator GROGAN: How much has the cost of early childhood education gone up in the last eight years?

Mr Philp: By recollection, it was about 41 per cent.

Senator GROGAN: So it has increased by 41 per cent in that time?

Mr Philp: That's right.

Senator GROGAN: That's enormous. How many people—and I believe the ABS has some stats on this—are not looking for work because they cannot make the childcare payments?

Mr Reed: The last ABS survey was the Participation Job Search and Mobility survey. It was 73,000 people.

Senator GROGAN: So 73,000 people are not looking for work because of the cost of early childhood education.

Mr Reed: Yes, based on that survey.

Senator GROGAN: That's huge. Obviously, we've got skills shortages all over the place, so having those 73,000 people in work would be highly beneficial for us as a country—economically, not to mention the advantages for their families. We keep hearing that people who have maybe got three days where they have their children in education and care would lose between 80 and 100 per cent by taking a fourth or a fifth day. Is that about the pattern of subsidy?

Mr Reed: It depends. Are talking about the workforce disincentive rates.

Senator GROGAN: Yes.

Mr Reed: It varies based on family circumstances. It varies based on whether you're a sole parent or a dual-income family, and on your income levels, particularly if you're earning under \$100,000 and you have welfare payments, for instance, that taper off. Welfare disincentive rates can definitely be that high at 0.8 to one per cent, and even higher in some circumstances, particularly when there are multiplying effects like childcare fees, welfare payments and then tax on top of that.

Senator GROGAN: So you've got many levers moving at the same time.

Mr Reed: Yes.

Senator GROGAN: Of the 73,000, are they overwhelmingly women? That would be my assumption.

Mr Reed: That would be right. I don't know whether I've got stats on that.

Dr Bruniges: We can see if we've got a breakdown somewhere in the ABS data. We can check for you.

Mr Reed: We would imagine that's probably correct.

Senator GROGAN: That would be great, thank you—really appreciated. Are you aware of how many of those women work part time? What's the part-time rate for women in work?

Dr Bruniges: It's a relatively high percentage, I think, if they're in the workforce—

Senator GROGAN: I'll take 'relatively high'.

Dr Bruniges: I think it's relatively high, but if I can take it on notice—

Senator GROGAN: Maybe you should just pop it on notice—that would be lovely. Treasury's workforce participation modelling found the impact of Labor's policy on making early childhood care and education more affordable. Was that same modelling used—you may or may not know this—for the higher childcare subsidy that was a policy of the previous government?

Mr Philp: Yes.

Senator GROGAN: Were we all working off the same numbers, is what I really want to know?

Mr Philp: They were the same assumptions.

Senator GROGAN: Good. From what I've heard, we know that this policy of cheaper child care—or as we like to say, cheaper childhood education and care—is good for families, good for the economy and good for women. What about the children? What's the impact on children?

Dr Bruniges: Substantial. I think the research evidence would be substantial about those who access. In fact, I think we have some data—even NAPLAN—of those children who access and how far they're advanced on entry to school in terms of access.

Mr Philp: That's right.

Dr Bruniges: I'm sure the team has a lot. But, in terms of education, there's no doubt that social and cognitive outcomes for students who interact with other children in those early years—there's a whole lot of worldwide research that would confirm that having that access will increase a whole lot of skills, growth in cognition, language acquisition, executive functioning, a whole range of things around that area. But I think the team has some research that we have here in Australia.

Mr Philp: We know children who attend a quality preschool program, for example, are three to six months ahead of their peers when it comes to grade 3 under the NAPLAN results. Typically the children who get the most benefit out of this are those who come from a place of disadvantage or vulnerability.

Senator GROGAN: So it would be a bit of a leveller?

Mr Philp: Absolutely.

Dr Bruniges: I think we see a faster rate of growth for students from a disadvantaged community who have access to good, high-quality early education.

Senator PAYMAN: I'm quite passionate around the genuine engagement with young Australians. Can you please outline for us what the merits of engaging young Australians in policy and program design are?

Mr Philp: Engaging young Australians as part of the policy design process and the program design ensures that their voices are properly heard, that the programs and policies have proper regard to those things that are important to young Australians and that they have an engagement in the democratic process that ensures their success and the better opportunities that come from that.

Senator PAYMAN: Would you then agree that having a Minister for Youth and a youth portfolio at a federal level is pertinent to achieving those goals?

Mr Philp: It can absolutely assist.

Senator PAYMAN: What were the negative impacts of the coalition government removing a permanent youth portfolio in 2014—the 19-year-old version of me felt very hard done by—and having no federal minister for youth for the subsequent five years?

Dr Bruniges: I was here when Minister Garrett was the minister for schools and youth. At that time, we had a youth voice and a youth parliament—a whole range of things that went on. Unfortunately I wasn't here in the intervening period, but to have the Office for Youth back now puts a laser-like focus on the importance of youth. I think youth engagement, as opposed to youth disengagement, and the consequences and benefits of ensuring that we have a strong youth voice in policy formation and that we have a good listening ear to the youth of today are extremely important, not only in the education setting but in industry—

Mr Philp: More broadly.

Senator PAYMAN: Absolutely, in every area, because it is our young people that usually slip through the cracks.

Dr Bruniges: Could I just point out that youth was a feature in previous years but in the department of health. There was a small youth team in the department of health. The department of education took that over a couple of years ago, so we've had a very small contingent in the department of education in previous years. But the recent budget initiative will expand that capacity in our department.

Senator PAYMAN: Great. I want to talk about those subsequent five years when we didn't have a federal minister for youth. Are you aware of any significant investments made by the Liberal government to rectify the impacts of these cuts and re-establish a permanent youth function at a federal level?

Dr Bruniges: That question is probably best for the department of health. I can talk about the Department of Education. We had a dedicated team of five students—and I think in previous estimates Senator O'Neill asked me lots of questions about the youth function in the department. We developed, under the previous government, a youth strategy, with those voices, in that time. But I really couldn't talk to the intervening period, when Health had that function.

Senator PAYMAN: Moving on to a positive outlook now, how has the current government turned the lack of investment around to ensure young Australians are represented in government policies and programs? Perhaps the minister can add on to the answer afterwards.

Mr Philp: There is the investment through the budget. That's \$10½ million as part of the budget process. The most significant part of that is the establishment of the Office for Youth. That sits within my group. That will have 10 ASL to bring together the work and to really have that focus. There is also ongoing funding there for the Australian Youth Affairs Coalition, of \$1½ million. That's to really engage and research and coordinate that activity. Part of this is also going to be youth advisory groups. The secretary mentioned before that it's not just confined to the education portfolio. These advisory groups will be formed based upon the advice from youth about the areas that they're interested in, to assist other portfolios in areas of concern to youth.

Senator PAYMAN: How many young people are in these advisory groups?

Mr Philp: We're looking at up to eight groups at this stage. Of course, then there is the creation, through the Office for Youth, the youth advisory groups and the steering committee—I didn't mention that before. There are 15 young people as part of the steering committee, ages 12 to 25. That will create and bring forward a youth engagement strategy. At this stage, it's about bringing those groups together to assist government in that policy development.

Senator PAYMAN: Wonderful. Finally, what will the national youth engagement strategy seek to achieve?

Mr Philp: Obviously it will be in the hands of the steering group and the advisory groups here, but it's really in that participation in policy and program design—advocating, improving and harmonising policies as they affect youth across all portfolios in the Commonwealth.

Senator PAYMAN: Fantastic. Minister, would you like to add anything?

Senator Chisholm: The one thing I'd add to that is on the timing of it. Obviously we're a new government, with a focus on the minister responsible, but I don't think we fully understand yet the full impacts of COVID on young Australians. I expect that that will be something that we will be helped to learn through this process. Then obviously that impacting on policy and decisions that government make will be really important, across all portfolio areas but particularly relevant to education at all levels.

Senator PAYMAN: I look forward to it. Thank you so much.

Mr Philp: I just need to correct myself. Those advisory groups are five groups of eight members, not eight groups of five.

Senator PAYMAN: Thank you. That's all from me.

Senator FARUQI: Good evening, Dr Bruniges and team. Treasury estimates that the government's early childhood education and care reforms will increase the hours worked by women with young children by up to 1.4 million hours per week in 2023 and 2024, and that's the equivalent of up to an extra 37,000 full-time workers going to work and needing early childhood education and care services. These are Treasury estimates. Have you done any work on how many additional educators will be required to meet this demand?

Mrs Twyman: The modelling that we have done has been through the Workforce Strategy, as you would be aware. We have been looking at the extent to which the workforce needs to grow to be able to cope with the reforms. The National Skills Commission have predicted, in their reporting, that by 2026 we will need an additional 21,800 educators—

Senator FARUQI: And that includes these changes? I thought the modelling was done before these reforms were even introduced.

Mrs Twyman: Yes. That is correct.

Senator FARUQI: It does not include this increase in demand? So it will be much higher than that, I am presuming?

Mrs Twyman: That's right.

Senator FARUQI: But no work has been done to predict that?

Mrs Twyman: We've got work in train. We are also working closely with the National Skills Commission, as it becomes Jobs and Skills Australia, to update those figures in line with that. We've got work in train that we're procuring separately, which I can't report on tonight because it's not finalised as yet. But we are doing that modelling internally.

Senator FARUQI: When will that be completed?

Mrs Twyman: We're hoping it will be in the very near future. Sorry I can't be more specific.

Senator FARUQI: There are some numbers that some providers have talked about. One provider has stated that 9,000 additional educators will be required as a result of the reforms. We also know there are currently 7,000 vacancies in the sector already. Assuming this attrition rate continues, it is estimated there will be over 10,000 vacancies next year. That would mean they will need, at least, 19,000 educators next July. That aligns with the 21,000, but that's in 2026.

Mrs Twyman: Yes, that was 2026.

Senator FARUQI: Okay. That is a huge number of educators. Treasury also confirmed to us, in the Senate inquiry into the Labor government's bill, that the policy benefits in terms of increased workforce participation were modelled based on assumptions that there would be sufficient ECEC workers to accommodate the increased demand in July. I'm wondering if you think that is a reasonable assumption, given that we will need tens of thousands of educators by July.

Dr Bruniges: Senator, I'm not quite sure whether you were here or not, but I talked about the encouraging signs in workforce participation, in terms of sub-bachelor and bachelor. We have seen some increases in the VET sector and so forth, but the lag effect—

Senator FARUQI: Sure, Dr Bruniges, but July is six months away.

Dr Bruniges: Yes. I think the interesting part is the work we're looking at now, for the end of the year. How many graduates we will have, and what level in VET, sub-bachelor and bachelor? What's that likely to do? I think Senator Davey raised the issue of regional provision of services. And what models of care could go in? Would more family day care be needed to create more access? There is no doubt that we have a task before us in terms of workforce in many areas. I would not say anything different. But we are working very, very hard to look at the numbers we've got, looking at that at a micro level, as well as what graduates we've got. There is the fast-tracking of some courses. You might be aware that some jurisdictions—I think New South Wales—have some fast-tracking of some courses. The most important thing, I think, is to have quality educators—

Senator FARUQI: Absolutely. That's my question. In six months, how are we going to get 20,000 or more than 20,000 educators? What's the plan here?

Dr Bruniges: One of the components of the plan is to have a look at how we can upskill existing workers to a graduate level or higher. Then you have entry-level workers coming in at the VET level, so you have a bit of a domino effect. That work is underway. As I said, we don't underestimate some of the challenges, but be assured that we are working very hard to look at who will exit and to look at what is a system in which we can microcredential up and have workers in at the bottom end as well. Fundamentally, we've got a population

problem, when you look across so many areas. What we've got to do is make the best of what we've got domestically, and if that means us doing some fast-tracking and relooking at traditional ways of doing it, then I probably think we have to do it.

Senator FARUQI: I think we've also got a huge turnover problem—

Dr Bruniges: Retention.

Senator FARUQI: and a problem of wages, I guess. We've heard about how low pay, burnout and lack of professional recognition are some of the main factors that are driving people to leave. Do you agree that those are factors, knowing the sector?

Mr Philp: Senator, what we've seen an increase in the average tenure in the sector. What that tends to indicate—and in our discussions with the sector—is that there are two problems: one is attracting people; the other is retaining them within the sector.

Senator FARUQI: Yes. There's a huge attrition rate.

Mr Philp: Yes. The attrition issue is one that tends to occur in the first year of staff within the sector. There are measures of the government, within the National Workforce Strategy, that go to attrition and maintaining those staff that are there. As for attracting new staff, there is also the streamlined skilled migration work that the government is committed to, as well, as part of the Workforce Strategy.

Senator FARUQI: I think the attrition rate last year was 40 per cent. Do you know what it is this year?

Mrs Twyman: We don't have that figure, but we have information from our providers, who are telling us the turnover rate is high. What we know, as well, is what the workforce census is telling us. Just to build on Mr Philp's point there, because our workforce census—which, as you know, came out this year; we hadn't done one since 2016, so it was really important to refresh that work—is telling us that the longest serving ones are staying longer, but it's the early ones, so the attrition rate is happening in the early stages, which is why we think we need to be really looking at what's happening for those entrants.

Senator FARUQI: So you don't know yet why?

Mrs Twyman: The work we have been doing on the workforce strategy and from our providers is actually saying it goes to leadership, supervision and professional development in those early stages to really cement the learnings and to cement the support.

Senator FARUQI: It has nothing to do with wages?

Mrs Twyman: Wages have certainly been raised as a part.

Senator FARUQI: I guess the next question is: has the department considered and costed a wage supplement for educators at all?

Dr Bruniges: We haven't costed that but we have had many discussions about that, not only in the department but with our colleagues interstate through the National Workforce Strategy. Looking at building on what Anna has just talked about, the importance of induction—it is the same in the teaching workforce, I might add, but that is probably tomorrow's story—the retention of beginning educators and what support services you need around them. There is no doubt we probably have two issues: first, how many people are coming out and graduating and what does that gap in policy mean; second, how you retain existing workforce or how do you supplement existing workforce in another way? Some of the structures states and territories have put on have been basically a mitigating strategy to retain by putting preschool in some sectors and in other places. But it will vary, so we have our hard work in front of us to actually look closely at that.

Senator FARUQI: I guess my concern is we're just looking at those things at the moment and, in six months time, there will be a requirement for at least 20,000 new educators, and policy outcomes will not be realised if we don't have those educators.

Dr Bruniges: I should say we are doing more than looking; the team are working really hard looking at the data.

Senator FARUQI: It is a short time period.

Mrs Twyman: Just to add to that, it is the sum of all of the parts, so it is the sum of the skilled migration work, the work in the fee-free TAFE space, the work in the attraction and retention, the PD, how we support backfilling. It is all of the measures that are going to culminate in us being able to attract and retain, not one single one. I know that there are so many things in this bill that we need to bring together to make sure this happens.

Senator FARUQI: If the subsidy changes come into place and demand for early childhood education and care places rises at a time when there are not enough workers and therefore not enough places to meet that demand, it

seems likely that providers would raise their prices, and people could be hundreds of dollars out of pocket because of a higher gap fee. What is the department's plan to ensure that doesn't happen? I'm just looking at supply and demand. If there is huge demand and there isn't enough supply, prices could go up. What is your plan to ensure that doesn't happen?

Mr Philp: There are a couple of things in the prices area that I would point to. First of all, we know that 86 per cent of the sector doesn't charge the rate cap at the moment. If the supply and demand, as you indicated, is out of kilter when the subsidy comes in, at that stage we are already going to have the ACCC doing a price inquiry. It is required to report back before the implementation of the new measures come June next year. That goes to the prices and costs and the differential between those things. As part of the bill, prices will also be required to be disclosed, or they are required to be disclosed on the Starting Blocks website, including the history of price changes, so families can see what those prices are and make decisions accordingly.

Senator FARUQI: But they don't have a choice if there aren't enough places available.

Mr Philp: I understand that.

Senator FARUQI: Are you monitoring how many centres have had to cap enrolments due to an absence of staff?

Mr Philp: No, that is not a dataset that we have access to.

Senator FARUQI: Who would have access to that? Who would keep that dataset? Does anyone have that dataset?

Dr Bruniges: ACECQA is the agency. States and territories probably hold it, as the regulators. They might have a notional data given they regulate and look after services. It is an important issue. We are having a conversation with providers at this stage.

Senator FARUQI: If you wouldn't mind.

Dr Bruniges: We are having conversations with them so that we have a more granular look at what that means at a local level.

Senator FARUQI: Mrs Twyman, you said you were doing that work on the number of educators that might be needed. Once that is done, could you provide us with that?

Mrs Twyman: Absolutely, I will take that on notice.

Senator FARUQI: Then there is a question for you, Minister. We heard during the inquiry that we have just finished into the government's bill on early childhood education and care, that educators were quite distressed by the cheaper childcare language used. You told us something along the lines of it undermines the value, recognition and importance of educators. The Australian Community Children's Services stated that 'cheaper childcare' does nothing to improve the wider community's understanding of this important role and the professionalism of early childhood teachers and educators. I'm just wondering if the government did consider the impact this language has on the sector, which, unfortunately, is being undervalued, as we know, despite the crucial work they do? Does the minister recognise that early childhood education and care is not a babysitting service but education and development of our children? And can you commit to government not using this language? I noticed Senator Grogan changed her language earlier on; thank you for doing that, Senator Grogan.

Senator Chisholm: It's an issue I have heard Minister Clare talk about repeatedly. I know he is someone who uses early childhood education and does so consistently. I think there was a bit of a mix of politics, obviously, in the election campaign, but I certainly know the minister values the work that they do. When I have heard him speak and in speeches, I know he does go out of his way to ensure that he speaks appropriately and values the industry and sees educators as part of that as well.

Senator DAVEY: The programs that were running, I just want to get an update as to where they are. In the budget, there was \$12.4 million for play groups and toy libraries. They are very important, particularly in regional areas. It seems to be under the Department of Social Services, not the education department. Can you explain that? I think it was always considered to be under education:

Mr Philp: That is with the Department of Social Services portfolio. It appears under the Families and Communities program, if I recall rightly. To my knowledge, that's where it's been for some time. It's been held separately to the early childhood education and care.

Senator DAVEY: I will ask them. Was there ongoing funding in the budget for the Community Child Care Fund or has it been rolled into a bigger program? Because I struggled to find the particular line item.

Mr Philp: Do you mean the Community Child Care Fund?

Senator DAVEY: The Community Child Care Fund that got funding in the May budget.

Mr Philp: It's not a new measure under this budget. It was part of the previous one. That appears in—

Senator DAVEY: But it hasn't been cut?

Mr Philp: It's part of program 1.1. It is part of the broader program now; it's not a stand-alone measure in its own right.

Senator DAVEY: In the Connected Beginnings program, how many Connected Beginnings sites have opened under the Albanese government?

Mr Philp: I would like to say seven.

Mrs Twyman: I am not sure that that has all been—

Senator DAVEY: You would like to say seven? Is that because it's your favourite number?

Mr Philp: Not at all.

Mrs Twyman: For 2021-22, I'm trying to work through whether that is from May. In 2021-22, the program has established seven additional sites under an expansion of Connected Beginnings. That's in Mackay and Eagleby in Queensland; Port Hedland and Geraldton in Western Australia; Katherine in Northern Territory; Salisbury Playford in South Australia; and Canberra here in the ACT. What I'm not clear on is whether that's been under the Albanese government, but we can take that on notice to get that.

Senator DAVEY: None in New South Wales?

Mrs Twyman: Not under the expansion, but there are existing sites in New South Wales. We have five existing sites in New South Wales, with a total funding of \$9.9 million.

Senator DAVEY: But they were done under the previous government?

Mrs Twyman: They would have been.

Senator DAVEY: Is that program continuing?

Mrs Twyman: Yes, it is.

Senator DAVEY: I think the target was 50 by 2025. Is that still the target?

Mr Philp: Yes.

Mrs Twyman: We're committed to an additional—to support the expansion of the program to 50 sites nationally by 2024-25, as part of the \$122.6 million early childhood education and care package.

Dr Bruniges: We currently have 32, which support about 11,000 First Nations children.

Mr Philp: That's right.

Senator DAVEY: How were those sites selected?

Mr Philp: Those sites are selected through a combination of things. We do analysis of the data around SEIFA and indigeneity in the Indigenous populations in those areas, particularly for that zero to four. We consult with groups like SNAICC, the Secretariat of National Aboriginal and Islander Child Care, and we talk to the states and territories about where the demand is. Because this is a program that links in both education and health outcomes, we consult closely with our department of health colleagues.

Mrs Twyman: Senator—just to build on that—what we do in terms of the analysis of where those sites should be is to look at the Australian Early Development Census, as well as the ABS data, and consult with states and territories and stakeholders to validate what that data is telling us, to ensure we're targeting in the right locations for the right communities.

Senator O'SULLIVAN: I've got quite an interest in this. How is it going? It's expanding, so it's obviously going well.

Mrs Twyman: The Connected Beginnings program specifically?

Senator O'SULLIVAN: Yes.

Mrs Twyman: We're very pleased with how that expansion is going. We've got some really positive feedback from the communities, and also from states and territories, about how that's beginning to really be able to lift the participation of our First Nations children in early childhood. Because we're partnering with the department of health and ageing in those locations, it's also impacting childhood and maternal health and family supports in those Indigenous communities.

Senator O'SULLIVAN: The whole marker of it is that it brings together all of those services so that, for the parents and for the child, they're able to access what they need in one location?

Mrs Twyman: That's exactly right. We often refer to it as the glue. It puts the child and family at the very heart—at the centre. It looks at the holistic needs and then brings it together as a wraparound service to support that, including this liaison with Health as well, so that you're getting a holistic response and families aren't having to go to multiple centres.

Senator O'SULLIVAN: Are they connected with schools as well?

Mrs Twyman: Yes, a number of them are.

Senator O'SULLIVAN: Is that a requirement? Do they have to be—

Mr Philp: Yes.

Senator O'SULLIVAN: or is it that they just generally are?

Dr Bruniges: It's not a requirement.

Mr Philp: It's not a requirement, no. Often it depends upon the location and what the best facility available is going to be able to provide these services.

Dr Bruniges: The first evaluation we did is up on our website. We did that in 2019, and we've got a subsequent evaluation with Health, which is due for completion in June 2023. So the first evaluation is done, and we're constantly monitoring—

Senator O'SULLIVAN: I did see the 2019 one. So it's next year?

Dr Bruniges: Yes, June 2023.

Senator O'SULLIVAN: Thank you.

Senator DAVEY: Just on that: when you select a site, is it signed off by the minister, or is the department responsible for selecting the sites?

Mrs Twyman: Site selection is through the department. We do the analysis and the verification. The minister would be informed of that data analysis and would be made aware of the activity that we were going to undertake in that location, which is to talk to the community and progress the site scoping work.

Senator DAVEY: We know we've got a target of 50 by 2025. Do we have an idea of how many we expect to open this financial year? Last financial year we had seven, and before that we had several.

Mrs Twyman: What I can do is give you a breakdown of where we're up to and a bit of a time line, if that assists. I talked about the seven additional sites. We're expanding to a further seven sites by June 2023, so June next year. We've had one site established in Wagga Wagga, New South Wales—

Senator DAVEY: Yay!

Mrs Twyman: in September this year. We've got another three sites already underway, with community consultation completed in—sorry, there isn't another one in New South Wales—Fraser Coast in Queensland, Ngukurr in the NT and Whittlesea in Victoria. We had five additional sites endorsed by the advisory group in October just gone for scoping, where we go into the community and talk to them about their aspirations for such a service. At least three of these will be being implemented by 30 June 2023 as well. Additional sites include Broken Hill in New South Wales, Ipswich, Cairns, Bundaberg and Woorabinda in Capricorn, Central Queensland.

Senator DAVEY: That's very good. I want to come back quickly to the Community Child Care Fund. You said it was ongoing, but it's now part of the broader budget measures. Was there a regional element announced in the budget? My understanding is that back in the May budget there was a specific regional element. Is that regional element ongoing? I think it was for about 20 centres.

Mr Philp: There are a couple of components to the CCCF program, and it's all ongoing. There's a restricted program, which is only open to those that were previously budget based funded. There's an open component to this and then there's also a special circumstances program, and, indeed, the Connected Beginnings program, strictly speaking, falls under the CCCF program. The ones that you referred to were announced in the May budget. They're being continued and they're part of the broader program now as part of that open round. The idea is that we go to market and see where those markets are and what those costs might be. Then decisions are made from there.

Mrs Twyman: Just to build on Mr Philp's comments, that notification is on the grants hub which is managed by DSS. It's the whole-of-government grants hub, and that's advertised as an opportunity that is likely to become live in the first half of next year. It is continuing.

Senator DAVEY: That's very good to hear, thank you.

Senator O'SULLIVAN: I have a couple of follow-up questions. I presume the answer is pretty straightforward, but I presume no Connected Beginnings site is closing, but they're all continuing.

Mrs Twyman: Yes.

Senator O'SULLIVAN: So the 50 is not a net 50?

Mrs Twyman: No.

Senator O'SULLIVAN: During the election campaign the then government made a commitment that we'd provide \$1.8 million for a new childcare centre in Kingston, and this announcement was then matched by the then opposition and now government. Can you point to where that is in the budget?

Mr Philp: That appears under the Infrastructure portfolio.

Senator O'SULLIVAN: Why's that?

Mr Philp: Because it's an infrastructure investment.

Senator O'SULLIVAN: Obviously, fair enough.

Mrs Twyman: It's a building.

Senator GROGAN: Can I go back to the Community Child Care Fund restricted program? There are an awful lot of programs here, but in 2021 there was a commitment for 20 services. Is that right?

Mr Philp: That's right.

Senator GROGAN: From what I heard from you there were seven that were funded before 2021 and then seven coming online from 2021.

Mr Philp: That was Connected Beginnings. Those seven were part of the Connected Beginnings program.

Senator GROGAN: Okay—a different one. So, there were 20 committed to. How many have hit the ground?

Mr Philp: Of those 20, I think where we're up to is that we've gone to market. Tenders have come back to us that we're analysing, particularly assessing what the cost structures of those might look like. I think it's fair to say that none of them have opened yet. But we're in the process of negotiation with the proponents that put those forward.

Senator GROGAN: So, there will be 20.

Mr Philp: That depends on what those negotiations lead to. Part of that is costs and what's affordable under the program, and part of that affordability is how many children are expected to be part of those services and what the CCS contribution is going to be to that. The way these work is that there'll be a contribution through the CCCF program. That'll be the capital investment and operational costs. Then there'll be the ongoing childcare subsidy contribution for each of the children who participate in these services, and that's part of the discussions we're having with the proponents at the moment about what the total drawdown on the CCCF needs to be.

Senator GROGAN: So, you're costing that up to say there's 20, but it might be 18 or it might be 22.

Mr Philp: Yes. We worked at the time on a number—about \$350,000 per service per year—understanding that we needed to understand what the costs were going to be on the ground once the proponents came back to us.

Senator GROGAN: Was this the first-ever round of this? Did you have something to pitch from? Was this a program before 2021?

Mr Philp: Yes, it was.

Senator GROGAN: So, that's broadly the costs. You'd be in the ballpark for 20 going forward?

Mr Philp: One of the things that makes it difficult to use history as an indicator of what the future costs are going to look like is the location of these, because the costs are going to be quite different. Second, we had a massive COVID impact, and we've seen that across the economy when it comes to housing and construction costs and so on. So it's fair to say that the numbers that are coming in are—

Senator GROGAN: On that basis, you'd anticipate that there'd be fewer than 20?

Mr Philp: I think that's where we're likely to end up.

Senator GROGAN: Do you have any idea of where? Or you're not at that stage yet?

Mrs Twyman: We're certainly not at that stage yet. We're speaking very closely to SNAICC, the peak body, around what's important in terms of ensuring proper, viable services in these locations in current circumstances, because we're at that stage where we've gone to scope the community and we've done the procurement but we're still negotiating as to what is the right price, I guess, for the service to make sure that they're able to be viable. That's why I think we're not in a position yet to know exactly how much each of those contracts will be, but we

hope to be in the near future. So, it's pretty hard to say at this stage where we'll end up, without knowing exactly the amounts that each one will get.

Senator GROGAN: But it was 29.8?

Mrs Twyman: Yes. That's the allocation.

Senator GROGAN: And \$350,000 per year per service for ongoing—

Mr Philp: That's right.

Senator GROGAN: and the rest then in capital?

Mr Philp: No, that \$350,000 included the capital. When we considered these, part of that is: when the sites come to us, do they have existing infrastructure that they can use? It may be a local council, for example, that's come to us and already has a hall or a facility available.

Senator GROGAN: So, highly varied.

Mr Philp: Absolutely, and that was my comment that history isn't necessarily predictive of what we're going to have come in the door.

Senator GROGAN: Thank you.

Proceedings suspended from 21:33 to 21:46

Senator FARUQI: I have some questions on the activity test. As you would already know, many, many providers, educators and stakeholders are highly critical of the activity test. We heard that again and again in the recent Senate inquiry on the bill. Many—if not all, I would say—support the abolition of the activity test, pointing out that it unfairly limits access to early childhood education and care for the most disadvantaged. For example, First Nations, non-English-speaking and low-income families are more than five times more likely to be limited to just one day of discounted early learning due to the activity test. Does the department know how many children are currently missing out on accessing early learning as a result of the activity test?

Mr Reed: We know that there are about 8,000 families that are on zero hours based on the activity test. That's not the full answer to your question, though. We don't know about those families that may not be in the system due to the activity test, so I probably can't answer that question—

Senator FARUQI: So it's 8,000 in the system?

Mr Reed: There are 8,000 in the system that have a current activity of less than eight hours and so are on zero hours of subsidised care.

Senator FARUQI: There was a report from Impact Economics and Policy in August 2022 which said that currently 126,000 children from low-income families are missing out on accessing early childhood education and care because of the activity test. Maybe this one is for the minister: Minister, do you think that's an acceptable number, given the developmental value of early learning for children?

Senator Chisholm: I'm not aware of that study, and I don't know if the department are—they might have more to add to this—but I think the government's intentions are clear. We, obviously, went to the election with a really ambitious agenda around this area. We understand how important it is, and that's why it's been a real priority for us, in terms of our legislative agenda and our political agenda, to get these changes made—because we know how beneficial they will be to young people but also broadly to society over time. The secretary has spoken about the beneficial impact that we're already seeing in NAPLAN as a result of some of these changes.

Senator FARUQI: Do you know how this number of 126,000 children who are missing out on accessing early learning will change as a result of the government's legislation?

Dr Bruniges: Could you just repeat the name of the report?

Senator FARUQI: It is a report from Impact Economics and Policy from August 2022.

Dr Bruniges: I'm not aware of the assumptions of that report, but I'll certainly take it away and have a look at it. But it would be hard for me to comment on their modelling and what's included in the assumptions.

Senator FARUQI: What about the 8,000 number that you already know? How will that number change as a result of the government's legislation?

Mr Reed: It is possible it will go down. The bill does a couple of things. Firstly, there's the First Nations measure that will increase the subsidised hours of care for First Nations children, but the bill also increases the low-income threshold to \$80,000. Families that may have received zero hours of care because they were earning between \$72,000 and \$80,000 will now get 24 hours of subsidised care. So it may have a positive impact on that number.

Senator FARUQI: So you have done no modelling to figure out how many more people it will benefit?

Mr Reed: We've done modelling to understand what the bill—

Senator FARUQI: Particularly the change to the activity test.

Mr Reed: I'd have to take that on notice, sorry.

Senator FARUQI: Could you look at that and tell us how much that 8,000 number will change because of the change to the activity test for First Nations people.

Mr Reed: We know—

Senator FARUQI: And the other one as well, from \$72,466 to \$80,000.

Mr Reed: We know 6,600 First Nations families in the system now will benefit from the measure. I'm not sure how many of those make up the 8,000.

Senator FARUQI: Minister, given that it is a huge number of children that miss out on early education because of the activity test, are you considering further changes that might be needed to the activity test?

Senator Chisholm: I'm happy for the department to add anything to that.

Dr Bruniges: At this stage, I'm not aware of any further changes, but, as I said, I'm very interested in the report that you talked about and in having a look at it. The department should take that into consideration in any advice we provide to government in future.

Senator FARUQI: So there are no changes at the moment from the government on the activity test?

Dr Bruniges: I can't speak on behalf of the government, but, for the department, no, not at this stage.

Senator FARUQI: Minister, you are not considering any changes? More than 100,000 children are missing out.

Senator Chisholm: I understand that. I think we've talked about our priorities in detail tonight. If there's anything additional that I can add, I'm happy to take it on notice and provide that to you.

Senator FARUQI: Scrap the activity test, Minister.

Senator O'SULLIVAN: Can I get an understanding, please, in regard to child care. Has the department done any modelling on how many additional places will be needed in centres across the country under the government's legislation if every eligible parent were to send their child to early learning at least three days a week?

Mr Reed: We haven't done any modelling on additional places that would be required. I think it would be very difficult to model the number of places that are required because essentially you'd have to understand even days of the week parents would send their children to day care because we know now that the number of places available are not necessarily full on every day of the week because some children only attend one, two or three days as a week. So if one of those 37,000 families in the Treasury model sent their child to care, say, two days a week, it could be on an available place now because of alternative days for a place already available. So it would be really difficult to model the numbers of places required. Similar to Treasury's model, we've used the elasticities to understand what the behaviour change would be, but we haven't modelled the places that would be required.

Senator O'SULLIVAN: I want to understand how you come up with the headline figure of the dollar amount of \$4.7 billion when you were budgeting for it.

Mr Reed: We've got a childcare subsidy model that essentially is used to develop costings like this. It already predicts childcare subsidy spend into the future. Over the forward estimates, it uses current populations, expected population growth, and expected fee growth to predict childcare subsidy spend. It's very accurate; it's usually within a very small percentage. When we have a measure like this, we use that model to project cost, and we also factor in some behaviour change. We calculate the additional CCS that'll be payable from the behaviour change, and the behaviour change is calculated in a very similar way to how Treasury calculate the additional FTE—the additional worked hours, essentially—that would enter the system from this change, using the elasticities from the reports from the ANU academics.

Senator O'SULLIVAN: I can't remember which one of my colleagues it was who asked this earlier. In the question a number was quoted from the ABS regarding the number of people that wanted to get into child care. How many places would be needed to meet that demand?

Mr Reed: There were 73,000 families using care. Again, it's very difficult to estimate the total number of places, because, of those 73,000, they wouldn't necessarily need a new place; it would depend on the location that they're in now or on the days that they need care.

Senator O'SULLIVAN: Do you mean that there could be capacity in that particular centre?

Mr Reed: There could be already existing capacity. So it would be very difficult to say how many new places would need to be created, even if we knew the exact number of families and the exact number of days that they wanted.

Senator O'SULLIVAN: Can the department advise how many childcare places they expect this new policy will create?

Mr Reed: We haven't done modelling on places, no. We've done modelling similar to Treasury's on childcare subsidy payments and the increase in subsidy payments that would result from this measure, but we haven't done modelling on the numbers of places that would be required for the challenges that I've outlined—that it's not uniform across the country, that it would depend on the day's access, that it would be very localised. So it would be very difficult to measure, even on an aggregate level, how many places would be required.

Dr Bruniges: This is where my comment about the local level analysis is really important, about what provision is in a local level. This is where micro matters, I would say, so actually mapping. I think we have some stats that show the maximum number of total places that may be helpful. We do quarterly reporting on the maximum number of places, and that would take into account the capacity issue that Mr Reed raised.

Mr Philp: As the secretary says, capacity constraints are largely going to be a localised issue. We know that there are some areas in which there's oversupply or capacity available now; we know that there are other areas in which there aren't. We also know that, from the March quarter of 2018 through to the June quarter of 2022, there has been a 21 per cent increase in the capacity of the approved places within the sector. So there is capacity within the market to expand. In the latest ACECQA report—

Senator O'SULLIVAN: It just depends on where you live or where you're trying.

Mr Philp: That's where programs, like our CCCF program, become important to address issues in thin markets.

Senator O'SULLIVAN: This might sound political, but I'm generally just trying to seek to understand it. Isn't the purpose of this policy, if you're listening to the speeches and what's being said about it, about interpreting it as increasing the number of places available? Am I misunderstanding that? If you're a parent and you're struggling to find a place and make it work, isn't this policy meant to be helping people get access to child care?

Dr Bruniges: I think there are two elements there. One relates to access, and the other one relates to places and capacity. In terms of access, we heard Senator Davey talk about some of the regional areas, where people might not have access, and what we can create through CCCF. So how can we increase access through CCCF? How can we increase access by placing Connected Beginnings? So, across the board, what is the total amount of strategies where we have to create more access where it's needed and that will also build capacity? If you put a new Connected Beginnings centre in, you automatically increase the number of places.

Senator O'SULLIVAN: I appreciate the difficulty in the modelling, as you've stated. I don't doubt that might be tricky to do. But then how can the government claim that this is going to increase participation for women when you can't actually put a number on the extra places that are going to be created?

Dr Bruniges: I think it's twofold. We talked about the Treasury modelling and the elasticity in terms of supply and demand. We've talked about the centre capacity, existing capacity. We do know that in some places there is existing capacity, or capacity to grow places. And we've talked about a number of strategies where we'll increase both access and places.

Senator Chisholm: I think the other thing is that it will also be cheaper for 96 per cent of families who are using early childhood education. There's the economic element to it, so it's more affordable for those families at the same time.

Senator O'SULLIVAN: Is the expectation for it to be cheaper? Is the expectation that the subsidy be passed on in full to parents, in order to achieve cheaper child care?

Mr Reed: I think there are a number of policies in place that would put downward pressure on fee growth. We've spoken about some of them previously, but there are rate caps that would put downward pressure on fee growth, there are existing transparency measures that are about improving competition, and there will be further transparency measures through these budget measures that will further increase transparency and increase competition. And then the big thing is the ACCC price inquiry, which will be looking into the drivers of price and making recommendations to government, and it will provide an interim report before these reforms are introduced. So there are things that will put downward pressure on fee growth.

Senator O'SULLIVAN: There's also going to be an increased demand. I remember doing economics at school—I didn't study it after—but 101 taught you that it's supply and demand.

Mr Reed: There'll be an increase in demand. We think there will be a supply response as well to that increase in demand. You are right, there will be an increase in demand, but there are other things to put downward pressure on fee growth. I don't think we can sit here and say that fees aren't going to go up between now and July, and they would in the usual course of business anyway. But there are things in place that would put downward pressure on fees.

Mr Philp: One thing that does give us some confidence is that, when the multiple child subsidy measure was introduced, we had a depression in the childcare component of the CPI as a result of that.

Senator O'SULLIVAN: Okay. Does the department know how many children are currently on waiting lists around the country?

Mr Philp: No, we don't have that data.

Senator O'SULLIVAN: It's not collected?

Mrs Twyman: It would be collected at the individual service level, where the waiting lists are, and we have a multitude of providers—

Senator O'SULLIVAN: But you don't gather that from the service providers?

Mrs Twyman: We don't extract that and keep that at a central level, no.

Dr Bruniges: We are working with providers to see if we can get common areas of greatest need—

Senator O'SULLIVAN: It would be a good metric to gather, I would have thought.

Dr Bruniges: but sometimes it's commercial in confidence, because of their commerciality, so we've got to be a bit sensitive to that, Senator.

Senator O'SULLIVAN: Yes, okay. Has the department spoken to the services to identify what percentage of the market is operating at capacity and whether they're in a position to take on more?

Mr Philp: We have constant communications with the sector. The feedback that we've had—and this is purely anecdotal—is that about 80 per cent of the sector has capacity. But, like I said, I'm very cautious of that because it's going to be very localised as to where those capacity constraints are and where that capacity is. So I wouldn't take that as 80 per cent across everything, because there will be particular regions and locations in which they are quite capacity constrained, and others which are not.

Senator O'SULLIVAN: We heard through the inquiry that there are places where there's an oversupply, and then there are places that are deserts.

Mr Philp: For example, we know that a council in Perth, if I recall, closed a centre recently because it was no longer economically viable.

Senator O'SULLIVAN: Anecdotally where I live—we haven't had our kids in child care for several years; they're in high school now—it does seem to pop up everywhere. You go into regional areas and outer metro and they're not there. I could keep going, but I'll go to my next question. Does the department know how many early learning centres are currently at 80 per cent capacity or higher?

Mr Philp: No, because we don't keep those capacity numbers, which is the same as the waiting list.

Senator O'SULLIVAN: According to Goodstart—I think it was in their submission—most of the centres are running at 70 to 80 per cent capacity. Would that be a common experience across providers?

Mr Philp: It's hard to know. That is a number that we've heard. Goodstart is a reasonable representation because they're quite well spread across the country. Others will be differently placed because they might be more concentrated in either a metro or a regional area. Anecdotally, again, I think that's probably the best number that we've got and it's consistent with what we've heard elsewhere.

Senator O'SULLIVAN: Has the department considered the lack of supply to meet the increased demand if this policy is implemented?

Dr Bruniges: Sorry, Senator, the lack of supply, when you're talking about the numbers—

Senator O'SULLIVAN: of place—

Dr Bruniges: Can we accommodate it through the capacity?

Senator O'SULLIVAN: Yes. Do you think the market will just respond?

Mr Reed: As I said, one of the biggest constraints on supply is the workforce. I think we've outlined all the pieces of work that've been done in relation to the workforce challenges. We're very conscious that there will be an increase in demand. There will need to be a supply response to the reforms. We've got programs in place that

provide further access in markets. We've also got a lot of work underway to increase the workforce and to focus on those workforce challenges.

Senator O'SULLIVAN: We have had plenty of discussion about that already. Given the strategies that you are working on, particularly with the workforce, what time frame does the department expect the sector will need to increase supply to meet the demand?

Dr Bruniges: I think the sector would say they need more supply immediately. I think both the retention of the existing workforce and additionality in some places, but, again, it's fragmented so it's not universal. You will see a difference across the country, with the supply and demand pressures, somewhat related to population growth centres and not. I think with all the strategies we've got—we've talked about to increasing access and supply through the different initiatives that we've talked about. We've talked about trying to look at the workforce. The workforce is a big issue domestically for a range of places, but we've got good looking statistics, we have got increases in the take-up of training.

Mr Philp: When I think about the supply constraints within the market, on the infrastructure side that's where the CCCF program that we spoke about comes in. On the workforce side, that's in all the measures that we've already discussed. As the secretary mentioned earlier, there are some green shoots in that space. We have seen increases in the total participation in the market through the ABS labour force survey, that is up 8,000—over the last quarter—participants in the market, as well as the VET and higher ed commencements and completions that we mentioned earlier. The workforce strategy is all on track. That's the one that is agreed with the states and territories and the sector. I have stressed the sector involved in that and the time frames. That one is progressing and all matters in that are on track, as well as the things that the government is doing itself. Those are things like the fee-free TAFE; the Commonwealth supported places, and 1,469 have been dedicated for early childhood education and care; \$10,000 bursaries for teaching; Australian apprenticeships incentives and migration increases.

The other thing I'll mention, because Senator Faruqi mentioned it earlier, with regard to pay and conditions is that in the minimum wage case that commenced—once the government came into power—part of that saw an increase in salary of 4.6 per cent for 113,000 early childhood educators. We can't dismiss those broader fair work treatments that we are going to have here. We know that multi-employer agreements in Victoria—there's an example of a group of 70 services coming together to agree an overall 16 per cent pay increase for the educators that were involved there. There are a number of things on that. When I think about it as an infrastructure constraint and a workforce constraint there are number things that are taking place in both of those.

Mrs Twyman: To build on Mr Philp's comments—I think Mr Philp alluded to it: there has been a green shoot in terms of the growth in the numbers of educators in the workforce, from 197,000 in May 2022 to 203,100 in August 2022. It's a green shoot; we're starting to see growth.

Mr Philp: And National Cabinet has asked all education ministers to bring forward advice on what workforce measures from the National Workforce Strategy can be expedited. That advice will come back at the next National Cabinet meeting.

Senator O'SULLIVAN: Does the department know how much investment will be required by the sector to meet the demand?

Mr Philp: No, we haven't modelled that. As Mr Reed mentioned earlier, that could be a spectrum anywhere from greenfields construction of a new site right through to having somebody pick up an extra day within an existing early education and care service that's already under capacity.

Mrs Twyman: Just building on that: we know the sector has been very proactive in this space, with the participation that was shown by the co-design practices of the National Workforce Strategy, where unions, employers and the sector all came together. Various organisations have got a number of campaigns and policies in place. It's a shared responsibility of all the players in the sector, and they've been very proactive in understanding the challenges and working together with the government, which is really positive.

Senator O'SULLIVAN: I'm not sure this was discussed before: in regard to there being centres where there are already centres, does the department have any plan to regulate that at all? Is there any plan to ensure that new centres address areas of concern rather than just pop up in areas where there is already overservice?

Mr Philp: Not to regulate. The way we would approach that—we have a market strategy the department is working up at the moment, which is about what kind of market information and dynamics we have available to us, and that data, and what it looks like if we're able to use that data to guide that investment. It's a market, and we're looking at competition to incentivise investment in those areas. Part of that is by having transparent information as to where those shortages are, and then the investment can follow those shortages.

Mr Reed: The only other thing I'd add is that a lot of services do that now. A lot of services, especially big ones like Goodstart, have their own analytics about where there is population growth and an undersupply, and choose locations based on the data they collect.

Dr Bruniges: The other thing I'd add is that, at the state and territory level, the planning authorities will often designate greenfield sites both for schools and early learning centres. Remember, the states regulate—so they give the hard tick for centres to open. At the state level, you will often see the planning authority for greenfields putting childcare centres in new business areas, in the bottoms of basements in buildings and so forth. I think we're seeing more and more that in terms of planning authorities in states and territories.

Senator O'SULLIVAN: Does the department know how many graduates from bachelors of education and childhood education, diplomas in early childhood education and cert IIIs there were across 2020 and 2021?

Dr Bruniges: In 2020 there were 13,589 students enrolled in early childhood teaching, bachelor and subbachelor programs—that includes universities and TAFEs.

Mr Philp: I will take commencements and completions of diplomas in early childhood education—

Senator O'SULLIVAN: Is that something you can table, to be efficient with time?

Dr Bruniges: Why don't we take it on notice. It'll probably be a long table.

Senator O'SULLIVAN: I'll put the question on *Hansard* and you can follow it up: does the department know how many graduates from bachelors of education and childhood education, diplomas in early childhood education and cert IIIs there were in 2020 and 2021? My next question is: does the department know how many students enrolled into bachelors of education and childhood education, diplomas in early childhood education and cert IIIs in 2021?

Mr Philp: We can provide on notice those commencements and completions for those three categories.

Dr Bruniges: Yes, yes, and yes!

Senator O'SULLIVAN: Great. Has the government done any modelling on the behaviour of parents in relation to this policy—that is, those families earning between \$360,000 and \$530,000? Has the government done modelling on what they expect their behaviours to be post July 2023?

Mr Reed: The Treasury modelling doesn't break it down by income band but we know that only two per cent of families that benefit will earn above \$360,000.

Senator O'SULLIVAN: What's that number?

Mr Reed: It would be two per cent—

Senator O'SULLIVAN: I'm not asking you to do the calculation in your head!

Mr Philp: Two per cent of two to six million—

Senator O'SULLIVAN: I'll work it out. Does the government have any modelling to show how many days a week on average a family with an income between \$360,000 and \$530,000 currently works, and does it also have modelling on how many days a week families on that income are putting their kids into either child care or preschool?

Mr Reed: We probably don't because they are unlikely to be in the system currently. For those earning over \$360,000, there'd be some in the system but it would be minimal. Because families earning over \$360,000 aren't eligible for the childcare subsidy, they're unlikely to be in our system. There are a small number that are that would be on a zero rate, but it would be very small.

Senator O'SULLIVAN: Has the department made any assumptions on the parameters regarding this policy and what effect it will have on the sector—childcare prices and attendance figures?

Mr Reed: We have not modelled the impact on prices. We have modelled in a similar way to Treasury the impact on childcare subsidy spend, but we have not modelled the impact on prices.

Senator O'SULLIVAN: We've discussed places already, and your logic in explaining why it's difficult to model places. I wish it was easy! Minister, we're hearing from the department that they haven't been able to model that, and they've given reasons why they can't tell us how many places are going to be created as a result of this policy. Yet many speeches delivered by your minister, delivered by Facebook posts and social media posts—I'm looking at one here from the member for Kingsford Smith, who says there will be 7,000 families in their electorate who will be better off through this policy. Right across the country Labor members are claiming outcomes. The member for Hunter is saying there will be 6,300 people better off. If the department can't give us any particular number, how is it that members of parliament are able to get these figures?

Senator Chisholm: I suspect those members have focused on the fact that there are 1.26 million families across the country that will benefit overall. What they'd also be focused on is those who are going to be better off financially, and they'd be talking about some of those families, which you can obviously identify per electorate. For instance, if your family is on an income of \$60,000, you'll get a 90 per cent subsidy, which would be worth \$14,558 a year. Seventy-five per cent of families benefiting from these changes earn under \$180,000, and around 50 per cent earn under \$120,000. I think, when you consider some of those things, the substantial focus of this is helping those on middle incomes and on lower incomes, and the other thing that we've talked about substantially is the economic benefit. That was the real focus of this budget, from our point of view. We wanted to do things that eased the cost-of-living pressures on families but also added an economic participation factor at the same time. If you had to identify the single most important aspect of the budget, I think what we're talking about tonight has been that.

Senator O'SULLIVAN: We keep hearing this. If it is so important, and it keeps getting said time and time again—it was a key feature of the jobs summit you had; the Prime Minister mentioned it in his speech at the jobs summit. It's been referred to time and time again, yet there's actually no modelling. The government hasn't done the modelling to be able to bring forward—

Senator Chisholm: We did that.

Senator O'SULLIVAN: and back up what you were saying in terms of the numbers of people or the benefit it's going to be to families—

Senator Chisholm: We had the same modelling that you had when you did your policy.

Senator O'SULLIVAN: This is your policy. You've just given some numbers in terms of how many people it's going to impact, yet we've just heard evidence that there's no modelling.

Mr Reed: Sorry, can I just add that we've done modelling on the number of families that will benefit. A lot of them are existing in the system and will get a higher rate of subsidy than they are getting now, and we have done modelling around additional childcare subsidy usage. We just haven't done modelling around the number of places that it would create. There's Treasury modelling on participation, there's modelling on the number of families that would benefit, and there's modelling on additional childcare subsidy usage. We just haven't modelled the number of places.

Senator O'SULLIVAN: I don't dispute that. But, if you're one of the families that can't access child care—you're on a waiting list that you don't have knowledge of; you're not getting that information from providers—how can the government possibly say that this is going to benefit people in the generic way that you say? If someone has got a childcare place, sure. But, if you're one of those families that can't access a childcare centre, that can't get a place, how is this policy possibly going to address your cost of living? How is it possibly going to enable you to get into the workplace, if you want to pick up more hours? How is it doing that, or how can you say that it's doing that, when you haven't got any numbers or back-up of data to demonstrate it?

Senator Chisholm: Have you been listening tonight? We've talked through in great depth so many aspects of this, whether it comes to the workforce, whether it comes to the work that they're doing with the providers, the benefits to the country economically, the benefits to young people. There are so many aspects that we've talked through about why this is going to be beneficial. The one thing I can't understand is why the opposition continues to criticise it, but Peter Dutton supported it. He must think it's important.

Senator O'SULLIVAN: We support the bill.

Senator Chisholm: You wouldn't know it tonight.

Senator O'SULLIVAN: We're disappointed that, time and again, we're seeing the government go out there—backbench members, ministers, all the way through—claiming the number of people that it's going to impact, yet there's no data to back it up; there's nothing that's actually demonstrating it.

Senator Chisholm: There is.

Senator O'SULLIVAN: I've heard the evidence tonight. We've heard it.

Dr Bruniges: Can I be really clear? Our modelling will show that 96 per cent of families will be better off. I've spoken tonight about the capacity issue, the workforce issue, the training—all of those issues coming together—and, in fact, I flagged that, at the granular level of the local level, that's really important. There's no doubt about that. We are currently working with providers and looking at, on a micro level, the data that we need—how many childcare centres, how many family day care centres and how many out-of-school-hours centres do we have, and what are the capacity limits—so that, at a local level, where we do have some restrictions, we're in a better position to inform government about policy positions to put in new Connected Beginnings that we've

talked about, and the additionality of family day care that we might have to talk to communities about. So that local-level stuff does really matter. But, at the macro level, we've done detailed modelling. What we're able to see through our data is that 96 per cent of families are better off, and that is really important. And at this stage we're looking at the local level.

Senator O'SULLIVAN: In relation to the summit, as I said, child care did feature quite strongly. The Prime Minister in his speech said that the summit has been 'shaped by more than 100 different roundtables and consultations, undertaken by ministers across every portfolio'. In regard to child care and maybe, more broadly, education, what role did the department play in these pre-summit roundtables?

Dr Bruniges: Personally I attended the ACT roundtable summit, which Minister Andrew Leigh convened, and heard about the local issues. We had childcare providers there. I attended a Perth summit with Minister Aly, where we met with childcare providers. My colleagues along the bench here would have also attended various summits at local levels, in participation with—

Senator O'SULLIVAN: Did the department host them, and the minister attended all of them? How did it work?

Dr Bruniges: Yes, the minister facilitated—Minister Aly facilitated the one—

Senator O'SULLIVAN: So in every case the minister facilitated?

Dr Bruniges: Yes. We could probably give you the number of roundtables and locations, if that would be of help.

Mrs Twyman: We can certainly do that. On 8 August 2022 Dr Anne Aly attended one in Sydney; on 10 August, in Melbourne; and, on 16 August, in Perth. We had youth roundtables as well as early childhood ones. They were in the afternoon and they were facilitated through the Australian Youth Affairs Coalition.

Senator O'SULLIVAN: Do you have Schools? I know that's a separate area, so I can ask that separately.

Dr Bruniges: In Schools? No, I attended the youth forums too with Minister Aly in Perth. We did that there. I also personally attended the ACT roundtable for the jobs summit.

Senator O'SULLIVAN: Were there agendas, and minutes and discussion papers from the meeting, circulated to attendees?

Dr Bruniges: I think we had an agenda for the ones I attended of providers with Minister Aly.

Senator O'SULLIVAN: Was there a communique following the roundtable at all?

Dr Bruniges: No, we didn't have a communique, nor did we have one from the ACT.

Senator O'SULLIVAN: That just came from the summit later?

Dr Bruniges: Yes. I think there was input to the summit, and then it was rounded off in the summit.

Senator O'SULLIVAN: There was an agenda. Was there a discussion paper?

Dr Bruniges: No, we didn't have a discussion paper at the summits I attended.

Senator O'SULLIVAN: So the question, 'How do we address X issue,' was just put to them?

Dr Bruniges: I think the minister had had a lot of contact with many providers in many jurisdictions, and so the department helped facilitate a number of providers in each of those settings. So as departmental officers we set up the forums, sent the invitations out and set the agenda. The agenda basically was that Minister Aly welcomed providers and started questions about what the challenges were, what the strengths of the sector were, what the weaknesses were—

Senator O'SULLIVAN: Can I ask that they be provided to us—the agendas?

Dr Bruniges: We're happy to take that on notice.

Senator O'SULLIVAN: And, to save me asking it again of Schools, for schools as well, if that's alright—if you could pass that through to the secretariat.

Dr Bruniges: Yes.

Senator O'SULLIVAN: I'm happy to move on from here, thanks, Chair.

CHAIR: So we've completed outcome 1.1, so we'll now go to outcome 1.2.

[22:29]

Mr Philp: It's a very similar subject.

CHAIR: It is a similar subject. I don't know why it's been written that way, but that's the way it's been written, and I'm just going to repeat it. How's that? Do you feel different now!

Senator O'SULLIVAN: Isn't it the same people?

CHAIR: That's right.

Senator GROGAN: I think we've pretty much jumped across those two.

Dr Bruniges: I think we've navigated both, yes.

Senator PAYMAN: My line of questioning is around phase 2 of the higher childcare subsidy. The former government committed to phase 2, which, as I understand, reduced the period for which families could continue to access the higher childcare subsidy for a child after their sibling left care. Is that correct?

Mr Philp: Yes.

Senator PAYMAN: If support was being reduced, presumably there were going to be savings, right? Were the savings banked? If so, how much was it?

Mr Philp: That was \$33.7 million per year.

Senator PAYMAN: That was over four years?

Mr Reed: That was over four years.

Senator PAYMAN: Can you now explain what it would take to implement this measure and how much it would cost?

Mr Philp: In our discussions with Services Australia, the cost to implement phase 2 was \$89 million.

Senator PAYMAN: So the cost to implement the measure far exceeded the save. Were the implementation costs factored in by the former government in the budget?

Mr Philp: When the costings were created for the multiple-child measure, the costs for the phase 2 component weren't known. That was a subsequent costing from Services Australia.

Senator PAYMAN: So the save was banked, but the cost of implementing the measure was not accounted for because it was unknown?

Mr Philp: That's right.

Senator PAYMAN: And the legislation was introduced by the former government despite this.

Mr Reed: That's right—the legislation was introduced to parliament.

Senator PAYMAN: Without knowing the cost of implementing phase 2?

Mr Philp: That's right. In part, it was because the cost of phase 2 was dependent upon the success and intricacies of phase 1, so it was unable to be costed at the time before phase 1 was fully implemented.

Senator PAYMAN: Now that we've got the new government, what has the current government done to fix this in the budget?

Mr Philp: The minister—I think he made this clear in his second reading speech and elsewhere—has chosen to reverse that and to not continue with phase 2 of the multiple-child subsidy measure.

Senator PAYMAN: Just to clarify in my head: it cost \$34 million to fix the problem to ensure we didn't pay \$89 million—

Mr Philp: The other way around: it was going to cost the government \$89 million to give effect to it in order to save the \$34 million.

Mr Reed: On the flip side, it's reversing that \$33.7 million save and not proceeding with the \$89 million cost.

Senator PAYMAN: And that, basically, was the cost of reducing the support for families. It cost the government \$89 million?

Mr Philp: It would have if it had proceeded.

Senator O'SULLIVAN: With your indulgence, Chair, I did skip over Youth. It's the same people, so could I go back to that?

CHAIR: By all means.

Senator O'SULLIVAN: We're not sticklers for the rules!

Senator GROGAN: Outcome one point everything!

[22:34]

Senator O'SULLIVAN: I want to ask about the Office for Youth. In Budget Paper No. 2, there was \$10.5 million over four years and \$2.9 million per year ongoing to implement a new youth engagement model for the

Office for Youth. Can we get a breakdown of how much is for the model, how much is for the Office for Youth and how much is for the Office for Youth engagement strategy?

Senator Chisholm: I think we've already been through this.

Mr Philp: I will be quick. The breakdown of that \$10.5 million is: \$7.029 million for the Office for Youth; \$1.528 million ongoing for the Australian Youth Affairs Coalition; \$1.49 million for the youth advisory groups; and \$0.483 million for the youth engagement strategy.

Senator O'SULLIVAN: Is the \$2.9 million for the Office for Youth ongoing?

Mr Philp: It's \$7.029 million.

Senator O'SULLIVAN: Okay. Is that specifically for the Office for Youth?

Mr Philp: That's right.

Dr Bruniges: Yes, it is.

Senator O'SULLIVAN: When will the Office for Youth be established?

Mr Philp: We're expecting the Office for Youth to be established this month.

Senator O'SULLIVAN: How many staff is it expected to have?

Mr Philp: We have funds for 10 ongoing staff. Because of the way that's factored in, it's about 6½ staff for the remainder of this financial year.

Senator O'SULLIVAN: Are they all full time—FTEs?

Mr Philp: Yes, that's full time. It's all FTEs.

Senator O'SULLIVAN: How many departmental staff will be employed by the Office for Youth?

Mr Philp: They will all be departmental staff.

Senator O'SULLIVAN: Can I get a breakdown of their levels—EL1, APS6 et cetera?

Mr Philp: I'll start. It will be within Mrs Twyman's division, so she can correct me. The intention is that the Office for Youth will be headed by an SES Band 1 officer, with two teams that will sit below them with two EL2 staff, and then it will cascade down from EL1s through to APS staff. We can provide on notice what the detail of that will be.

Senator O'SULLIVAN: Thank you. What's the expected outcome of the engagement model? What does the government hope to achieve with this?

Mr Philp: The key thing is to develop a youth engagement strategy, and we are doing this in a few ways. One is by creating a youth steering committee through the Australian Youth Affairs Coalition. This will be a group of 15 young people between the ages of 12 and 25. They will be coming together for their first meeting on 21 November. They will come from all states, and we will ensure that the group includes two First Nations people, gender splits, regional splits and the like. From that, five advisory groups with eight members each will be formed around the issues that the steering group determines are of importance to young people. They will then be available to portfolios outside of the Department of Education to inform the development of policy and programs relevant to youth in those portfolios.

Senator O'SULLIVAN: How did you advertise for the steering committee?

Mrs Twyman: It was basically done through the Australian Youth Affairs Coalition—through their state and territory networks and through a range of their youth bodies—to ensure that we got maximum reach and to ensure that we also got that gender split and diversity split. It was very important that we got that broad range of young people who were able to apply for that. So it was quite a broad reach.

Mr Philp: Through that process 1,259 responses were received, and those applications will be processed, with the announcement to be made by Minister Aly.

Dr Bruniges: You can tell by the number of applications that it was well received in the field—1,259 applications. Now, through that application process, we'll go through a selection process.

Senator O'SULLIVAN: What are the criteria to make that selection?

Mr Philp: We are looking for specific representation. There are a number of factors that are important to us: equal gender diversity, including non-binary members; at least two First Nations members; representation from across all states and territories as well as from outer metropolitan, regional, rural and remote locations; and specific representation from groups including: young people with disability, those with lived experience of mental health issues, multicultural young people, noncitizens, young people with low SES backgrounds, young people

who've experienced homelessness or lived within the in-home care program, regional, rural and remote young people, young carers and LGBTIQ+ young people.

Mrs Twyman: If I may just add to that, in terms of the assessment criteria for the applications, it specifically included emphasis on the applicants' awareness of youth issues, their lived experiences and the skills that would be contributable to the work of the committee. That was part of the assessment process and advertised criteria.

Senator O'SULLIVAN: Did the minister's office have any input into selecting candidates—or will the minister have input?

Mr Philp: The assessment panel had representatives from the AYAC—so the Australian Youth Affairs Coalition—and Department of Education departmental staff.

Senator O'SULLIVAN: Is there any social media vetting? Are you using social media to vet any of the candidates?

Mr Philp: To vet?

Mrs Twyman: Using social media for the announcements or for the—

Senator O'SULLIVAN: The candidates. The potential people who'll go on the steering committee.

Dr Bruniges: No. I don't believe that was part of the selection criteria at all.

Senator O'SULLIVAN: So you're not looking at individual's social media to see if there's any reason why—

Mrs Twyman: No.

Senator O'SULLIVAN: Is the department qualified to make these assessments?

Mr Philp: I'd say that the department is quite experienced in making assessments across a range of programs and areas, including selection for committees and otherwise. As we described, there's a pretty thorough selection criteria that we apply, and we were aided by the Australian Youth Affairs Coalition, which has expertise in this space. In fact they're a co-member of the selection of the panel, so it's not as though we only seek their advice, but their decision is important as well.

Senator O'SULLIVAN: When do you expect the steering committee to be established and when will the first meeting be held?

Mr Philp: The first meeting for this committee is 21—

Mrs Twyman: It's actually 23 November, so it will be meeting shortly

Senator O'SULLIVAN: It's coming up pretty soon.

Mrs Twyman: Yes, and I understand that the successful applicants will shortly be announced, obviously, because they need to know that they've got to come to the meeting.

Senator O'SULLIVAN: That's a good idea.

Mrs Twyman: That's exactly right. They are in the process of being spoken to now, and we're hopeful of making a public announcement in the very near future.

Senator O'SULLIVAN: Good. What's the point of the steering committee? What are they steering?

Mr Philp: I'll ask Mrs Twyman to help me with this. The importance of the steering committee is to be able to set up that broader range of issues that are important to young people in Australia from all walks of life—as we described. That will then influence both the interdepartmental committee that Mrs Twyman sits on, and the important issues that we want to engage these advisory groups on. As I said, there are five advisory groups of eight people. The steering committee will group together the key issues that we want each of those five committees to do and which portfolios they're going to assist.

Dr Bruniges: One of the issues that was raised in Perth at the youth forum I attended was youth employment and some of the challenges and barriers that the youth found around employment opportunities. That would be an example of one of the really important things we want to have a youth voice on, and then really have a look at what the challenges are to see what we can do to facilitate removing barriers to employment like—thinking back to my employment days—not having a drivers licence. Some of those issues about how you facilitate a drivers licence for youth could transition them into employment, so to facilitate access.

In some Indigenous communities having birth certificates can be an issue, so facilitating getting one for Indigenous youth. If you don't have a birth certificate you can't get a car licence and you can't get transport to work, so there's a domino effect, an on-the-ground effect, for youth. Hopefully the whole youth engagement model will help us listen to the needs of youth and be able to enact things.

Senator O'SULLIVAN: I realise this is a different area, but where is youth unemployment at historically?

Dr Bruniges: That would be a question for the employment portfolio who appeared yesterday.

Senator O'SULLIVAN: Not the specific figure, because I realise that. Is it still historically low?

Dr Bruniges: What have we got? Unemployment at 5.3—

Senator O'SULLIVAN: Don't worry about it. I'm happy to come back.

Dr Bruniges: I'm happy to ask my colleagues to respond.

Mr Philp: It's 9 per cent.

Senator O'SULLIVAN: I note that the application process was open to people aged 12 to 25, which is a little novel.

Mr Philp: That's right.

Senator O'SULLIVAN: I'm not being critical of that, but many places, particularly across the UN, define 'young person' as aged 15 to 24—younger than that would be a child. Is there any particular reason?

Dr Bruniges: That's a really interesting question. I know that under the child protection framework it's 16 to 25, so different acts define it. I know the UN is different. I know that child protection goes from 16 up.

Senator O'SULLIVAN: So it's just bespoke for this particular program?

Dr Bruniges: Yes, I think.

Senator O'SULLIVAN: Will members of the steering committee be paid, or will they be volunteers?

Mrs Twyman: They will be paid an honorarium through the Australian Youth Affairs Coalition. It's not a paid position per se, but they will be supported, also, with their travel and accommodation costs to come to face-to-face meetings where they are. Because of the age range, as well, we've also got some very strong protection measures in place, particularly for those under the age of 16 if they're travelling—

Senator O'SULLIVAN: Will they be offered to travel with a parent?

Mrs Twyman: They're accompanied, yes, and that's where AYAC will also be involved in terms of the transport and support of those young people.

Dr Bruniges: If I can just go back to the ABS Labour Force data from September 2022, the unemployment rate is 5.3 per cent, as I said, but for youth the unemployment rate is nine per cent.

Senator O'SULLIVAN: That's still historically low, then?

Dr Bruniges: Compared with the overall, youth unemployment is just about double what the unemployment rate is—5.3 per cent and nine per cent.

Senator O'SULLIVAN: Yes, it's always higher, but historically it's low.

Dr Bruniges: Yes.

Senator O'SULLIVAN: I'll put the rest of these questions on notice. Can the department advise how many young people have experienced a mental illness in the last 12 months; how many young people are currently unemployed—I guess we covered that—how many young people are in full-time employment or part-time employment; and how many young people are studying full time or part time? If you could provide me those on notice.

Mr Philp: The study questions are definitely within our portfolio. For the others, we'll have to reach out to other portfolios like Employment and Health.

Senator O'SULLIVAN: Are you able to do that for me, or do I need to ask them?

Mr Philp: We'll get that for you on notice, yes.

Dr Bruniges: Yes, we're happy to.

Senator O'SULLIVAN: Thank you. I'm just trying to be efficient.

Dr Bruniges: The mental health question, your first question, is going to be difficult. We might have to have a look at some health stats or ABS data, but we're happy to see what we can facilitate.

Senator LIDDLE: I know it's late, but my mind has been focused for a long time on issues such as operating costs going up—fixed and variable costs—with changes to the numbers of children that will be getting care subsidies. I'm wondering how confident you can be, before businesses look at increasing their costs—effectively, a zero-sum game—in providing subsidies.

Mr Philp: Whether there are price increases?

Senator LIDDLE: Yes.

Mr Philp: As I said earlier, the experience we have in the sector is that 86 per cent of the sector do not price to the price cap that they're able to at the moment, which would maximise their subsidy intake and which would also increase the gap for families. That tends to indicate that there is some confidence in there. Clearly, the transparency measures that are required under the bill—the disclosure of their prices and the trends of their prices over time on the Starting Blocks website—will drive that formal competition of families making choices. The Australian Competition and Consumer Commission commences its price inquiry in the new year and reports back prior to the measures coming in at the end of the year.

The thing I'd note is that there have been some price increases, on our September data, of 1.2 per cent, which is below CPI and below inflation generally. Services always do consider their prices around the January period in the normal course, as they reconsider their costs and that as families come on board. But our expectation would be that, given all those factors and the oversight that the ACCC will be offering, any price rises would be minimal.

Senator LIDDLE: Do these providers set their price once a year? Twice a year? Are they locked into price changes, given that we know we're going to see increasing costs of electricity and gas?

Mr Philp: They're not locked in, in a regulatory sense. The way those are done is through the contracts that they have with families about when they're able to increase those prices. Typically it's around January that they consider their costs and what their prices are for the forward year, as families are then coming back into the system after the Christmas holidays and as they commence school and return to the workforce. But there's no regulatory regime that requires them to. But competition does quite a good job, given that 86 per cent are not charging up to the rate cap at the moment.

Senator LIDDLE: What effect will this have on out-of-pocket costs?

Mr Reed: We'd expect out-of-pocket costs to go down significantly. The multi-child subsidy measure, which was the budget measure from last year, under the previous government, was about half the spend of this measure. And the childcare CPI, which measures out-of-pocket costs, went down by 7.3 per cent. So we'd expect there to be quite a significant decrease in out-of-pocket costs.

Senator LIDDLE: You say 'we can expect'. When do you think you might be able to demonstrate that? Are you expecting it in the cycle—

Mr Philp: The CPI cycle would be the most appropriate point to point it out.

Senator LIDDLE: I want to understand around attendance. It's a pretty big area of interest for me, particularly in the area of school attendance, when the measure is often enrolment rather than achievement or performance. That's why I'm interested in this question. How many children aged between zero and two and between three and five attend some form of day care or preschool? I'm particularly interested in a breakdown so that I can understand what's happening in rural, remote and very remote areas for those groups, having recently visited some places where there was no care available.

Dr Bruniges: We've got some data here.

Senator LIDDLE: Are you able to provide that?

Mr Philp: I can. In the zero-to-five cohort, about 47.7 per cent of children attend some form of early learning education and care. We've got that broken down by year group. For below one it is 8½ per cent, for one-year-olds it's 44.3 per cent, for two-year-olds it's 59.6 per cent, for three-year-olds it's 66 per cent, for four-year-olds it's 62.6 per cent and, for five-year-olds it's 43.6 per cent. I think I'd have to take on notice how that is split as to regional, metropolitan, inner-regional, outer-regional and the like. But we can take that on notice.

Dr Bruniges: We'll probably use ABS classifications of very remote and remote.

Mr Philp: That's right. [inaudible]

Senator LIDDLE: That's one group I'm interested in. I'm also interested in the group where English is not their first language.

Mr Philp: Let us take that on notice. I'm not sure whether the data breaks it down into those cohorts.

Senator LIDDLE: Thank you.

Mr Philp: For Aboriginal and Torres Strait Islander we typically have a better understanding, because it's identified as part of the Services Australia application for the CCS. I'm not sure whether English as another language or otherwise is identified in the same way, but we'll see what we can do.

Senator LIDDLE: I think in some of the discussions we had earlier we talked about the definition that's applied in the education department in relation to Aboriginal and Torres Strait Islander children. Given that we've seen a 25 per cent increase since the 2016 census in the number of people who identify as Aboriginal or Torres

Strait Islander, I'm interested to know what impact the use of that definition is going to have on the costs associated with people who might identify as being in that cohort and therefore have access to the causes that allow them to not be subject to the activity test.

Mr Philp: At the moment the number we have is 6,600 people who identify as Aboriginal or Torres Strait Islander within their applications to Services Australia. It would be those people who would benefit from the changes to the activity test for First Nations children. That is just self-identification on the application form for the childcare subsidy.

Senator LIDDLE: But on that self-identification it actually has the appropriate clauses that say when you can tick that box, what you require to tick that box?

Mr Reed: I think the current flag is for a parent. I'd have to check what's on the Services Australia form at the moment. It still would be a process of self-declaration. There would be some guidance around that for families, but it would be a process of self-declaration at the moment. I'd have to take on notice what the current form says around the flag that's already on the Services Australia form.

Since the hearing on the bill where this issue was first raised we have consulted with stakeholders on the test that's there at the moment. Stakeholders are generally supportive. We're still seeking further feedback on the definition that's in the current bill, but the response from First Nations stakeholders we have had to date is supportive of that three-part test. It has been used in common law and it's used—

Senator LIDDLE: That's what I'm asking. Are you going to use the three-part test, because in other discussions it wasn't clear that the three-part test was going to be used?

Mr Philp: The way the legislation is drafted at the moment is that the three-part test—descent, self-identification or -determination, and community acceptance—is the definition within the legislation, consistent with the Australian education regulations. Can I just make one point, just being really careful here? The self-identification within the Services Australia form at the moment is only for demographic purposes; it's not for payment purposes, so that's why we need to make sure that the definition is right within the bill.

Senator LIDDLE: Right. Thank you for the clarification. Thank you.

CHAIR: That concludes questions for tonight. We're giving you an early mark! It's very considerate of us. Thank you very much for your time, your participation and being with us tonight. That concludes today's proceedings. The committee is due to recommence its examination of the budget estimates on Thursday 10 November. I remind senators that written questions on notice should be received from senators by close of business on Friday 18 November 2022. Answers to questions on notice are required to be returned by close of business on Friday 16 December 2022.

I thank the ministers, officers of the Department of Employment and Workplace Relations and the Department of Education and all witnesses who have given evidence to the committee today. I thank you all. I also thank Hansard and broadcasting. I thank you very much again, Secretariat. I appreciate it.

Committee adjourned at 22:57