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SENATE

STANDING COMMITTEE ON EMPLOYMENT, WORKPLACE
RELATIONS AND EDUCATION

ESTIMATES

(Budget Estimates)

MONDAY, 28 MAY 2007

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**SENATE STANDING COMMITTEE ON
EMPLOYMENT, WORKPLACE RELATIONS AND EDUCATION**

Monday, 28 May 2007

Members: Senator Troeth (*Chair*), Senator Marshall (*Deputy Chair*), Senators Barnett, Birmingham, George Campbell, Lightfoot, McEwen and Stott Despoja

Participating members: Senators Allison, Bartlett, Bernardi, Boswell, Bob Brown, Carr, Chapman, Crossin, Eggleston, Chris Evans, Faulkner, Ferguson, Fielding, Fifield, Forshaw, Hogg, Humphries, Hutchins, Joyce, Kemp, Ludwig, Lundy, McLucas, Ian Macdonald, McGauran, Milne, Moore, Murray, Nash, Nettle, O'Brien, Parry, Patterson, Payne, Polley, Robert Ray, Sherry, Siewert, Stephens, Sterle, Trood, Watson, Webber, Wong and Wortley

Senators in attendance: Senators Bartlett, Birmingham, George Campbell, Joyce, Lightfoot, Marshall, McEwen, Siewert, Sterle, Troeth and Wong

Committee met at 9.00 am

EMPLOYMENT AND WORKPLACE RELATIONS PORTFOLIO

In Attendance

Senator Abetz, Minister for Fisheries, Forestry and Conservation

Department of Employment and Workplace Relations

Portfolio overview and major corporate issues

Dr Peter Boxall, Secretary

Ms Malisa Golightly, Deputy Secretary, Employment

Mr Finn Pratt, Deputy Secretary, Workplace Relations

Mr Graham Carters, Deputy Secretary, Workforce Participation

Ms Vanessa Graham, Chief Financial Officer

Ms Michelle Baxter, General Manager, Corporate Group, Human Resources

Ms Meredith Fairweather, Principal Advisor, Communications

Mr Brian Quade, Assistant Secretary, Parliamentary Branch, Corporate

Ms Kristina Hopkins, Assistant Secretary, Human Resources

Dr Aloka Sinha, Assistant Secretary, Business Services Branch

Mr Jeremy O'Sullivan, General Counsel

Mr Bernard O'Donnell, Assistant Secretary, Investigations Branch

Mr Simon Gotzinger, Senior Executive Lawyer, Corporate Legal Branch

Ms Sue Bird, Senior Executive Lawyer, Corporate Legal Branch

Mr Henry Carr, Senior Executive Lawyer, Corporate Legal Branch

Ms Marian Moss, Senior Executive Lawyer, Corporate Legal Branch

Ms Christine Leary, Chief Internal Auditor

Mr John Burston, Chief Information Officer

Ms Tulip Chaudhury, Assistant Secretary, Public Sector Branch

Outcome 1: Employment

Ms Susan Monkley, Group Manager, Employment Business Services Group
Mr Darren Hooper, Assistant Secretary, Employment Services Purchasing Branch
Ms Joan ten Brummelaar, Assistance Secretary, Centrelink and Stakeholder Management Branch
Ms Susan Devereux, Assistant Secretary, Contract Management Branch
Mr Stephen Moore, Group Manager, Employment Systems Group
Ms Marsha Milliken, Group Manager, Income Support Initiatives Group
Ms Jo Caldwell, Group Manager, Intensive Support Group
Ms Alison Morehead, Group Manager, Job Search Support Group
Mr Tony Waslin, Group Manager, Specialist Services and Income Support Group
Ms Jennifer Chadwick, Assistant Secretary, Vocational Rehabilitation Taskforce
Ms Alison Durbin, Assistant Secretary, Disability Employment Services Branch
Mr Ali Jalayer, Assistant Secretary, Employment Pathways Branch
Ms Sue Kruse, Assistant Secretary, Income Support Programme Branch
Ms Debbie Mitchell, Assistant Secretary, Payment Integrity and Assurance Branch

Outcome 2: Workplace Relations

Mr John Kovacic, Group Manager, Workplace Relations Policy Group
Mr Ted Cole, Principal Advisor, Workplace Relations Policy Group
Ms Sue Sadauskas, Assistant Secretary, Strategic Policy Branch
Ms Linda Lipp, Assistant Secretary, International Relations Branch
Mr Stuart Watson, Assistant Secretary, Strategic Coordination Unit
Mr Malcolm Greening, Assistant Secretary, Wages and Conditions Policy Branch
Ms Jenet Connell, Group Manager, Workplace Relations Services Group
Mr Stewart Thomas, Assistant Secretary, Workplace Programmes Branch
Ms Jo Major, Assistant Secretary, Employee Entitlements Branch
Ms Ann Smith, Assistant Secretary, Knowledge Management Service
Ms Natalie James, Chief Counsel, Workplace Relations Legal Group
Mr David De Silva, Assistant Secretary, Legal Policy Branch
Mr David Bohn, Assistant Secretary, Legal Policy Branch
Mr Bob Bennett, Assistant Secretary, Legal Policy Branch
Mr Peter Cully, Assistant Secretary, Legal Policy Branch
Ms Elen Perdikiogiannis, Assistant Secretary, Legal Policy Branch
Mr Michael Maynard, Group Manager, Workplace Relations Industries Group
Ms Sandra Parker, Group Manager, Office of the Australian Safety and Compensation Council
Ms Melissa Ryan, Assistant Secretary, Commonwealth Safety and Compensation Policy Branch
Mr Tom Fisher, Federal Safety Commissioner, Office of the Federal Safety Commissioner
Mr Paul Dwyer, Acting Assistant Secretary, Office of the Federal Safety Commissioner
Mr Andrew Craig, Director, Outcome 2 Support Unit

Outcome 3: Workforce Participation

Mr Barry Sandison, Group Manager, Working Age Policy Group
Ms Sharon Rose, Assistant Secretary, Disability and Mature Age Policy Branch
Ms Robyn Shannon, Assistant Secretary, Parent and Youth Policy Branch
Ms Stephanie Bennett, Assistant Secretary, Employment Policy Branch
Mr Bob Harvey, Group Manager, Indigenous Employment and Business Group
Mr Michael Manthorpe, Group Manager, Labour Market Strategies Group
Mr Ivan Neville, Assistant Secretary, Labour Supply and Skills Branch
Ms Louise McSorley, Assistant Secretary, Industry Strategies Branch
Mr Chris Foster, Principal Adviser, Economic and Labour Market Analysis Branch
Mr Matthew James, Assistant Secretary, Economic and Labour Market Analysis Branch
Mr Bruce Whittingham, Group Manager, Research and Evaluation Group

Workplace Authority (formerly Office of the Employment Advocate)

Mr Peter McIlwain, Employment Advocate
Mr Geoffrey Casson, Deputy Employment Advocate
Mr George Brenan, General Manager, Workplace Advice and Education
Ms Ann Skarratt, Corporate Director
Mr David Rushton, Senior Legal Manager
Ms Ann Smith, General Manager, Knowledge Management Service Team

Australian Fair Pay Commission

Ms Jennifer Taylor, Director, Australian Fair Pay Commission Secretariat

Australian Building and Construction Commission

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

Comcare

Ms Barbara Bennett, Chief Executive Officer
Mr Martin Dolan, Deputy Chief Executive Officer
Mr Steve Kibble, General Manager, Research and Policy
Ms Merrilyn Chilvers, General Manager; Compliance, Enforcement and Self Insurance
Ms Nicky Nicolaou, General Manager, Legal Services
Ms Penny Weir, General Manager, Corporate Services
Mr James Malizani, General Manager, Financial Management Group
Mr Matt Goldrick, General Manager, Customer Service Support
Mr Stewart Ellis, General Manager, Customer Service

Australian Industrial Registry and Australian Industrial Relations Commission

Mr Doug Williams, Industrial Registrar
Mr Terry Nassios, General Manager, Statutory Services Branch
Mr Dennis Mihelyi, Corporate Services

Indigenous Business Australia

Mr Ron Moroney, General Manager
Mr Craig Dalzell, Deputy General Manager
Mr Chris Baseler, Acting Assistant General Manager
Ms Kaely Woods, Assistant General Manager
Mr Jag Dhingra, Acting Chief Financial Officer
Mr Colin Clements, Assistant General Manager
Ms Valerie Price-Beck, Assistant General Manager
Ms Sue McCormick, Assistant General Manager
Mr Peter O'Neill, Assistant General Manager

Equal Opportunity for Women in the Workplace Agency

Ms Anna McPhee, Director

Workplace Ombudsman (formerly Office of Workplace Services)

Mr Nicholas Wilson, Director
Mr Alfred Bongi, Deputy Director
Ms Lyn Valentine, Chief Financial Officer
Ms Naomi Bleeser, Acting General Manager, Corporate
Ms Sherry Pullen, General Manager, Policy
Mr Bill Loizides, General Manager, Field Operations
Leigh Johns, Chief Counsel

CHAIR (Senator Troeth)—Good morning, everyone. I declare open this meeting of the Senate Standing Committee on Employment, Workplace Relations and Education. On Wednesday, 9 May, the Senate referred to the committee the particulars of proposed expenditure for 2007-08 and the particulars of proposed supplementary expenditure for 2006-07 for the portfolio of Employment and Workplace Relations. The committee may also examine the annual reports for the departments and agencies appearing before it. The committee has resolved that answers to questions on notice are to be lodged by Friday, 27 July 2007, and the committee will report to the Senate on 19 June 2007. The committee will hear evidence today from the Employment and Workplace Relations portfolio, beginning with the Workplace Authority, formerly the Office of the Employment Advocate. Today's proceedings will be suspended for breaks as indicated on the agenda.

I remind officers that they are protected by parliamentary privilege. I also remind officers that, in its orders of continuing effect, the Senate has resolved that there is no area 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. Officers shall not be asked to give opinions on matters of policy and shall be given an opportunity to refer such questions to superior officers or to the minister. Where an officer declines to answer a question, the grounds for this should be stated so that the committee may consider the matter. The giving of false or misleading evidence to the committee may constitute a contempt of the Senate. Oral evidence and documents in estimates proceedings are part of the public record.

I welcome the Minister representing the Minister for Employment and Workplace Relations, Senator the Hon. Eric Abetz; the Employment Advocate, Mr Peter McIlwain; and

officers of the Workplace Authority; as well as observers to this public hearing. Minister, would you like to make an opening statement?

Senator Abetz—No, thanks, Chair.

CHAIR—In that case, I call upon the Workplace Authority.

[9.02 am]

Workplace Authority (formerly Office of the Employment Advocate)

CHAIR—Mr McIlwain, do you wish to make an opening statement?

Mr McIlwain—No, thank you.

CHAIR—I call for questions.

Senator MARSHALL—Thank you, Chair. Welcome, Minister, and welcome, officers. Mr McIlwain, was the data about protected award conditions, wages and compliance with the Fair Pay and Conditions Standard, reported in the *Sydney Morning Herald* on 17 April, data that is or has been collected by the OEA?

Mr McIlwain—I have seen five individual pages of material which the *Sydney Morning Herald* says in its article has been leaked by an officer of the former OEA. I have seen nothing more of that material, so you will understand that it would be difficult for and imprudent of me to confirm the content and the accuracy of the material which the *Sydney Morning Herald* says it holds, in those circumstances.

Senator MARSHALL—Was the information that you have seen—the five pages that you have seen—information that was collected by the OEA?

Mr McIlwain—The five pages, which were faxed to the OEA by the *Sydney Morning Herald*, are similar but not identical to pages in data sheets held by the Office of the Employment Advocate.

Senator MARSHALL—How similar was it? Can you tell me where the differences are?

Mr McIlwain—Material of a certain kind appeared to have been deleted.

Senator MARSHALL—What material was deleted?

Mr McIlwain—The suspected unauthorised release of statistical data sheets from the former OEA is currently the subject of an investigation by the Australian Federal Police. In those circumstances I am very reluctant to talk about the detail of the differences between what was provided to the OEA.

Senator MARSHALL—You may be reluctant—tell me when you think the questions actually get to, I guess, impinge upon the investigation, but I would not think the differences at this point would. Let's just keep going for a moment. You said the differences were some deletions. Apart from the deleted material, was the information contained in the *Sydney Morning Herald* accurate?

Mr McIlwain—What I can say is that, apart from those changes, which I said we had detected, the five pages that were faxed to the OEA matched five pages of data sheets held by the OEA.

Senator MARSHALL—So it was accurate?

Mr McIlwain—I am saying that the five pages I saw matched, save for those changes, five pages of data sheets held by the OEA.

Senator MARSHALL—Let's be clear about what you mean by 'changes'. You have just told me that the five pages were the same. I think you are trying to indicate to me that the five pages were not the complete amount of data in your possession. Is that how you could describe it to me?

Senator BARNETT—Chair, could I make a point of order. Mr McIlwain has indicated that there is litigation currently afoot, and what Mr McIlwain may or may not—

Senator MARSHALL—No, he did not indicate that there was litigation afoot.

Senator BARNETT—Let me finish, please. What Mr McIlwain may or may not say may impact in terms of the investigation that is currently underway. I would caution the senator in terms of his questioning and draw that to the committee's attention.

CHAIR—There is no point of order at present. I think Senator Marshall has indicated that questioning will continue and I am sure that both Mr McIlwain and Senator Marshall will know when we have reached a point beyond which further questioning is impossible.

Senator MARSHALL—Thank you, Chair. Could you answer the question, Mr McIlwain.

Mr McIlwain—I sorry; could you repeat the question?

Senator MARSHALL—You have told me that the five pages that were faxed from the *Sydney Morning Herald* to you were accurate.

Mr McIlwain—They matched five pages held by the OEA save for changes which had been made to them.

Senator MARSHALL—What changes were they? I thought you indicated earlier that the changes were in fact deletions.

Mr McIlwain—That is correct.

Senator MARSHALL—Explain to me what you mean by that. The five pages obviously is not the complete data set of information—

Mr McIlwain—What I mean is what I have said: I cannot say that all of the material which the *Sydney Morning Herald* says it holds and it received as the result of an unauthorised leak by an OEA employee is the same as material that might be held by the OEA.

Senator MARSHALL—You have indicated to me that the five pages that the *Sydney Morning Herald* have showed you match five pages of your own data.

Senator Abetz—Subject to deletions.

Mr McIlwain—Subject to the deletions I mentioned, yes.

Senator MARSHALL—Deletions from the five pages.

Mr McIlwain—Yes.

Senator MARSHALL—Then it is not really a match, is it? I need you to be clear with me, Mr McIlwain, because I do not want to leave this estimates under any misapprehension about what you are telling me.

Senator Abetz—It is pretty clear.

Senator MARSHALL—I do not think it is that clear. You say the information contained in the five pages that the *Sydney Morning Herald* has matches, Mr McIlwain. Does that mean that the information in the five pages is accurate?

Mr McIlwain—No, it does not mean that; it means that the information matches. As to the accuracy, none of that information contained on those five pages has been quality assured or looked at for its accuracy, so I am unable to say whether it is accurate or not. What I can say is that it is the same, save for those deletions I mentioned.

Senator WONG—I would like to clarify that answer. Is your answer to Senator Marshall that the information that you received from the *Sydney Morning Herald* is identical to the information held by the OEA but that you cannot verify—this is what you are asserting—the accuracy of the information held by the OEA?

Mr McIlwain—I am saying just that.

Senator WONG—Thank you.

Mr McIlwain—I am not able to assert the accuracy of information on those five pages, because the information was not quality assured.

Senator WONG—Right. But what you got from the *Sydney Morning Herald* was the same as what you had internally? You just have not checked it?

Mr McIlwain—That is correct.

Senator WONG—Thank you.

Senator Abetz—But there were deletions on the five pages as well. I think we all know just from life experience that when certain things are deleted from pages—and I do not know what has or has not been deleted—such deletions can cause a completely different slant on that which then appears in the document.

Senator MARSHALL—Is there further information available from that tranche of data that was reported in the *Sydney Morning Herald*?

Mr McIlwain—To repeat my evidence, I cannot confirm what is held by the *Sydney Morning Herald* that I have not seen.

Senator MARSHALL—Let me come back then. Is there further information available in addition to the five pages that you have seen?

Mr McIlwain—Within the OEA?

Senator MARSHALL—Yes.

Mr McIlwain—Yes.

Senator MARSHALL—What is that information?

Mr McIlwain—That information is raw data compiled on data sheets.

Senator MARSHALL—Can you provide that to the committee?

Mr McIlwain—I will need to take that on notice.

Senator MARSHALL—Why?

Mr McIlwain—I need to take it on notice for two reasons: the first is the very heavy and onerous responsibility placed on me and my staff by section 165 of the act, where I may not, as my staff may not, disclose without their consent the parties to an Australian workplace agreement.

Senator MARSHALL—The *Sydney Morning Herald* published data which you say matches the information of the OEA. That did not identify individuals.

Mr McIlwain—You are now going to issues that are at the nub of the Australian Federal Police investigation currently underway. I feel it would be best if I did not answer that question.

Senator MARSHALL—What further information about AWAs do you have?

Mr McIlwain—In the course of its day-to-day operations the OEA, now the Workplace Authority, collect hundreds of thousands of data items concerning AWAs and collective agreements. So we have a vast array of data about Australian workplace agreements held in various systems used for the lodgement and processing of AWAs and collective agreements. My answer, I guess, is that we have millions and millions of data items on AWAs and collective agreements.

Senator MARSHALL—What documents does the OEA create in relation to the data that you collect?

Mr McIlwain—We create documents on lodgement trends, lodgement demographics and compliance—as a result of an audit agreed with the Office of Workplace Services for the Australian Fair Pay and Conditions Standard or an agreement facilitating or not facilitating compliance. For a period of five months contemporaneous with that audit, other data on other factors, including protected award conditions and the appearance or nonappearance of wage increases in AWAs, was entered incidentally to data sheets. That data, however, remained raw data on data sheets and, as per my evidence here on several occasions, since my decision to cease analysis of that kind—analysis of statistical data in particular on protected award conditions—no such analysis has been conducted. The data remained raw data entered onto an array of data sheets.

Senator MARSHALL—So you have been sampling?

Mr McIlwain—The data remained raw data. It was compiled incidentally to the drawing of a sample of 1,000 AWAs per month for five months to facilitate an audit in conjunction with the Office of Workplace Services.

Senator MARSHALL—So you have been sampling AWAs each month?

Mr McIlwain—AWAs were sampled for a five-month period to facilitate that audit.

Senator MARSHALL—What was the period of that five months?

Mr McIlwain—Those five months were May, June, July, August and September. It was 1,000 per month. I have just been reminded that, by agreement with the Department of Employment and Workplace Relations, we provide a second sample of 1,500 AWAs per quarter for the purpose of data coding in the workplace agreements database.

Senator MARSHALL—You said that as a result of the sampling you get some raw data and information with respect to the deletion of protected award conditions.

Mr McIlwain—Yes.

Senator MARSHALL—Can we have that information, please?

Mr McIlwain—I will take that question on notice for the same reason. I would need to be satisfied that the high level of responsibility placed on me by section 165 of the act was met.

Senator MARSHALL—You say that documents were leaked to the *Sydney Morning Herald* and that the five pages that you have seen match the information that you have. Did that information not provide details of individuals?

Mr McIlwain—Again, that question goes to the nub of the Australian Federal Police investigation and I would prefer not to answer it.

Senator MARSHALL—Is the information in a similar form?

Mr McIlwain—Yes, it is in a similar form.

Senator MARSHALL—Does it identify individuals?

Mr McIlwain—Does the OEA's information identify individuals to AWAs?

Senator MARSHALL—Yes.

Mr McIlwain—Yes.

Senator MARSHALL—Do you have any documents that go to the question of removal of protected award conditions which do not identify individuals?

Mr McIlwain—As I have said here repeatedly, since my decision to cease that analysis no such analysis has been completed. So there have been no analysis documents containing a summary—

Senator MARSHALL—No, I am not asking for that; I am asking for the raw data that has been collected. It has been publicised. You said that it matches the information that you have. What I am trying to do is get information from you.

Mr McIlwain—What I have said is that the five pages that were faxed to me with some differences—deletions—match five pages of raw data, statistical coding pages, held by the OEA. I am not able to confirm the extent of the material held by the *Sydney Morning Herald* without seeing it—nor the accuracy. Further—

Senator MARSHALL—But I am asking now about the information that you hold. I am interested in getting the information that you hold. You want to take that on notice on the basis that you want to ensure that it does not identify individuals.

Mr McIlwain—Yes.

Senator MARSHALL—Okay. But I do not accept that you would not know that right now.

Senator WONG—There are actually two issues, though, Mr McIlwain, aren't there? Senator Marshall is not asking you to identify individuals; he is just asking you about the data set you hold. How can that possibly cut across any concern you might have about identifying individuals?

Mr McIlwain—Because these are raw data—

Senator WONG—We are not asking you to disclose that; we asking you a simple question: do you hold that data?

Mr McIlwain—I have said that data was entered onto data sheets over that five-month period. I have said that.

Senator WONG—Okay. What happened post-September? What data is held post-September?

Mr McIlwain—The audit was for a five-month period.

Senator WONG—No, that is not the question. I understand the answer you gave Senator Marshall—that there was a five-month period of 1,000 AWAs per month to September.

Mr McIlwain—Yes.

Senator WONG—In addition, there was a second sample per quarter of 1,500 AWAs provided to DEWR.

Mr McIlwain—Yes.

Senator WONG—I am asking: post-September, did you continue to at least continue to collect data sheets—just raw statistical data—in relation to AWAs, protected award conditions et cetera?

Mr McIlwain—I am advised that a final sample was drawn in October, but at that point, Mr Nicholas Wilson, Director of OWS, and I had agreed that the audit would cease and not continue.

Senator WONG—When you say that 'the audit would cease', does that mean that you did not record any spreadsheets or any other data collection mechanism post-October? Can I just be clear here: you should take advice on this, because I am extremely concerned—when you are ready—

Mr McIlwain—I beg your pardon, Senator.

Senator WONG—I would encourage you to take advice on this and make sure that the answer you give is full, because I am extremely concerned when I look at the *Hansard* on the last occasion at what is, frankly, the patent conflict between the evidence you are giving today and the evidence you gave on the last occasion.

Senator Abetz—That is an assertion.

Senator WONG—It is. Mr McIlwain, in relation to the conducting of small samples of AWAs, on the last occasion—it is in the *Hansard* of 15 February, pages 97-100—Senator

Marshall asked a question about a question in relation to a question on notice provided on 16 August. He asked:

... the OEA was conducting small samples of AWAs to establish how protected award conditions are being treated by the parties. Can you provide the data relating to those samples?

Mr McIlwain—I am unaware of that.

Senator MARSHALL—So you were not collecting small—

I interpolate there. It continues:

Mr McIlwain—No.

You then went on to answer a question from me, where I asked:

Senator WONG—So is your evidence that the data set that comprises the answer is no longer being collected by the OEA?

Mr McIlwain—With regard to protected award conditions, yes.

You now tell us that, for the period May-September, you were collecting data in relation to AWAs.

Mr McIlwain—For the period May to September, incidental to the audit of 1,000 AWAs per month, in conjunction with OWS, other data was entered onto data sheets.

Senator WONG—Including in relation to protected award conditions?

Mr McIlwain—Including in relation to protected award conditions.

Senator WONG—So that is entirely consistent with your answers on the last occasion before this Senate committee? I would invite you to consider the *Hansard* from the last occasion.

Senator Abetz—Allow him to explain himself, because this affected anger—

Senator WONG—It is not an implication; it is clear from the *Hansard* that the answer given on the last occasion by this officer is inconsistent with the evidence being given today, and it is utterly inappropriate.

Senator Abetz—Allow him to explain before you make your wild assertions.

Senator WONG—They are not wild. I am appalled at the fact that the evidence we have been given today is inconsistent with the answers given on the last occasion.

Senator Abetz—I am not sure that that is the case. Let's just chill out a bit and allow the witness to explain.

Senator WONG—I would invite Mr McIlwain to ensure the answers he gives on this occasion are entirely accurate.

Senator Abetz—Look, that sort of sledging of the witness is completely unnecessary.

CHAIR—Yes, that is not called for. If Mr McIlwain wants to consult with his officers, he will and we will then proceed with further questions—or, indeed, answers.

Mr McIlwain—I have consistently said that, following my decision to cease analysis of statistical data on AWAs, on protected award conditions, no such analysis was undertaken. That remains—

Senator WONG—You were asked about data collection.

Senator Abetz—Wait a minute, Senator. You have made a serious allegation against this witness. I think he is entitled to give a full and detail explanation, as you sought.

Senator WONG—He can address the substance of the allegations.

Senator Abetz—Not satisfied with interrupting the witness, you are now interrupting me. It is only about 9.30. What are you going to be like at 9 o'clock tonight?

Senator WONG—I will be fine if people actually give answers which are consistent with the answers they gave on the last occasion.

Senator Abetz—No. If you allow people to answer, rather than jumping to your own predetermined conclusions, I think we might all get along a lot better.

CHAIR—I think we will now hear the answer from Mr McIlwain.

Mr McIlwain—I have carefully reviewed the transcript of my evidence in February, in November and in May and I think some confusion of terms did creep into the exchanges during those hearings. But the fact remains that no statistical data on protected award conditions were analysed by the OEA following my decision to cease such analysis at the end of June 2006.

Senator WONG—You were asked about data collection and you specifically indicated it was not occurring in relation to protected award conditions, Mr McIlwain. I asked you a specific question:

So is your evidence that the data set that comprises the answer is no longer being collected—

not 'analysed'; I used the verb 'collected'—

by the OEA?

And you said:

With regard to protected award conditions, yes.

That is different from the answers you are now giving today.

Mr McIlwain—In February no data was being collected.

Senator MARSHALL—Let me, then, take you to the November estimates. You said earlier today that you were taking samples between May and September. I asked you in May at the end of a question:

So that I am very clear, are you telling me that you have not sampled again since then?

That was in relation to when you said you had stopped doing the statistical analysis. Your answer was:

No statistical analysis for protected award conditions has been undertaken by the OEA on agreements lodged since I last gave evidence here to this committee.

Mr McIlwain—Yes.

Senator MARSHALL—My question was about sampling. Let me say it again:

So that I am very clear, are you telling me that you have not sampled again since then?

Mr McIlwain—My answer was an accurate one.

Senator WONG—It was just a nonresponse. It did not actually relate to the question.

Mr McIlwain—No statistical analysis had been undertaken since my decision.

Senator MARSHALL—But that was not the question I asked you.

Mr McIlwain—As I said, it would seem that some confusion of terms did creep into those exchanges.

Senator MARSHALL—When I started by saying, ‘So let’s be very clear,’ and I asked about sampling—and you have told me this morning that you were sampling at that time—you answered a question that I did not ask in answer to a question that I did ask. There is actually a word for that.

Senator Abetz—If that assertion is correct—

Senator MARSHALL—What assertion is that?

Senator Abetz—That you asked a question to which you got a completely non-responsive answer. If that is the case then clearly, unless you want to assert mala fides against individuals, it is obvious that the two of you were talking past each other and it would have been up to you to follow up with a further question to ensure that that was not occurring. I think in recent times your leader indicated that certain events had given him fresh pause for thought in relation to making allegations against people too quickly. Sometimes honest errors occur or, as in this case, people can talk past each other. I invite you to heed your own leader’s injunction and treat the witness with the respect that he deserves.

Senator MARSHALL—Mr McIlwain, I asked you:

... what other information, other than what you have just relayed to me then, you have collected on AWAs. Is there any and, if there is, what is it?

Do you recall me asking you that? Your answer was:

I do not believe there is.

Mr McIlwain—I am sorry, I will have to ask you for the reference.

Senator Abetz—What page are you on?

Senator MARSHALL—This was at committee *Hansard* page 15.

Senator Abetz—From the 2 November hearings?

Senator MARSHALL—Yes.

Mr McIlwain—My answer was:

I do not believe there is. I will check.

Senator MARSHALL—Are you really saying that you did not know there was any other information being collected at that time?

Mr McIlwain—The OEA collects, in its day-to-day business, literally millions of separate pieces of data about AWAs and collective agreements. It would be foolish to say that I had a complete and entire knowledge of all the information, all the statistical data items, being collected by the OEA—now by the Workplace Authority.

Senator MARSHALL—Taking what you have said, how could you say ‘I do not believe there is’?

Senator Abetz—He said:

I do not believe there is. I will check.

Senator MARSHALL—Mr McIlwain has just said that he collects lots of information. Didn’t you know that at the time, Mr McIlwain?

Mr McIlwain—I am unable to know the full extent of the data holdings of the OEA and now the Workplace Authority.

Senator MARSHALL—All right. Did you check?

Mr McIlwain—I commenced leave immediately upon finishing here that day. The matter was followed up by the acting Employment Advocate, Mr Casson.

Senator MARSHALL—Did he respond on your behalf? Did he let you know when you got back from leave?

Mr McIlwain—Mr Casson checked with the operational area that compiled the data sheets.

Senator MARSHALL—I assume that when you said, ‘I don’t believe there is; I will check,’ that, if the checking found that there was, and you had indicated that you did not believe there was, you might tell us.

Mr McIlwain—We believe we have taken this question on notice, as my answer in the transcript might suggest, so we will check to make sure that I do not fall into a role that is not mine—to table the answers to questions on notice.

Senator MARSHALL—Tell me the answer now. What other information, if there is any—other than what you have just relayed to me, which you were telling me was none—have you collected on AWAs? If there is, what is it?

Mr McIlwain—Just for the record, I believe I said I do not believe so rather than ‘none’.

Senator MARSHALL—I was referring to the previous stuff. We were having a discussion about the information, and you were telling me that there was not any. We were talking about that statistical analysis. My questions are: what other information have you collected on AWAs? Is there any? If there is, what is it?

Mr McIlwain—We believe we have established that there is no question on notice that goes to this issue. Mr Casson checked with the operational area which compiled the data sheets, and it was at that point that he learned that the coding—the compilation of raw data—had extended beyond the checking facilitation with the Australian Fair Pay and Conditions Standard.

Senator MARSHALL—And you were not aware of that then?

Mr McIlwain—No, I was on leave.

Senator MARSHALL—Do you recall my asking you:

Mr McIlwain, at the last estimates—

Senator Abetz—Which page?

Senator MARSHALL—Page 12.

... you told the committee that you intended to sample AWAs every month. Do you recall saying that?

You responded:

I recall that.

I then asked:

When did you stop doing the sampling?

You responded:

There was no analysis of statistical data on agreements lodged since we last spoke here.

But you did not stop doing the sampling, Mr McIlwain.

Senator Abetz—He did not say that he did.

Senator MARSHALL—I asked you the question, and you answered a question I did not ask as if you were answering the question I did ask. There is a word for that.

Senator Abetz—If there is a word for that, it is that a senator does not listen to the answer to the question that he has asked.

Senator WONG—Or the officer deliberately answers a different question.

Senator Abetz—And/or the officer misinterpreted the question in relation to previous discussion and that is where—

Senator GEORGE CAMPBELL—Or he has answered the question as asked.

Senator Abetz—the wit of the senator asking the question comes into play. If you get a non-responsive answer, you should then nail it down. I do not know now why we need to give you this gratuitous advice in relation to how to conduct yourself at Senate estimates.

Senator MARSHALL—There was a lead-up question. Let me repeat it. I asked:

Mr McIlwain, at the last estimates you told the committee that you intended to sample AWAs every month. Do you recall saying that?

Mr McIlwain answered:

I recall that.

So the context of the next question was about evidence that Mr McIlwain had given about monthly samples. We were not talking about anything else. It was very clear.

Senator Abetz—But the purpose of the sampling—

Senator MARSHALL—You then answered, Mr McIlwain—

Senator Abetz—is to undertake analysis of it. But do not just sample and say I am talking about samples but I have got no idea what it says.

Senator MARSHALL—I am talking about samples. Minister, let's be serious about this. You have a reputation for running a fairly tight ship. You would not accept that sort of evasiveness to an answer to your question in your department from a senior public servant—you would not do so. The Senate should not expect senior public servants to do that either.

When I ask you a direct question about a specific issue of sampling, you answered it with a non-answer, something that had nothing to do with my question, as if you were answering my question.

Senator Abetz—Clearly, looking at the transcript, what was occurring was, ‘Why do you sample anything so you can undertake analysis of the sample’. The sample itself is of no consequence; it is the analysis that flows from it. And Mr McIlwain, being the seriously bright individual that he is, undoubtedly was pre-empting the next question. That is what often happens with a question and answer session—people pre-empt what the next question might be and, in the context of reading the previous page as well, it is quite clear: ‘When did you stop the sampling?’ ‘Well, there was no analysis of statistical data lodged since we last spoke here.’

Senator MARSHALL—So your defence of Mr McIlwain is that he was actually answering a question I was going to ask in the future.

Senator Abetz—May well be.

Senator MARSHALL—Instead of answering the question I actually asked him.

Senator Abetz—This is a free-flowing discussion. If you did not have the wit to realise on 2 November 2006 that the answer that you were given was not directly responsive, and it has taken you over six months to come to that conclusion and you are now coming back for a second bite, that is fine. We could put that on the record, but ask your questions and determine exactly what you want rather than making the sort of allegations that you are.

Senator MARSHALL—The purpose of us asking questions of senior public servants is to get answers. We actually default to the position that the answers will be accurate, honest and responsive. If you are suggesting that in every instance we should actually challenge that presumption, in your words ‘To have the wit to challenge that presumption’, I think we have really stooped to a new low.

CHAIR—With due respect Senator Marshall, at the time you asked the question you accepted the answer you were given and there was no further questioning on your part. To then come back at whatever the time interval is and say that you were not happy with the question—Mr McIlwain has been diligently answering the questions that you have now asked and I see not a lot more productive time being able to be spent on this.

Senator WONG—I have a follow-up question.

Senator MARSHALL—Just before you get there, because the chair has introduced the follow-up, I then asked:

When did you make the decision to stop doing it?

And you answered:

It would have been sometime in June.

Senator Abetz—Yes, but see—‘Stop doing it.’ That is directly following on from Mr McIlwain saying:

There was no analysis of statistical data ...

Then when you say ‘When did you make the decision to stop doing it?’ it must be referencing the analysis of statistical data as opposed to sampling. I can understand that misunderstandings or talking past each other has occurred. That is, I think, pretty obvious from the transcript with respect to both gentlemen on both their parts, but to now try to start putting assertions in I think is unwise.

Senator MARSHALL—Let me take you to page 12 of the February estimates, where I said to you, Mr McIlwain:

Did you come to the decision to cease sampling the data in conjunction with anybody else?

You say:

No, it was entirely my own decision.

But you did not cease sampling.

Senator Abetz—Page 12 did you say?

Senator MARSHALL—Yes.

Senator Abetz—Of February 2007?

Senator MARSHALL—Yes.

Senator Abetz—I am not going to make any outrageous allegation. I am sure there is a misunderstanding that we can resolve between us. Do you have a page number there?

Senator MARSHALL—Mine is actually 12.

Senator Abetz—Chances are it is the original. See, there is always an explanation to these things if we work hard enough.

Senator MARSHALL—There is an explanation as to why the page numbers might be wrong. We can come back to that if you want to, but it is a rather simple proposition:

Did you come to the decision to cease sampling the data in conjunction with anybody else?

You said:

No, it was entirely my own decision.

Were you still sampling at that time?

Mr McIlwain—My response concerned the statistical analysis of that data. As I said, I agree, I believe some confusion of terms did creep into the exchanges over those three occasions.

Senator WONG—‘Creep into’? Your answer is that confusion crept in?

Mr McIlwain—Yes.

Senator WONG—Can I go back then to the issue I raised earlier, because you gave me a responsive answer and you still have not given me an explanation about why the answer you gave me on that occasion is different to the answer you have now given. I refer you to the question I asked.

Senator Abetz—Sorry, at what page?

Senator WONG—This is I think at page 100.

Senator Abetz—Of 15 February?

Senator WONG—Correct.

So is your evidence that the data set that comprises the answer is no longer being collected by the OEA? ‘Collected’!

Senator Abetz—We are at page 100.

Senator WONG—‘Collected by the OEA.’ I think Mr McIlwain has it, Minister.

Mr McIlwain—I have it.

Senator WONG—Let me finish the question. And your answer is:

With regard to protected award conditions, yes.

In other words, you confirm that you do not collect the data, which is inconsistent with the evidence you have given today. There is nothing about sampling.

Senator Abetz—Just bear with us, it is page 98 on ours, I think.

Senator WONG—Nothing about sampling, no creeping confusion, no non-responsive answer. It is a very clear answer to a simple question—that answer being inconsistent with the evidence you have given today.

Mr McIlwain—It is not inconsistent in any way. Regardless of the meaning either of us took ‘data set’ to connote in February, no audit of 1,000 AWAs, no sampling of 1,000 AWAs per month—

Senator WONG—‘Collected’. I did not ask about audits, I did not ask about sampling; I asked about collection of data. You have now told us today that you were collecting data, not analysing it, not sampling it, but collecting it. The verb that was used was ‘collection’ and you denied that there was any such collection of data.

Mr McIlwain—Senator, your question was:

So is your evidence that the data set that comprises the answer is no longer being collected by the OEA?

Senator WONG—Yes.

Mr McIlwain—In every respect my answer, ‘yes’, was true and accurate. In February, in January, in December and in November there were no samples drawn and from those samples and no entry of data on to data sheets. In every way my response in February was accurate and full.

Senator WONG—Your answer earlier today, Mr McIlwain, was that the raw data was still being collected and is still being collected.

Mr McIlwain—No.

Senator WONG—What is included in the 1,500 that you provide to DEWR, for example?

Mr McIlwain—Senator, we are talking, I regret again, at cross-purposes here. Your question was in regard to protected award conditions. What I have said here this morning is that in the day-to-day operations of the OEA, now the Workplace Authority, incidentally—as part of the lodgement process for example—the OEA collects literally millions and millions of data items. Today parties lodging workplace agreements, collective and individual, will

provide, as part of the lodgement, literally hundreds of thousands of separate pieces of data about their business—the business size, its location, the industry in which it operates, the age of the employee. All those.

Senator WONG—Impact on protected award conditions?

Mr McIlwain—No, that information does not, in its raw state, throw light on any particular research or statistical proposition. That, Senator, is what I am saying. It is nothing more than raw data. However, that information is not the information that was the subject of our exchanges at my last three appearances here. The evidence I gave in answer to your question was accurate, full and complete in every respect. In February 2007 the OEA was not compiling on data sheets information on protected award conditions in AWAs.

Senator WONG—Okay, so the answer now is ‘not compiling on data sheets’. What happens here, Mr McIlwain—and it was demonstrated frankly by Senator Marshall’s questions—is that we ask a question and you give us an answer which is somewhat different to the question that was asked. So I am going to continue to follow this. You say not on data sheets, but is the data collected?

Mr McIlwain—No.

Senator WONG—So you do not hold any data whatsoever in relation to protected award conditions?

Mr McIlwain—In regard to the period covered by your question, Senator—and January and December and November—I am unaware of the OEA collecting data in any way, shape or form.

Senator WONG—‘In any way, shape or form’?

Mr McIlwain—I am unaware of it—

Senator BARNETT—Let him finish.

Senator WONG—Are you chairing this, Senator Barnett?

Senator BARNETT—You keep interrupting the witness, Senator.

CHAIR—Order! I am chairing it. Just for the moment, I think at this point it would be helpful to perhaps make a distinction between the collection of data, which surely implies a selected target or a sector, and the lodgement of data with the AWAs. Would that be correct, Mr McIlwain?

Mr McIlwain—Senator, I think that is most helpful.

CHAIR—So what Senator Wong is meaning by ‘collection’ and what you are meaning by ‘the appearance of data along with the lodgement of AWAs’ are indeed two separate things.

Mr McIlwain—They are indeed. To take the kernel of Senator Wong’s question, to collect data, to compile raw data on a characteristic such as a protected award condition, requires someone, somewhere to form that idea to do it. Now, there may be all sorts of data contained in—obviously there are—in agreements lodged but there is no decision to collect data on protected award conditions.

Senator GEORGE CAMPBELL—Can I just follow that point up, Mr McIlwain, and ask what you meant by your comment as reported in the *Sydney Morning Herald* on 21 May, which said:

... the agency was “warehousing” this data until it could finalise a new methodology for analysing AWAs.

What exactly did you mean by that?

Senator Abetz—With what?

Senator WONG—‘Warehousing’?

Mr McIlwain—I meant that the data had been collated—it was raw data, nothing was done with it—but it would have been available to go through a process to be used in a methodology to arrive at a full picture of the treatment of protected award conditions in AWAs, should that methodology have been devised.

Senator GEORGE CAMPBELL—Can I ask you what you mean by ‘the data had been collated’? Does that mean people in your office had extracted data from the agreements that had been lodged?

Mr McIlwain—Yes.

Senator GEORGE CAMPBELL—So in fact there had been a collection of data.

Mr McIlwain—There had been the collection of data; there had been no analysis of that data.

Senator GEORGE CAMPBELL—But I thought you just said before that there had been no data collected or collated.

Mr McIlwain—Senator, my answer was that from December onwards there had been no sample drawn and from within that sample there had been no collection of data on—

Senator GEORGE CAMPBELL—From December onwards?

Mr McIlwain—From the end of November. From November lodgements onwards.

Senator GEORGE CAMPBELL—So does the information that is referred to in the *Sydney Morning Herald*, which I presume your comment about warehousing goes to, refer to data that was collated prior to November last year?

Mr McIlwain—Yes.

Senator GEORGE CAMPBELL—So any information you provide to the department—the last information you would have provided to the department—pre-dates November last year.

Mr McIlwain—I understand your question. It was my mistake. There were two samples drawn: the 1,000, which was drawn to facilitate an audit with OWS and a small subset of which was used for the purposes of collecting other data on other characteristics; and then a second sample, contemporaneous with that, which continues—the 1,500 AWAs per quarter, which is drawn and provided to the Department of Employment and Workplace Relations. So there are two samples: the sample of 1,000 per month for the purpose principally of an audit with OWS, which ceased; and the sample of 1,500 per quarter, which is provided to the

Department of Employment and Workplace Relations, which continues. It was concurrent with the other sample of 1,000, but it continued and in fact continues now.

Senator GEORGE CAMPBELL—So in fact the office is collecting data.

Mr McIlwain—No, I need to be precise here. We do not collect the data from that sample of 1,500; we simply provide the 1,500 agreements in their raw form—without any processing or data entry of any kind by the OEA—to the Department of Employment and Workplace Relations.

Senator WONG—But presumably you must choose?

Senator GEORGE CAMPBELL—I make the same point: obviously you make a selection of 1,500 from whatever agreements you have on hand?

Mr McIlwain—Yes.

Senator GEORGE CAMPBELL—So that is a selection or collation of data, even in its raw form.

Mr McIlwain—Senator, I am reminded—I do not have the transcript reference—that this issue came up in February, but I am happy to give again the evidence I gave then. We do have a process for selecting the 1,500. They are not selected at random; they are selected principally on business size and industry composition, having regard to the 16 ABS industry categories. So there is a process where our lodgement system has recorded that information automatically at the time of lodgement. We are able to then ask the system to give us 1,500 agreements according to these parameters, which it does. We then provide those agreement identifiers to staff of the department who, under my delegation, have access to those agreements for the purpose of entering them into their workplace agreements data base. Page 103 of the transcript of 15 February 2007 goes to that evidence.

Senator GEORGE CAMPBELL—Can you explain for us in a bit more detail exactly what you mean by the term ‘warehousing’ and what that means in practice within your office?

Mr McIlwain—What it means is that the raw data was entered into data sheets, which were an electronic document—they are not held as a paper document—and kept there in that raw form.

Senator GEORGE CAMPBELL—And that has not been done since November last year?

Mr McIlwain—Yes.

Senator WONG—What is the date for that?

Mr McIlwain—We will check that. I am advised that around 6 or 7 November was the last day on which coding took place, but we would have to check that with our processing division.

Senator GEORGE CAMPBELL—Was the material that finished up in the hands of the *Sydney Morning Herald* extracted from the data that was being warehoused by the office?

Mr McIlwain—The very small amount of material which I had seen from the *Sydney Morning Herald* would have come from those electronic documents with the raw data.

Senator WONG—Could I make a suggestion. Obviously we have a pretty clear difference of opinion about some of the answers previously given, but I think we need to be very clear and go through in a bit of a time frame about what was collected and held and when, so we can understand what your evidence is, Mr McIlwain. In May of last year you provided us with evidence in relation to the 250 AWAs, which was a reasonably comprehensive analysis of their impact upon protected award conditions and other matters. Correct? May last year?

Mr McIlwain—No, it was in May last year, but it was not a comprehensive analysis. In fact—

Senator WONG—Okay, you are taking issue with—

Senator Abetz—All it did was take away and none of the positives.

Senator WONG—I am happy not to have an argument about the adjective; I just want to get the process clear. In May you provided us with evidence about the analysis of, I think, 250 AWAs?

Mr McIlwain—Yes.

Senator WONG—Including their impact on award conditions?

Senator Abetz—Or the flawed analysis.

Senator WONG—This is not a commentary at this stage, Minister. If you want to have a political thing—

Senator Abetz—Well, it is when you talk about talk about impact on award conditions.

Senator WONG—I am just trying to get clear what the evidence—

Senator MARSHALL—We do not know if it is flawed or not, because you have not released any further information. You are being quite, I think, evasive about that. You seem to have lots of it, but you do not want to share it with the parliament.

CHAIR—Order! Let us proceed with at least a start of the classification of the material that we are talking about—or how you are prepared to define it.

Senator WONG—Mr McIlwain, you then told us in November that you ceased analysing data in June. I want to be clear what occurred after the May estimates. You ceased analysing data, so June data analysis ceases—correct?

Mr McIlwain—I made a decision to cease. Senator, you have asked me the question so I will answer it. I made a decision at the end of June 2006 to cease analysis of data for protected award conditions.

Senator WONG—Right, but what you continued to do for May, June, July, August and September 2006, on the basis of your evidence today, was to collect data from a sample of 1,000 AWAs per month. Do you want to be clear about what you have been telling us?

Mr McIlwain—I will be clear about that. The question put to me earlier was in the context of the *Sydney Morning Herald* and the data sheets it said it received as the result of unauthorised release. Going by the numbers according to the *Sydney Morning Herald*, we believe that the *Sydney Morning Herald* is referring to data sheets that cover May, June, July, August and September. However, a further sample of 1,000 AWAs was drawn for the audit

with OWS in October, but coding was discontinued on that last sample following an agreement with Mr Nicholas Wilson.

Senator WONG—I want to come to that. I am trying to do this in sections, so could you bear with me. I want to be absolutely clear what you were undertaking in respect of AWAs, from May to September 2006. You told us you ceased analyses in June. What was being collected between May and September? I am emphasising ‘collected’. Let us forget about the *Sydney Morning Herald* article for a moment. I just want to know what your evidence is about what data was being collected for the period May to September 2006.

Mr McIlwain—On 1,000 agreements, the full sample, for facilitation of the Australian Fair Pay and Conditions Standard—per month.

Senator WONG—The data collection in relation to that would have involved consideration of all matters within the Fair Pay and Conditions Standard and also protected award conditions?

Mr McIlwain—No. For that purpose, only the Australian Fair Pay and Conditions Standard. Incidental to that audit: for 250 AWAs per month, raw data was entered into coding sheets on protected award conditions.

Senator WONG—How long did the second aspect subsist for—the 250 per month, coded for protected award conditions, being entered onto data sheets?

Mr McIlwain—May, June, July, August and September, and either incomplete or not at all for October.

Senator WONG—To be clear: 1,000 AWAs per month, data collected and analysed against the Australian Fair Pay and Conditions Standard.

Mr McIlwain—No. I need to be careful here. The data was not analysed by the Office of the Employment Advocate with regard to any of these.

Senator WONG—It was analysed by OWS?

Mr McIlwain—Yes.

Senator WONG—So you collected data from May to September, which enabled an analysis against the Fair Pay and Conditions Standard of 1,000 AWAs per month, with incomplete or nil return in October?

Mr McIlwain—That is correct.

Senator WONG—In addition, you collected data and coded data in relation to protected award conditions for 250 AWAs per month in the same period?

Mr McIlwain—Yes.

Senator WONG—Which concluded when?

Mr McIlwain—It concluded with the October sample—again, either incomplete or not at all.

Senator WONG—From October onwards, what data have you collected?

Mr McIlwain—As part of this process that we have been talking about, none. I need, though, for certainty to say that we continue to draw a sample of 1,500 AWAs per quarter, which was provided to the Department of Employment and Workplace Relations.

Senator WONG—And that was provided when? March, June, September?

Mr McIlwain—On a quarterly basis.

Senator WONG—Tell us when that was provided.

Mr McIlwain—I am advised that it is drawn on a monthly basis. It amounts to 1,500 per quarter, so 500 per month, under that separate arrangement, go to the workplace agreements database team, in DEWR.

Senator WONG—The database team? Correct?

Mr McIlwain—Yes, the workplace agreements database team.

Senator WONG—In what form is that data collected and provided?

Mr McIlwain—It is not data; it is an individual agreement number that allows that agreement in its entirety to be accessed by the data entry staff in that unit.

Senator WONG—I think Senator Campbell was following this up with you: who makes the decision as to how that sample is determined?

Mr McIlwain—Based on lodgement trends, a statistically representative sample in terms of business size and industry is identified through a report that we can generate in our lodgement system, and the number—500 per month, 1,500 per quarter—are reported on. Those are the numbers provided to the workplace agreements database team. They are then able to use those numbers to access the agreements in our lodgement database to do whatever they do.

CHAIR—Senator Wong, before you go any further with that, Senator Joyce has a question on this point.

Senator WONG—Can I finish the time line?

CHAIR—I do not mean the whole thing; I mean you have had an hour and a quarter uninterrupted.

Senator WONG—Frankly, Chair, it is just that we have had issue with the evidence, which we believe has been non-responsive. I really would like to get a very clear time line—

CHAIR—Will three more questions do this time line?

Senator WONG—It depends on Mr McIlwain's answers, but I will certainly try.

Senator Abetz—It is always somebody else's fault.

Senator MARSHALL—That is a hallmark of this government.

CHAIR—Order! We are wasting time.

Senator Abetz—I would not be going there, given your leader's current circumstances.

Senator MARSHALL—We will go wherever you want to go, Minister.

Senator WONG—We have cleared, so far, 1,000 AWAs per month against the Fair Pay and Conditions Standard, 250 AWAs per month—this is May to September—coded for protected award conditions, 500 per month provided to DEWR, based on lodgement trends. Senator Campbell may have some questions about that later. Post October, is there any other form of collection of data in relation to AWAs other than simply the AWAs that have been lodged?

Mr McIlwain—No.

Senator WONG—No statistical compilation, no coding in any data sheets, no electronic coding of any of the AWA information?

Mr McIlwain—No.

Senator WONG—In respect of the warehousing to which Senator Campbell referred: what did that refer to in terms of the functions and time line you have just described to me?

Mr McIlwain—Those data sheets with the raw data are those that were warehoused—so those samples of 1,000 agreements that were then the subject of data entry onto the data sheets.

Senator WONG—It is that the 1,000 AWAs per month against the Fair Pay and Conditions Standard?

Mr McIlwain—Yes.

Senator WONG—But the issue, as I understand the article from the *Sydney Morning Herald*, is that that actually did include an analysis against protected award conditions.

Mr McIlwain—Yes, a subset of 250 of each of those 1,000 is coded on a data sheet each month.

Senator WONG—I have follow-up questions, but I am finished with that. Thank you, Chair, I appreciate that.

Senator JOYCE—What parties are generally involved in the process of the set-up of AWAs?

Mr McIlwain—It is the employer and an individual employee. Both parties may also use a bargaining agent. In the case of an employee, for example, a bargaining agent can be a friend, a relative, a union official. There are some prohibitions.

Senator JOYCE—Can the bargaining agent ever be an employment agency? Do they have any involvement in that process?

Mr McIlwain—There would be no prohibition of that. In those cases where an employment agency is also the employer, clearly the employment agency could not do both roles—be employer and the bargaining agent—but where an employment agency is not the employer, there would be no prohibition.

Senator JOYCE—So it would be likely that you could get information in your collection of AWA information and the samples you were discussing? For example, employment agencies would know if people were going into AWAs, wouldn't they? That would be a source to collect information from?

Mr McIlwain—I do not have a personal knowledge of the operations of employment agencies, but I imagine that it would be reasonable to say that an employment agency placing a job seeker with an employer would have made an inquiry about the terms and conditions of employment and the industrial instrument that would apply in that workplace.

Senator JOYCE—Would you be able to find out from an employment agency how many people they had actually placed into jobs under AWAs, if that question were given to you on notice?

Mr McIlwain—I would take it on notice, but at the moment I am not certain that we would automatically—certainly not necessarily—collect that information. However—

Senator Abetz—The Job Network might, because they pay on results, don't they? Therefore, they might have a better handle on it. But they would not know necessarily what sort of employment arrangements people were engaged in.

Senator JOYCE—I was just curious. There is a firm in Brisbane called Ingeus. I would be curious to know how many AWAs—in that sample—it placed or whether it is part of it. I will ask you take that on notice, if I can. The company is Ingeus. In that sample, how many of the employees are actually earning over \$75,000 and how many are earning under \$75,000?

Mr McIlwain—We do not collect that information at the moment through our lodgement system, but our feeling is that as high as 90 per cent of employees on AWAs would in ordinary time earnings terms be earning no more than \$75,000. But that is our best estimate.

Senator JOYCE—So if there were a piece of legislation that came in that was to differentiate a no disadvantage test below \$75,000, that would have a fundamental change on 90 per cent of the people going into AWAs?

Mr McIlwain—It would affect, on our best estimate, around 90 per cent, yes.

Senator JOYCE—What you would be left with would be the 10 per cent who are people at the top of the market who are pretty strong in bargaining their position in any case.

Mr McIlwain—Or working in industries where, regardless of the employment instrument, there are high levels of earnings.

Senator JOYCE—It would be fair to say that the vast majority of effect would be changed by a piece of legislation, if that were to get through, that differentiates between above and below \$75,000. In fact, it knocks out 90 per cent.

Mr McIlwain—On that basis it would have a pronounced effect.

Senator JOYCE—Have you put in the modelling what would be the change, if any, to the effect if you took out 90 per cent—knowing that 90 per cent will never have a disadvantage because there will be a no disadvantage test below \$75,000?

Mr McIlwain—I think it is more than reasonable to draw that conclusion.

Senator JOYCE—I will also leave that with you. In your collection of this AWA information, is it possible that a greater amount would be available if you contacted the employment agencies and asked them how many they are sending out into jobs with AWAs and how they are progressing?

Mr McIlwain—I think that would be an interesting research project. The information is not currently collected but, given the critical role that employment agencies now take in placing job seekers, I think it is an interesting research proposition, which we could consider.

Senator JOYCE—They have collected money for placing the jobs, so you would be entitled to that information, if you asked for it, wouldn't you? They have actually collected a fee for placing those people in jobs in AWAs, haven't they?

Mr McIlwain—I am not sure that we would be able to demand the information. Nonetheless, historically we have a pretty good success rate in gaining the cooperation of employers and employees for research purposes.

Senator JOYCE—How much do they get for placing a person in a job?

Mr McIlwain—I am not really able to answer that.

Senator JOYCE—I will ask that somewhere else. Thank you very much for that.

Senator BARNETT—Mr McIlwain, I just want to take you back to last year, round about now, when you made the decision to change the methodology in terms of the coding and collecting data relating to protected conditions and the reasons for it. Could you outline to the committee the reasons for it? My understanding was that it was an incomplete analysis. You were looking at the removal of certain conditions but not the input in terms of what some people would consider the positives. So in a sense it was an incredibly one-sided methodology. Could you outline to the committee the reasons so that it is patently clear for the committee?

Mr McIlwain—I am happy to do that. I think the minister has already observed that the issue is that looking only at the removal or modification of protected award conditions and nothing else does not provide a complete picture of what is occurring for that employee in the workplace. The reason for that is that any methodology that focuses on certain employment conditions in isolation—for example, those that are known as protected conditions—and does not take into account other benefits, which might include flexible hours, family-friendly provisions and, very significantly, higher pay and access to bonuses, is a misleading methodology and will result only in distorted outcomes. Having regard to that concern in chief, I made the decision at the end of June 2006 that the crude approach to protected award conditions analysis that had been undertaken would be ceased and not recommenced until a robust and secure methodology could be devised.

Senator BARNETT—Thank you. I want to now ask some questions about the number of AWAs as a percentage of the total workforce in Australia. It appears that there is some debate or misunderstanding about this. I draw to your attention to the *7.30 Report* last Thursday, 24 May, when the opposition leader, Mr Rudd, claimed that:

Some 3 per cent of employment right across Australia currently has AWAs ...

Not so long ago I was at a conference with opposition parliamentary secretary Brendan O'Connor and I think he referred to the figure of either four per cent or five per cent. Mr Smith has previously referred to the figure of four per cent or five per cent of the total workforce. Can you advise the committee the latest figures for the number of AWAs, what

percentage of Australia's workforce that figure is and, if you remove owner/managers from those figures, what the figure is as a percentage of Australian employees?

Mr McIlwain—Using the OEA's methodology, we estimate that, at 31 March 2007, 747,000 AWAs were in operation. Using ABS statistics on the size of the workforce, that would equate to 8.4 per cent of the workforce. With regard to some of the other figures that are reported, particularly derived from the ABS biennial employee earnings and hours report, the observation I would make is that, though that report and the analysis it is based on are extensive, it is compiled as the result of a survey of a sample of Australian workplaces and does not mirror the AWA population. For example, the most recent ABS data for Western Australia showed a 2.2 per cent decline in the proportion of employees covered by AWAs in that state when in fact the number of AWAs lodged in Western Australia over the same period had risen by 165,000—an increase of 76 per cent.

So, as always with statistics, a number of conclusions can be drawn. But the OEA's methodology is a simple one. We take into account, for the purposes of coming up with workforce coverage, live AWAs—all the AWAs that have been lodged in the previous three years. We choose three years as the period because three years remains the most common nominal expiry date in AWAs. Some AWAs run for less than three years but many run for more than three years. So we believe that three years is an appropriate slice to take, and, over those three years, 747,000 AWAs have been made.

Senator BARNETT—Can you advise the committee as to how anybody could come up with, rather than 8.4 per cent, a figure of three per cent, which is less than half, nearly a third, of your calculation—and your calculation, as you say, is based on live AWAs, as in AWAs over three years?

Mr McIlwain—I believe the three per cent figure is derived from that biennial ABS survey. But the latest ABS survey, which was published this year, was conducted in May last year and, as I said, does not mirror the AWA population. The best example is that dramatic growth in AWAs in Western Australia, which does not appear to be properly accounted for in the ABS results.

Senator JOYCE—If an agency were to set up an AWA in their own firm, would they get paid for that placement?

Mr McIlwain—I am not able to answer that question.

Senator JOYCE—You might like to take that one on notice.

Senator Abetz—Possibly the Job Network should be asked about that.

Mr McIlwain—Yes, we will refer it to our colleagues in DEWR.

Senator BARNETT—You mentioned WA. What percentage of the workforce in that state are on AWAs?

Mr McIlwain—In that state—

Senator BARNETT—I am interested in Tassie as well as WA. You can take it on notice if you have to.

Mr McIlwain—In Western Australia, on the basis of the OEA's methodology, 22.3 per cent of the workforce are covered by AWAs at the moment. I have just had referred to me a media release by the Australian Chamber of Commerce and Industry which has slightly less favourable figures—for example, in Western Australia, using a different ABS denominator, the labour force rather than employees, is slightly less, at 19.4 per cent.

Proceedings suspended from 10.31 am to 10.46 am

CHAIR—The committee will resume. Senator Campbell has a question.

Senator GEORGE CAMPBELL—Mr McIlwain, I want to go back to the sample you provided to the department—the 1,500 each month. Can you provide us with the details of the sample, not the details of each of the agreements. You said it was a selected sample drawn from various industry sectors. Can you give us the details of how many are drawn from which sectors that make up the 500?

Mr McIlwain—We can do that. We will take that on notice. It is 1,500 per quarter, 500 a month.

Senator GEORGE CAMPBELL—I presume it is the same statistical monthly drawdown that you have.

Mr McIlwain—It will differ from month to month, depending on lodgements during that period. So if there are more lodgements from one industry there would be more agreements from that industry than in the previous month.

Senator GEORGE CAMPBELL—Perhaps you can give us a monthly figure and the quarterly aggregate.

Mr McIlwain—We will give it to you on a monthly basis.

Senator MARSHALL—Mr McIlwain, I think we have established during the evidence this morning that the warehousing of data that you referred to in the *Sydney Morning Herald* is a collation of information that is extracted from a sample of AWAs.

Mr McIlwain—It is data that is taken from AWAs and entered onto a data sheet.

Senator MARSHALL—I think you used the word 'collation'.

Mr McIlwain—Whatever word, it is entered onto a data sheet.

Senator MARSHALL—I think you used the word 'extracted'. This information is stored electronically?

Mr McIlwain—Yes.

Senator MARSHALL—And I think you confirmed that the *Sydney Morning Herald* information would have come from that electronic source of information that you have warehoused.

Mr McIlwain—I have said that I am unable to say that what the *Sydney Morning Herald* holds in full is what we hold in full, but what I have said is that the five sheets that I have seen—with some changes, some deletions—have been identified as matching data sheets that are part of that warehoused material.

Senator MARSHALL—If it is stored electronically, it will not necessary identify the individuals from which the information was taken?

Mr McIlwain—That is not correct.

Senator MARSHALL—Which bit is not correct?

Mr McIlwain—That it does not identify parties.

Senator MARSHALL—It will not necessarily have to identify the parties if it is electronically stored.

Mr McIlwain—It does identify the parties.

Senator MARSHALL—You have indicated that you think the *Sydney Morning Herald* information came from that electronic source. That did not identify the individuals.

Mr McIlwain—I cannot answer that question because it goes to the nub of the AFP investigation.

Senator MARSHALL—What I am interested in is extracting the information that you have in relation to that warehoused data in respect of protected award conditions. What can you tell me about that?

Mr McIlwain—I can tell you that I think I have already taken that question on notice.

Senator MARSHALL—You have taken it on notice with respect to not being able to identify the individuals.

Mr McIlwain—I am sorry, I thought the question was for those documents.

Senator MARSHALL—But I asked you why you would want to take that on notice, and you said it was because you had to ensure that the information would not identify the individuals.

Mr McIlwain—That is correct.

Senator MARSHALL—Is the information available without identifying the individuals?

Mr McIlwain—That is what I need to conclusively satisfy myself of.

Senator MARSHALL—Have you accessed any of that information that is being warehoused?

Mr McIlwain—Yes.

Senator MARSHALL—What information—and I mean the OEA—have you taken from that warehoused information?

Mr McIlwain—It is being perused.

Senator MARSHALL—Does that go to the issue of protected award conditions?

Mr McIlwain—That is some of the information.

Senator MARSHALL—And does the information that you have perused in any case identify individuals?

Mr McIlwain—Yes.

Senator MARSHALL—When would you be able to find out for the committee whether you could extract that information about protected award conditions without identifying the individuals?

Mr McIlwain—Because of the high level of responsibility placed on me by section 165, I would have to personally look at all of that material and all the data entered for each agreement.

Senator MARSHALL—Your responsibility only goes so far as ensuring that the names are not attached to the information.

Mr McIlwain—That is correct—well, no, ‘identifies’ is what the legislation says.

Senator MARSHALL—When do you think you will be able to respond to the committee about that? Just so you understand the difficulty that I have: the problem is that when we put questions on notice they seem to go to this black hole of the minister’s office and we fail to get responses. Most of the questions that we had on notice from both the November estimates and the February estimates were not responded to until Friday afternoon, prior to this estimates. I know that you have given evidence that you provided the answers to those questions to the minister within the time frame specified by this committee. But we still did not get those. So I do not want a mechanism to be put in place where people simply take questions on notice and the committee fails to get the information until a time that suits the minister.

Senator Abetz—That is an appropriate comment to make for an opposition senator but, with respect, I do not think—

Senator MARSHALL—‘An appropriate’ or ‘inappropriate’?

Senator Abetz—An appropriate comment. In this game of politics you make those sorts of comments—I will not take issue with that. But I do not think it is appropriate to expect the participants at the table to comment.

Senator MARSHALL—I am sorry if you misunderstood—I was not expecting you to comment. I said I was backgrounding you on why—

Senator Abetz—Good. I just thought that this was for questions and answers. I was thinking you might have wanted a response.

CHAIR—Senator Marshall has made the statement, and that is on the table now. We will proceed with further questions.

Senator MARSHALL—It was so you understood my reluctance to simply accept the taking of questions on notice. The purpose of this Senate estimates is to get answers. So I am keen to know when you would have an answer to that—whether you could give that to the committee today or whether your officers are able to establish that and you could respond later in this hearing. That is what I am trying to find out.

Senator JOYCE—I can understand where Senator Marshall is coming from with some of these things. Obviously, you are trying to look after people at the lower end of the scale—those people who go onto AWAs and may be disadvantaged. Do AWAs cover things such as—

CHAIR—Sorry, Senator Joyce, but Senator Marshall is pursuing a line at the moment and I will allow him to finish that before I go on.

Senator Abetz—It is difficult to follow, but we think there is a line.

CHAIR—Senator Marshall, have you finished?

Senator MARSHALL—No. I am waiting for a response about when I may expect the information. Mr McIlwain, will you be able to respond today?

Mr McIlwain—No, Senator, that would not be possible.

Senator MARSHALL—You have perused the information at this point and you are not prepared to document that because of your concerns about identifying the individuals. What information have you gained from your perusal in respect of the removal of protected award conditions?

Mr McIlwain—I have not perused, but my staff have perused, the documents.

Senator MARSHALL—And what information have they obtained?

Mr McIlwain—The information they have obtained from a cursory perusal is that the data has not been quality assured, that it contains obvious errors and inconsistencies and that it may not safely be relied upon to draw inferences or conclusions.

Senator MARSHALL—What sorts of errors have they identified?

Mr McIlwain—They have identified errors in the way the data, for example on protected award conditions, was entered.

Senator MARSHALL—What was the extent of those errors?

Mr McIlwain—The extent of those errors would allow people to make incorrect conclusions about the incidence of the exclusion of protected award conditions from AWAs.

Senator MARSHALL—Are you currently collecting data about the treatment of protected award conditions in AWAs, specifically for AWAs lodged post 27 March 2006?

Mr McIlwain—No.

Senator MARSHALL—So that I am not accused by the minister of not having the wit to challenge that answer and so that it is clear, are you collecting—

CHAIR—Senator, please do not start with provocation.

Senator Abetz—If they had any information—

Senator MARSHALL—any information in respect of the treatment of protected award conditions in AWAs?

Mr McIlwain—No.

Senator MARSHALL—Do you have any information in respect of the treatment of protected award conditions in AWAs?

Mr McIlwain—Contained in individual agreements there will be information that goes to the treatment of protected award conditions. However, we are not looking in those agreements for that information or entering it into any database.

Senator MARSHALL—I think you may have already provided this answer, but perhaps you could clarify it for me. When did the data collection cease?

Mr McIlwain—It ceased on or around 6 November 2006. I understand either that an October sample was not subjected to the data entry process or that the process was incomplete. The reason for that was that the thousand AWAs were drawn for the chief purpose of conducting an audit with OWS for facilitation of compliance with the Australian Fair Pay and Conditions Standard. Having decided, with Mr Nicholas Wilson, to cease that audit, no more samples were drawn.

Senator MARSHALL—What can you tell us about the compliance of the information you collected with the Fair Pay and Conditions Standard?

Mr McIlwain—The purpose was to look at agreements to see whether, on the strength of the information that was available within the agreement, compliance with the Australian Fair Pay and Conditions Standard was facilitated. The key point here is that compliance with the standard depends upon what actually occurs, and it is not a breach of the act to include in the agreement something that, on the face of it, does not facilitate compliance. That is why it was a joint audit with the Office of Workplace Services. The only agency empowered and equipped to determine whether in fact compliance was occurring in the workplace for that employee was the Office of Workplace Services. The list of agreements where the OEA was unable to conclude that there was the standard facilitated on the strength of what was in the agreement was provided to the Office of Workplace Services. It went through an investigatory process to determine whether compliance with the standard was occurring.

Senator MARSHALL—What did your information find?

Mr McIlwain—It found that some agreements, on the face of the information contained within them, did not facilitate compliance with the standard. I am advised by the Office of Workplace Services that, having gone through the process of looking at a large number of agreements—1,700 agreements—there have been no prosecutions.

Senator MARSHALL—So you had an initial perusal and you identified 1,700 that you questioned and referred to the OWS out of a sample of how many?

Mr McIlwain—It was 3,250 agreements.

Senator MARSHALL—So just over half. Can you tell me what information you have collected in terms of wages?

Mr McIlwain—Using the subset of 250 AWAs, which was a subset from the monthly sample of 1,000 AWAs—

Senator MARSHALL—In which month?

Mr McIlwain—It was the monthly sample drawn to check the facilitation of compliance with the Australian Fair Pay and Conditions Standard. Data was entered on whether or not an agreement on the face of it provided for a pay increase during the duration of the agreement.

Senator MARSHALL—What were the results of that?

Mr McIlwain—Those data were never analysed. I beg your pardon: I am reminded that, in the evidence I gave here a year ago, the April sample was analysed and, of that, 78 per cent of

AWAs provided for a wage increase during the life of the agreement. I think that is the evidence I gave at the time.

Senator MARSHALL—So you did not do an analysis but you looked at the sample of 250 to determine whether or not there was a wage increase provided. How many did, and how many did not?

Mr McIlwain—We have not analysed the data. I am unable to tell you.

Senator MARSHALL—I am not interested in the analysis of the data. Out of the 250 agreements you told me you sampled, you looked at whether they provided for a wage increase.

Mr McIlwain—And the data has not been analysed.

Senator MARSHALL—I am not going to get hung up in the analysis issue again. How many of those agreements did and how many did not?

Mr McIlwain—I do not know.

Senator MARSHALL—Does anyone in your office know? Now you are asking me to expect that you actually looked at a sample of 250 AWAs with this question and you did not add it up.

Mr McIlwain—The data was never quality assured. It never went to our statistical analysts.

Senator MARSHALL—You have made that point.

Mr McIlwain—I repeat: I am unable to tell you, without those processes, what the analysis would disclose.

Senator MARSHALL—I am not interested in the analysis at this point; what I am interested in is how many of those agreements sampled provided for a wage increase. I accept what you have said—that there may be some errors and the final analysis, whatever that might be, might throw up a different result—but we are talking about raw data. You sampled 250 agreements. You asked the question to each of those agreements, figuratively speaking, as to whether or not they provided for a wage increase. So how many did and how many did not?

Mr McIlwain—I am unable to tell you. I do not know.

Senator MARSHALL—Does anyone in your office know? Someone must have added it up, surely. You sampled 250; you asked a specific question. Surely you added up those that did and those that did not.

Mr McIlwain—The aggregation and the analysis of data is not conducted by the staff who enter the data onto data sheets. Data sheets, if they are aggregated and analysed, are aggregated and analysed by qualified statistical analysts in the OEA's—now the Workplace Authority's—statistical research area. It is in a different division from the processing division where this data entry onto data sheets occurred. The other point to make is that the question as to whether an agreement provides for a wage increase during its nominal expiry date period is not straightforward. It is not simply a yes or no answer; there are other factors that come in.

Senator MARSHALL—I am happy to hear those too.

Mr McIlwain—Those questions may only be reliably determined by the OEA's research analysts. They did not see this data. They did not analyse it. They have not analysed it on this day.

Senator MARSHALL—But the data is there.

Mr McIlwain—Yes.

Senator MARSHALL—Provide it to the committee, please.

Mr McIlwain—I will take that on notice.

Senator MARSHALL—For what reason?

Mr McIlwain—I need to make sure that the data is accurate. It has been through no quality assurance process. If we are able to do that, I will provide it on notice.

Senator MARSHALL—I have simply asked for the raw data. I am not asking for you to do anything to it, Mr McIlwain. You went through a sample of 250 to ascertain whether those agreements provided for a pay increase during the life of the agreement. That is what you have told us. Provide that data to us, please.

Mr McIlwain—I will take that on notice. If I am able to quality assure the data—which I believe we will be able to do—and then also be satisfied personally that, in providing the information, I do not transgress section 165 of the act, that will overcome my concerns and I will be able to answer the question on notice.

CHAIR—Senator Joyce wants to ask some questions. Do you still have some to go on this?

Senator MARSHALL—I will, yes.

Senator JOYCE—I can understand where Senator Marshall is coming from. He is concerned about possible exploitation of individuals under AWAs. Obviously there are two groups that are likely to exploit: the employers, if they are that way inclined, and also anybody else who makes money out of the position being available—for instance, the placement agency. They also might make some money out of placing someone into an AWA where they are likely to get exploited. In light of that, there is another 'collective'—collective responsibility and a collective morality in where you put people and what sorts of jobs you put people in. Do you think an AWA is a reasonable set-up for someone who is going to be a junior childcare assistant?

Mr McIlwain—It seems to me that an AWA can provide benefits to both the employee and the employer in that situation. But an AWA must ipso facto comply with the law. If there is not compliance, there is a regime to ensure that people are protected.

Senator JOYCE—There is a firm called WorkDirections Australia. It has set up junior childcare assistants into AWAs in Beenleigh, in Brisbane. That would be the sort of AWA that would hopefully get knocked out by the \$75,000 limit, wouldn't it? That would be a person really on their first go at a job, and the employment agency has set them up into an AWA, which would be—

Senator Abetz—We are dealing in hypotheticals here. It really depends on—

Senator JOYCE—This is not hypothetical; this is real—they did it.

Senator Abetz—But it depends on the terms of each particular AWA. I do not know about these particular ones. They may be—

Senator JOYCE—This ad is for ‘Junior Childcare Assistants’ at Shailer Park. It says: ‘Salary: AWA’ and ‘To apply, please email Susan at WorkDirections Australia Beenleigh.’

Senator Abetz—Yes, but we do not know what the AWA terms are. And you could not in any event agree to standards below the minimum standards that have been set in legislation. That aside, I think there may be an announcement very shortly in relation to those that are under \$75,000, with a fairness test to deal with the public perceptions and concerns that you are expressing.

Senator JOYCE—That is very good, Minister. I am right on board with that. I am just saying that, whoever this WorkDirections Australia firm are, they have obviously benefited from that. They have actually received money; they have received a placement. So in their collective morality, collective responsibility, they thought it was quite all right to put a junior childcare assistant on an AWA.

CHAIR—I do not think you could ask Mr McIlwain to give an opinion on that, with due respect.

Senator Abetz—It sounds a bit like a Senator Marshall observation, which is now on the record but which Mr McIlwain, with respect, should not be asked to comment on.

Senator BARNETT—Mr McIlwain, I want to conclude my earlier questions regarding the number of AWAs. You were going to take on notice how many there were, the percentage in each state and territory. I also wanted to ask whether you have any figures—if you do not, I am happy to ask the department—regarding self-employed and owner-operators. Do you have those figures with you? If you are looking at the employees on AWAs you really should compare them with other employees rather than just the total workforce, which does include self-employed and owner-operators.

Mr McIlwain—That is an astute observation. If you removed owner-operators from the equation I think you would see an even larger percentage coverage of live AWAs. We will see if we are able to provide you with some information on notice—in fact, I think we can. And we most certainly can provide you with a state-by-state coverage for AWAs.

Senator BARNETT—Thank you. Finally, do you have figures on independent contractors? Again, that is a whole separate area. Do you have figures on how many there are in Australia that you can provide to us? Or is that a question for the department?

Mr McIlwain—We are now able to provide that. As of a couple of weeks ago we became responsible for independent contractors at the Workplace Authority. We may have some information we can provide immediately. If not, we can take it on notice. I will ask Mr Brennan to comment.

Mr Brennan—I will need to get you an accurate figure on the number of independent contractors. I will need to take that on notice. My recollection is that it is in the vicinity of half a million, but I would like to take that on notice to check it. That is an indication of roughly where I think it is.

Senator GEORGE CAMPBELL—I am sorry, the number of AWAs?

Mr Brennan—No, the number of independent contractors in the workforce.

Senator STERLE—Australia wide?

Mr Brennan—Yes, I think it is of that order, but I will take it on notice to be sure.

Senator WONG—Where are you drawing those figures from?

Mr Brennan—That was from the most recent Bureau of Statistics figures. They were published sometime last year—

Senator WONG—Yes, they were.

Mr Brennan—but it is a while since I have looked at them.

Senator BARNETT—When you do that on notice, can you break it down as well into state and territory figures, if possible?

Mr Brennan—I will take that on notice.

Senator BARNETT—Thank you.

Senator MARSHALL—Mr McIlwain, I asked about information you had been looking at with respect to the data and you told me you are looking at the wages issue. I am not sure that I am going to get any further on that. What else are you looking at?

Mr McIlwain—Now?

Senator MARSHALL—What have you looked at or what are you looking at now? What information can you give the committee about AWAs—or the data?

Mr McIlwain—We provide a quarterly statistical note on agreements, which contains lodgement trends, disaggregated by state, by business size, by industry—

Senator MARSHALL—I know. My question goes specifically to the content of AWAs.

Mr McIlwain—The content of AWAs is something that the OEA is not looking at at the moment. I have delegated one of my powers to the workplace agreements database team in DEWR. The department provides—or the minister tables—as per the legislation, a report on agreement making. So could I respectfully suggest that, if you have some questions of that nature, they be put to the department.

Senator MARSHALL—All right. Can you tell me what your data says about AWAs lodged since 27 March 2006 in terms of the treatment of rest breaks and meal breaks?

Mr McIlwain—Rest breaks and meal breaks being protected conditions, as defined by the act?

Senator MARSHALL—That, too. That is included in it.

Mr McIlwain—I provided some evidence here last year on that. I answered a question on notice providing further information. We will see if we are able to obtain that now.

Senator MARSHALL—In terms of the sampling that you did over those months—the 1,000 samples—what did the data you collect there tell us about the treatment of rest breaks and meal breaks for AWAs?

Mr McIlwain—I do not know. The data for those particular protected award conditions, as for all protected award conditions, were never analysed.

Senator MARSHALL—But what did the data itself say?

Mr McIlwain—I do not know.

Senator MARSHALL—Does anyone in your office know?

Mr McIlwain—It has never been analysed.

Senator MARSHALL—That was not the question. Does anyone know?

Senator Abetz—It has not been analysed.

Mr McIlwain—It has not been analysed.

Senator MARSHALL—We go back to the problem before: that is not the answer to my question; I am asking what the actual data said.

Senator Abetz—Nobody knows.

CHAIR—I think that is the distinction we made previously: there is a difference between data being put in a place in the office and then being analysed. It could be possible for it to be there but not be analysed.

Mr McIlwain—Just so, Chair. The data was not aggregated for analysis. It was not analysed.

Senator MARSHALL—Can you tell me what the data says in terms of the treatment of annual leave loading?

Mr McIlwain—No.

Senator MARSHALL—You cannot?

Mr McIlwain—My answer is identical to the answer I have just given in regard to the other protected award conditions.

Senator MARSHALL—Has that question been specifically looked at in terms of the data collection?

Mr McIlwain—The data was not aggregated for a statistical analysis. It was not analysed.

Senator MARSHALL—All right. But you perused it. Did you peruse the data for the treatment of annual leave loading?

Mr McIlwain—It was not perused to come to any conclusion regarding the content of the data or the analysis of the data; it was given a cursory perusal.

Senator MARSHALL—What were the results of the cursory perusal?

Mr McIlwain—The cursory perusal showed, particularly in regard to protected award conditions, that it would be unsafe for anyone to rely on the data without quality assurance, because there had been no quality assurance, and without returning to the individual agreements to clarify obvious inconsistencies in the entry of the data.

Senator MARSHALL—Isn't that the conclusion that you drew from the perusal? I am actually asking you for the raw data. What did the perusal actually indicate in terms of the treatment of annual leave loading?

Mr McIlwain—It indicated nothing.

Senator MARSHALL—What does that mean?

Mr McIlwain—It means that it was not perused with the intention of forming any view—

Senator MARSHALL—But you told me that you did just form a view.

Mr McIlwain—other than that the data may not be relied upon for any safe conclusion.

Senator MARSHALL—I accept that, but I would like the data. I accept the conditions that you attach to the data, but I would like the data.

Mr McIlwain—And I have taken that question on notice.

Senator MARSHALL—So you will not provide it to the committee.

Mr McIlwain—I have not said that; I have said that I will take it on notice.

Senator MARSHALL—Is the data available?

Mr McIlwain—The data exists. I will take it on notice, because I wish to satisfy myself personally that in providing the data I do not transgress section 165 of the act, which places on me a high responsibility not to identify the parties to an AWA.

Senator MARSHALL—Your perusal looks at the data—we are talking about the treatment of annual leave loading—and then you have made some conclusions. How many agreements did you peruse for this issue?

Mr McIlwain—Maybe if I described the data sheets we might avoid talking at cross-purposes. They are Excel spreadsheets with many columns and tabs. They exist as electronic documents. They are almost impossible to print as hard copy documents. The staff doing the audit of 1,000 AWAs for facilitation with compliance with the Australian Fair Pay and Conditions Standard entered information, data, drawn from the agreements—often through radio buttons or a binary approach—from which it would be impossible for an individual to draw any safe conclusion, and in fact for most individuals any conclusion whatsoever, from viewing those sheets. That is why those sheets, if they were going to be analysed, were always going to be analysed by statisticians and research analysts in another part of the Office of the Employment Advocate. Following my decision to cease analysis, which I made at the end of June last year, no-one with those skills in the OEA looked at those data sheets. No analysis was conducted. No analysis has been conducted since my decision to cease analysis.

Senator MARSHALL—Can you provide to the committee the audit you referred to?

Mr McIlwain—Again, I will take that on notice because that material also contains, obviously, information that would identify the parties to an AWA. I need to satisfy myself personally that there is no transgression of section 165 in providing that. For that reason, I will take your question on notice.

Senator MARSHALL—Can you tell me the contents of the audit? What were the findings of the audit?

Mr McIlwain—I have already given evidence on the outcome of the audit, which was that 1,700 AWAs, on the strength of the information available to the OEA in the agreements themselves, were referred to the Office of Workplace Services for investigation. So the outcome of the audit was that 1,700 AWAs were referred to the Office of Workplace Services.

Senator MARSHALL—That is because, I guess in a global sense, there was a view they did not meet the Fair Pay and Conditions Standard?

Mr McIlwain—No, because on the strength of the information contained in the agreements it was not possible for the OEA to be certain that in the workplace the standard was being complied with. The requirement under the law is that the standard be met. The requirement under the law is not that the standard be reproduced in the agreement; the law stands, whatever is in the agreement. The only body equipped to investigate and decide whether in fact there was compliance was the Office of Workplace Services. Our role in that joint activity was simply to facilitate an audit exercise and to provide a subset of the sample that might be investigated by the Office of Workplace Services. That is what we did.

Senator MARSHALL—I assume your answer will be the same if I ask you specifically about observance of public holidays?

Mr McIlwain—Yes.

Senator MARSHALL—Public holiday pay?

Mr McIlwain—Yes.

Senator MARSHALL—Substitution of days for public holidays?

Mr McIlwain—Yes.

Senator MARSHALL—Allowances?

Mr McIlwain—Yes.

Senator MARSHALL—Shift work loadings?

Mr McIlwain—Yes.

Senator MARSHALL—Penalty rates?

Mr McIlwain—Yes.

Senator MARSHALL—Outworkers conditions?

Mr McIlwain—Yes.

Senator MARSHALL—I guess any other matter?

Mr McIlwain—Where my concern about section 165 arises, yes.

Senator MARSHALL—Can you tell us of any areas where you will not have those concerns?

Mr McIlwain—No, because of the form in which the data was entered onto those electronic data sheets.

Senator GEORGE CAMPBELL—Can I follow up on a matter here. Mr McIlwain, in the office of the new Workplace Authority, how many people are employed in the statistics and analysis branch?

Mr McIlwain—There are three qualified staff.

Senator GEORGE CAMPBELL—Can you give us their qualifications?

Mr McIlwain—I believe we have answered this question on notice, but I am happy to answer it again. They have tertiary qualifications in disciplines using statistical analysis.

Senator GEORGE CAMPBELL—What are they classified as? Is there a statistician?

Mr McIlwain—Reporting and Data Analyst; Manager, Reporting and Analysis; and, Assistant Director of the Strategic Services Unit, which is where these staff work. Those three have qualifications in tertiary disciplines making extensive use of statistical analysis methodologies.

Senator GEORGE CAMPBELL—Are any of them qualified statisticians?

Mr McIlwain—Three are.

Senator GEORGE CAMPBELL—The three of them are qualified statisticians?

Mr McIlwain—Yes.

Senator GEORGE CAMPBELL—That is all I wanted to know. What do they do?

Mr McIlwain—They conduct statistical analyses.

Senator GEORGE CAMPBELL—But you do not do any.

Mr McIlwain—Yes, we do.

Senator GEORGE CAMPBELL—Where? Tell us a statistical analysis that you do?

Mr McIlwain—We provide a quarterly statistical note on all agreement lodgements—AWAs and collective agreements. That provides information on lodgement trends. It provides information on an industry by industry basis, state by state basis and a business size basis. We provide information on workforce coverage by AWAs.

Senator Abetz—I think you get the picture.

Senator GEORGE CAMPBELL—No, I do not.

Mr McIlwain—AWAs by federal electoral division, AWAs and collective agreements by post code.

Senator GEORGE CAMPBELL—Why is it important to have them by electoral division?

Mr McIlwain—Because we have been asked by both sides of politics to provide that information.

Senator MARSHALL—When did you start doing that?

Senator Abetz—This was at Senate estimates a while ago.

Mr McIlwain—I think we have answered a question on notice.

Senator GEORGE CAMPBELL—Please forgive us, but these questions did not come in until Friday afternoon. I do not have the computer.

Mr McIlwain—No, I think before that. It would be at least for four years that that information has been provided in that format.

Senator GEORGE CAMPBELL—To both sides?

Mr McIlwain—It would be pre-Work Choices.

Senator GEORGE CAMPBELL—It has been provided to both sides over the past four years?

Mr McIlwain—It has been provided on request.

Senator GEORGE CAMPBELL—On request?

Mr McIlwain—Yes. It has been provided to this committee.

Senator GEORGE CAMPBELL—I am aware that it has, after it was discovered that the information was available. Let me take a step back. Are you saying that the work that is involved, in what you have just described, is sufficient to keep those three people employed full time?

Mr McIlwain—Yes, I am. Now, with more than 1,000 AWAs and several hundred collective agreements lodged every day, we are talking very large numbers of agreements coming in. It is a full-time task for those three people.

Senator GEORGE CAMPBELL—And in carrying out their work, they do not do anything related to looking at the specifics of those agreements?

Mr McIlwain—At the content of agreements, no.

Senator GEORGE CAMPBELL—Why wouldn't that be a natural corollary for those people to do that?

Mr McIlwain—They have a full-time job dealing with the macro picture, if I can describe it that way. Separately, the department has a workplace agreements database which codes quarterly 1,500 AWAs and every collective agreement lodged. At the time of the Work Choices legislation being passed by the parliament, an agreement was made that, because an extensive, new system had recently been set up in DEWR for this exact purpose, the best use of the taxpayers' money would be to have DEWR, not the OEA, undertake that task. So funding did not come to the OEA; it went to DEWR for that purpose.

Senator GEORGE CAMPBELL—But you are the body that is responsible, are you not, for ensuring that provisions of agreements or AWAs meet the provisions of the act?

Mr McIlwain—The short answer is that, except in regard to prohibited content, no, it is the Office of Workplace Services. However, the OEA, now the Workplace Authority, has extensive responsibilities to assist the parties to make lawful workplace agreements, individual and collective, and we certainly do do that. We have other functions that are set out in section 151 of the act.

Senator GEORGE CAMPBELL—How do you meet your function under the act without looking at least at a selection of AWAs or agreements? Do you only do it when someone raises a complaint?

Mr McIlwain—There are several issues there. If someone raises a complaint with the Workplace Authority, we will see that that complainant is transferred to an inspector in the Office of Workplace Services to deal with that complaint. That is the standard operating procedure.

Senator GEORGE CAMPBELL—So it is a reactive rather than a proactive approach.

Mr McIlwain—The role of the employment advocate is to perform the functions set out in section 151 of the act, and the system is a lodgement-only system. It has been established with a high onus—

Senator GEORGE CAMPBELL—It is no longer a lodgement-only system.

Mr McIlwain—It is still a lodgement-only system.

Senator Abetz—Soon to be changed.

Mr McIlwain—There are proposed legislative amendments that would change that, but today there are still—

Senator GEORGE CAMPBELL—But I thought your rule was changed on 7 May.

Mr McIlwain—It is still a lodgement-only system for the time being until the parliament passes legislation. But to return to your question, the employment advocate and his staff do not check each agreement. The law sets a high onus of responsibility on the parties but quite particularly the lodger—the employer—to comply with the law to meet the Australian Fair Pay and Conditions Standard, for example. Where instances of alleged non-compliance come to our attention, they are immediately referred to the Office of Workplace Services—I will not go too far in speaking for Mr Wilson—which takes its role very seriously and is a vigorous investigator of issues of non-compliance. In providing a sample of agreements to the workplace agreements database, I discharge my responsibility to analyse workplace agreements and, for the purposes of the workplace agreements database, that responsibility has been delegated to the staff who work in that unit. That is what has occurred since the advent of Work Choices.

Senator MARSHALL—And that is in DEWR?

Mr McIlwain—That is in DEWR.

Senator GEORGE CAMPBELL—There are a few issues I will come back to, but I will let Senator Marshall finish off the area he was dealing with.

CHAIR—Senator Barnett would also like to ask a question.

Senator MARSHALL—Where does the quarterly note that is drawn up by your statistics branch that you referred to go?

Mr McIlwain—On our website.

Senator MARSHALL—If Senator Barnett has questions on that issue he may as well go, because I am going to move on a bit.

Senator BARNETT—It is not exactly on that issue but it should not take too long. In terms of the Fair Pay Commission with their increases across the board, how does that affect people on AWAs?

Mr McIlwain—The responsibility of an employer employing somebody on an AWA is the same as any employer covered by a determination of the Fair Pay Commission. As the Fair Pay Commission makes an increase to the pay scales, that employer employing an employee on an AWA that has already been signed is required to continue to comply and must pay a higher pay rate so that they can comply when those decisions come down. If the pay rate is equal to the minimum pay scale that applies on a given date when the AWA is signed, that does not stay fixed if there are subsequent increases to that pay scale by the Fair Pay Commission. The employer must always comply with whatever the pay scale is at a particular point in time, whether or not the employee signed an AWA before.

Senator BARNETT—That is helpful, thank you.

Mr Brennan—Senator Barnett, I have some further information on independent contractors. I do not have too much detail, but there was a new release by the Bureau of Statistics on 27 April this year. I have the cover note from that release which indicates that there are a total of 1.5 million people who work on a contract basis, of which 1.1 million are employee contractors—although that is a contradiction in terms but I guess people who are individual contractors—and 409,000 who are business owners who work on a contract basis. If you want more detail, I will need to take that on notice, but that is an indication of the current numbers.

Senator Abetz—What period is that just out of interest?

Mr Brennan—That was at November 2006.

Senator Abetz—That is when they made the statement?

Mr Brennan—That is when the survey was conducted, yes.

Senator BARNETT—So effective November 2006?

Mr Brennan—Yes, and I think the previous data was—I am not sure but it wasn't that recent. It was a couple of years old.

Senator BARNETT—That is very useful up-to-date information. Can you take on notice the state-by-state breakdown?

Mr Brennan—Yes.

Senator MARSHALL—Mr McIlwain, we have already touched on some of this, but I want to talk about compliance with the Fair Pay and Conditions Standard. Was the data reported by the *Sydney Morning Herald* about compliance with the Fair Pay and Conditions Standard accurate?

Mr McIlwain—We have not analysed the data, so I am not able to answer that question.

Senator MARSHALL—Would that information fall into the category you said earlier about the five pages that you were aware of? I forget the words you used, either 'mirrored' or—

Mr McIlwain—Matched.

Senator MARSHALL—matched the information that you have?

Mr McIlwain—There was at least one page that matched information going to that issue, yes.

Senator MARSHALL—You have told me that, of your initial joint audit of 3,250 AWAs, 1,700 were subsequently referred to the Office of Workplace Services for further investigation, which is a bit over half. Remind me what period that was over, because I want to know what you are doing now in respect of that.

Mr McIlwain—That subset of 3,250 from which the 1,700 were drawn was from April, May, June and July 2006.

Senator MARSHALL—What are you doing now in terms of—

Mr McIlwain—The audit has ceased. The reason it ceased was that Mr Wilson and I agreed that OWS, having been through its processes, had identified high levels of compliance in the workplace and I am advised that no prosecution has ensued. On that basis it was considered reasonable to cease that audit, which was not intended to continue indefinitely.

Senator MARSHALL—I am not sure that just because no prosecution has ensued means that much. Mr Wilson has given evidence to the committee that if in the first instance people fix the problem then no prosecutions will ensue. When you did your joint audit, were you able to identify what part of the agreement may not have been complied with?

Mr McIlwain—Yes.

Senator MARSHALL—Can you give me that information please.

Mr McIlwain—The agreement was coded in a way where the agreement was identified and then there was a free text comment as to where the problem seemed to arise.

Senator MARSHALL—Can you tell me where the problems were arising?

Mr McIlwain—Across all components of the standard.

Senator MARSHALL—Are you saying most agreements failed every component or?

Mr McIlwain—No.

Senator MARSHALL—Well, I am after information, Mr McIlwain. You said you had some information about where these agreements failed to comply. I would like you to tell me where the agreements failed to comply and what the break-up was.

Mr McIlwain—I do not have a breakdown of that information.

Senator MARSHALL—Will you be able to get that for us?

Mr McIlwain—I will take that on notice and see if the information can be broken down that way.

Senator MARSHALL—Of all those AWAs that the joint audit identified needed further investigation, the process is that they were all accepted for lodgement and so they were all operational upon lodgement; is that the case?

Mr McIlwain—That is the law.

Senator MARSHALL—So they are in train anyway regardless of whether they comply or not.

Mr McIlwain—Senator, the point to make, again, is that it is impossible to deduce from the agreement itself whether there is compliance with the standard. That may only be done by the Office of Workplace Services as the result of investigatory processes.

Senator MARSHALL—Sure. Thank you.

Senator GEORGE CAMPBELL—Mr McIlwain, can you tell us what amount of money has been budgeted for the OEA to implement and conduct the fairness test?

Mr McIlwain—I am not able to tell you today, Senator. That would be part of the package of legislation that is yet to be introduced into the parliament.

Senator GEORGE CAMPBELL—So you are not aware of what it is?

Senator Abetz—In circumstances such as this, I think you know, Senator, that there may well have been discussions backwards and forwards, but everything is capable of being changed until such time as it is actually announced. Therefore, I would suggest you wait until some time later.

Senator GEORGE CAMPBELL—I actually asked Mr McIlwain when was he aware of what has been allocated. I have not yet asked him to disclose it, Minister. If you would be patient and listen to our questioning, you may not have to interject as often as you do and we might get through this a lot quicker.

Senator Abetz—Mr McIlwain may well not be appraised of the final decision that is taken.

Senator WONG—Then he can say that.

Senator GEORGE CAMPBELL—Well, let him say it. He is the officer at the table.

CHAIR—Order, Senator Campbell!

Senator Abetz—I happen to be the minister at the table, and it is appropriate for me—

Senator GEORGE CAMPBELL—It is not a policy issue, Minister, with due respect.

Senator Abetz—Absolutely it is a policy issue.

Senator GEORGE CAMPBELL—No, it is not.

Senator Abetz—How much money is being spent on a particular item, especially when that policy has not been fully announced—

Senator GEORGE CAMPBELL—It is not a matter for you.

Senator Abetz—It is.

CHAIR—I think we will hear from Mr McIlwain, if he is able to answer the question.

Mr McIlwain—The Workplace Authority has been consulted on this issue but a financial impact statement is customarily part of a bill, or the documents accompanying a bill, when it is introduced into the parliament. I am not able to presume on the final form of that bill when it is introduced, so I am really not able to say more.

Senator GEORGE CAMPBELL—Given that the Prime Minister, when he announced that the fairness test will apply, said it would apply from Monday, 7 May, how many resources have you expended from 7 May to date in implementing the fairness test?

Mr McIlwain—None.

Senator GEORGE CAMPBELL—None?

Mr McIlwain—None.

Senator GEORGE CAMPBELL—How many staff have been involved in implementing the fairness test?

Mr McIlwain—Conducting the fairness test? None.

Senator GEORGE CAMPBELL—None? Has any fairness testing been done?

Mr McIlwain—No.

Senator GEORGE CAMPBELL—No?

Mr McIlwain—No.

Senator GEORGE CAMPBELL—So the minister told porkies—

Mr McIlwain—I am sorry?

Senator GEORGE CAMPBELL—in saying it would apply from 7 May?

CHAIR—Order! Would you please rephrase that question.

Senator GEORGE CAMPBELL—Are you saying that the minister misled the parliament in indicating that it would apply from 7 May and that your office would be responsible for carrying out the testing?

Senator Abetz—Once again, whether a minister or somebody else has misled the parliament is not something that you should be asking an officer at the table. It requires a judgement from the officer as to whether somebody misled. The simple fact, as I think we all know, is that from time to time governments of both persuasions make policy announcements that they intend should apply from a particular date and then legislation is passed. Some call that backdating, or retrospective, legislation; others say it is not retrospective because it has been publicly announced as of 7 May. That is going to be the test when and if the parliament passes the legislation, but people have been put on notice that there will be a new test as of any agreement that was signed up—was it on or after, or after?

Mr McIlwain—On or after.

Senator Abetz—Yes, on or after 7 May.

Mr McIlwain—Lodged.

Senator Abetz—Sorry, lodged on or after 7 May.

Senator GEORGE CAMPBELL—Mr McIlwain, were you requested by the department or the minister or the Prime Minister's office to conduct fairness testing on or after 7 May?

Mr McIlwain—The fairness test may be conducted only when the parliament passes legislation to permit its conduct.

Senator GEORGE CAMPBELL—That is not the question I asked you. I asked you if you were requested by the department—by DEWR—or by the minister for industrial relations or by the Prime Minister or by the Prime Minister’s office to conduct fairness testing on and from 7 May.

Mr McIlwain—To conduct the fairness test now? No.

Senator GEORGE CAMPBELL—You were not?

Mr McIlwain—No.

Senator GEORGE CAMPBELL—You had no such request?

Mr McIlwain—The fairness test cannot be conducted until the legislation is passed.

Senator Abetz—Exactly.

Mr McIlwain—What we have begun to provide as a service to employers and employees is pre-lodgement advice. This was foreshadowed in the Prime Minister’s statement of 4 May. The pre-lodgement advice advises an employer or an employee if the agreement that has been submitted for the pre-lodgement advice provides full monetary compensation for the exclusion or modification of protected conditions. However, it is categorically not the fairness test, as the fairness test has not yet been passed by the Australian parliament.

Senator GEORGE CAMPBELL—Could you table that pre-lodgement advice?

Mr McIlwain—To individual employers?

Senator GEORGE CAMPBELL—I presume it is a written document.

Mr McIlwain—It is provided to individual employers and employees—that is, it has not yet been provided but will be provided.

Senator WONG—So it has not yet been provided?

Mr McIlwain—No.

Senator WONG—I think Senator Campbell was asking what has been provided, what advice has been given from your office, as from 4 May.

Senator Abetz—I think 7 May.

Senator WONG—Sorry, 7 May. The fourth was the—

Senator GEORGE CAMPBELL—The fourth was the announcement.

Senator WONG—The Friday.

Senator Abetz—But it came into effect on the seventh.

Mr McIlwain—We are providing now, every day—

Senator WONG—No, answer the question, Mr McIlwain. The question is: what advice did your office commence providing from 7 May?

Mr McIlwain—We have not yet sent out notices advising on the outcome of pre-lodgement assessments.

Senator GEORGE CAMPBELL—How many AWAs have been lodged with your office since 7 May to date?

Mr McIlwain—As of midnight last night, 20,866.

Senator GEORGE CAMPBELL—So the potential is that 20,866 employees and employers may well be in breach of the new provisions.

Mr McIlwain—That is a hypothetical question.

Senator GEORGE CAMPBELL—It is not a hypothetical question.

CHAIR—I think it is, with due respect.

Senator GEORGE CAMPBELL—With due respect it is not, because—

Senator Abetz—Of course it is hypothetical because we do not know what is in the agreement.

Senator GEORGE CAMPBELL—they have lodged them in the context of a bill which is effective from 7 May and which will contain a fairness test. It is conceivable that some or many of those will not meet that fairness test.

CHAIR—It is conceivable—

Senator Abetz—Yes, but not the whole lot.

CHAIR—but I would think that until they are inspected, looked at, analysed and clarified that sort of statement will not be possible.

Senator GEORGE CAMPBELL—Mr McIlwain, has it been indicated to these employers and employees that that may be the case, that there will be a change in circumstances?

Mr McIlwain—Absolutely.

Senator GEORGE CAMPBELL—How did you convey that.

Mr McIlwain—From Sunday, 6 May our website included a pop-up so that anybody going to the Workplace Authority website was compelled to view, read and then click to remove a pop-up which provided them with information about the government's policy intentions with regard to the fairness test. Additionally, every lodger going to the OEA's—now the Workplace Authority's—electronic lodgement site again was presented with a pop-up, and on the login page, again, saw before them information about the government's policy announcements with regard to the intended fairness test. Additionally, employers seeking lodgement forms from the OEA electronically or from its mailing house have been provided with a one-page fact sheet, again making clear the government's policy intentions with regard to the fairness test. So from the afternoon of Sunday, 6 May, all of that information has been available to employers lodging agreements.

Senator GEORGE CAMPBELL—Can we have a copy of the fact sheet here?

Mr McIlwain—Absolutely.

Senator GEORGE CAMPBELL—That is what I asked you before. I used a different terminology but it is essentially the same thing. What about employers who have been ringing in to your office seeking advice? What advice has been provided to them?

Mr McIlwain—All of our contact centre agents have been brought up to speed on the government's policy intentions with regard to the fairness test and are briefed on answering questions and providing accurate information.

Senator GEORGE CAMPBELL—Do they have a written brief?

Mr McIlwain—They do.

Senator GEORGE CAMPBELL—Can we have a copy of the written brief?

Mr McIlwain—I do not see why not. It is what they say on the telephone.

Senator WONG—Again, I would like to go back through your time line so we can be clear about what occurred when. Can you please advise us when you and/or your office first became aware of the changes to your functions as per the Prime Minister's announcement?

Mr McIlwain—The day of the Prime Minister's announcement was when my office became informed.

Senator WONG—You were not aware prior to that time?

Mr McIlwain—I had been brought into the picture a day or so earlier.

Senator WONG—Can you tell me the circumstances of that?

Mr McIlwain—I was asked to provide some advice.

Senator WONG—Asked by whom?

Mr McIlwain—By a deputy secretary in the Department of Employment and Workplace Relations.

Senator WONG—When did that occur?

Mr McIlwain—I believe it was Wednesday, 2 May.

Senator WONG—A deputy secretary within PM&C or within DEWR?

Mr McIlwain—Within DEWR.

Senator WONG—Was that the first occasion on which you became aware, in general terms, of the substance of the Prime Minister's announcement?

Mr McIlwain—Yes.

Senator WONG—And that advice was sought from you by the deputy secretary?

Mr McIlwain—Yes.

Senator WONG—On or about Wednesday, 2 May?

Mr McIlwain—Yes.

Senator WONG—And that advice was provided in writing?

Mr McIlwain—It was provided orally.

Senator WONG—What did that advice pertain to?

Senator Abetz—No—

Senator WONG—Can I be clear: this is advice between two departmental officers. The witness has not indicated that the advice has gone to the minister's office.

Senator Abetz—This advice was the subject of further advice to the minister.

Senator WONG—That is fine. I will not proceed further with that. Did you have any direct discussions with any member of the minister's office in relation to these issues?

Mr McIlwain—Yes, with others. I was not the only person present.

Senator WONG—When did that occur?

Mr McIlwain—On Wednesday, 2 May.

Senator WONG—Was this before or after you provided the oral advice?

Mr McIlwain—It was after.

Senator WONG—And that was a meeting involving Minister Hockey's office?

Mr McIlwain—Yes.

Senator WONG—And a representative of the Prime Minister's office?

Mr McIlwain—Yes.

Senator WONG—Did you have any further discussions in relation to this issue between Wednesday, 2 May and the announcement on 4 May?

Mr McIlwain—No.

Senator WONG—Did you see the substance of the Prime Minister's announcement before it was made?

Mr McIlwain—I saw an early draft.

Senator WONG—When was that?

Mr McIlwain—Wednesday the 2nd.

Senator WONG—Who provided you with that?

Mr McIlwain—The deputy secretary of DEWR.

Senator WONG—Do you know who that was prepared by?

Mr McIlwain—No, I do not know whether it was the product of an individual officer's drafting or a collaborative effort.

Senator WONG—Do you know if it was prepared in the Prime Minister's office?

Mr McIlwain—No, I do not know that.

Senator WONG—Would it be correct to say that from Wednesday, 2 May, you knew that there would be changes to the tests applicable to AWAs announced by the Prime Minister?

Mr McIlwain—And to collective agreements, yes

Senator WONG—And to collective agreements. Could you tell me—just to go through this very clearly—what actions you took from 2 May onwards in order to give effect to the Prime Minister's announcements?

Mr McIlwain—I took no actions until the morning of the Prime Minister's announcement.

Senator WONG—What action did you take then?

Mr McIlwain—Subsequently, I established a working party which now includes officers of the former DEWR output 2.2.3 to consider, if legislation is passed by the parliament to establish the fairness test, how the Workplace Authority will implement that legislation.

Senator WONG—When was that working party established?

Mr McIlwain—Its nucleus was established on Friday, 4 May.

Senator WONG—What was the nucleus?

Mr McIlwain—The nucleus was the OEA at that time: SES officers, acting SES officers and me.

Senator WONG—From which outcomes?

Mr McIlwain—2.2.2.

Senator WONG—2.2.2 or 2.2.3?

Mr McIlwain—No, 2.2.2 on that day. Subsequently, the following Tuesday, the 8th, elements of DEWR output 2.2.3 were transferred to DEWR output 2.2.2, Assistance to the Employment Advocate, and from the next day a larger working party was established.

Senator WONG—From which day?

Mr McIlwain—From the next day, Wednesday, the 9th.

Senator WONG—You mentioned a pop-up et cetera, as and from Monday, 7 May.

Senator Abetz—From Sunday, the 6th.

Mr McIlwain—From Sunday evening, the 6th.

Senator WONG—But the question is—all right, from midnight, Sunday, the 6th, or I suppose midnight is actually the 7th, technically—what action was taken by you to inform industrial parties, employers and employees, about the pending change arising from the Prime Minister's announcement?

Mr McIlwain—I have answered those questions for Senator Campbell a moment ago. I am happy to answer them again.

Senator WONG—Yes, I want you to recap.

Mr McIlwain—We provided the fact sheet in the form of a pop-up, so that anybody visiting the OEA's home page would immediately be presented with a large intrusive pop-up which they had to consciously choose to close, and that contained information drawn from the Prime Minister's statement. Additionally—

Senator WONG—All right. That was available from midnight on the Sunday?

Mr McIlwain—Well, midnight or possibly 2 am on Monday morning—that will depend on when the IT division made the change, whether it was a special change or a 2 am change.

Senator WONG—So we have a fact sheet. What else?

Mr McIlwain—The same information was provided as a hard copy going out with all forms sent from the OEA's mailing house, or the contractor's mailing house. The same information—

Senator WONG—To whom?

Mr McIlwain—To anyone seeking lodgement forms from the morning of Monday, 7 May onwards. Additionally, the same information was included on the OEA's workplace agreements online lodgement system, so that again an employer or a bargaining agent lodging an agreement would be presented with an intrusive pop-up, which they had to make a conscious decision to close. When they closed it, the information was again available immediately under their log-in field.

Senator WONG—Another pop-up which dealt with electronic lodgement of AWAs and certified agreements, or AWAs?

Mr McIlwain—On that site, but it was the same material, the same words.

Senator WONG—Yes. But to be clear: this was one that came up in relation to electronic lodgement of agreements?

Mr McIlwain—Yes. If you clicked through to our electronic lodgement website—

Senator WONG—When was that from?

Mr McIlwain—That was from the morning of Monday, 7 May.

Senator WONG—Do we think it is the same time frame, approximately 2 am?

Mr McIlwain—Probably. We will check that, but it was certainly before the start of business that morning.

Senator WONG—Anything else?

Mr McIlwain—The information was available also as part of the PDF versions of the lodgement forms that people may choose to download themselves rather than to have sent from the mailing house. So it was available at every touch point for employers who had lodged by paper from the 7th onwards, and indeed this remains the case. The lodgement receipt that goes out also includes a fact sheet.

Senator WONG—What have you done with agreements you have received since the morning of 7 May?

Mr McIlwain—Agreements lodged since 7 May as per the current legislation are accepted for lodgement. They are recorded in our system and they operate from the day of lodgement, and a receipt is provided. The receipts now all contain an information sheet about the government's intended fairness test.

Senator WONG—So these 20,000 agreements lodged since 7 May are legally effective?

Mr McIlwain—There are 20,866 AWAs, 251 employee collective agreements and 228 union collective agreements.

Senator WONG—So the 20,866 AWAs and the two other sets of agreements that you refer to are legally effective from the date of lodgement?

Mr McIlwain—Yes.

Senator WONG—What are you planning to do should the parliament pass legislation giving effect to the Prime Minister's announcement?

Mr McIlwain—In regard to these agreements?

Senator WONG—Correct.

Mr McIlwain—They will be handled for the fairness test by a dedicated unit charged with conducting the fairness test as expeditiously as possible on those agreements lodged between 7 May and the commencement of any legislation.

Senator WONG—So 20,000-plus agreements will have to be checked against any new legislative test that is passed?

Mr McIlwain—Correct.

Senator WONG—Who will be the dedicated unit?

Mr McIlwain—It has not yet been established.

Senator WONG—Presumably there is some preliminary planning you must have undertaken, Mr McIlwain. That would be prudent, would it not?

Mr McIlwain—That is correct, yes.

Senator WONG—What is the planning?

Mr McIlwain—The planning is to engage contract staff, train contract staff and have those contract staff undertake the assessments under the direction of experienced former NDT assessors from the Workplace Authority, who will exercise delegations.

Senator WONG—Delegations?

Mr McIlwain—To approve.

Senator WONG—Meaning you would delegate.

Mr McIlwain—Delegations of powers given to the Workplace Authority by the parliament in any legislation passed.

Senator WONG—How many contract staff are you planning to involve?

Senator Abetz—We have some difficulty here because the numbers may well indicate certain things that are going to be in the announcement—

Senator WONG—You have already made the announcement.

Senator Abetz—of the legislation.

Senator GEORGE CAMPBELL—Do you want to legislate for staff?

Senator WONG—You do not have to legislate for staff.

Senator GEORGE CAMPBELL—Are you going to legislate for staff?

CHAIR—Order! Minister, perhaps you will finish what you have to say.

Senator Abetz—Can we take that on notice, and we might be able to get back to you in a very short period of time.

Senator WONG—Meaning it is going to be announced. Have you commenced training these staff, Mr McIlwain?

Mr McIlwain—No, we have not.

Senator WONG—How long will it take to train them to undertake this assessment?

Mr McIlwain—We believe it will be a two-week classroom environment where some assessment work would be done in the second week, and then a further two weeks of on-the-job training to increase skills, up to a month.

Senator WONG—Up to a month of training?

Mr McIlwain—In total.

Senator WONG—And where are you getting these staff from?

Mr McIlwain—They will be recruited from the employment market.

Senator WONG—Yes, but presumably you have started to consider how you might get these contract staff?

Mr McIlwain—We will use the normal—

Senator WONG—Have you had any discussions with any organisations regarding the provision of these contract staff?

Mr McIlwain—No, not at this stage. I am advised that we have discussed with Employment and Workplace Relations the possibility of using employment agencies that it has on a contract panel.

Senator Joyce interjecting—

Mr McIlwain—I do not know whether that is one of them.

Senator JOYCE—Employment agencies would have to be informed about the AWAs that they are a part of, whether they are fair or not now, wouldn't they?

Mr McIlwain—All employers would be getting the same information now about the government's intentions with the fairness test.

Senator JOYCE—And the employment agencies as well?

Mr McIlwain—If they are lodging as bargaining agents, which is a possibility, they would also be getting that information.

CHAIR—Senator Wong, I am anxious to give Senator Siewert her spot in the sun before lunch. Senator Siewert.

Senator SIEWERT—Thank you for making the time.

Senator Abetz—Sorry, Senator Siewert, if I may refer briefly back to the other matter: there is some potential sensitivity but can I indicate to the committee that a figure of about a couple of hundred would give you a fair flavour of what was intended.

Senator SIEWERT—Thanks. I want to ask about the community partners program. As you would be aware, I obtained a copy of the report under FOI. The report states that it is quite possible for community partners:

... to fully meet their contractual obligations in a broader sense: provide the coverage and capability required and provide their range of employment or legal services efficiently and effectively; and yet still not receive many AWA enquiries nor provide much AWA-related assistance.

Why was the program terminated if it is meeting its obligations as defined, which I understand the report actually says it does. I will get into some other issues around the report a bit later. Why was that program terminated?

Mr Casson—The decision taken not to renew the contracts with community legal centres and working women's centres was taken following an independent review of the arrangements by Deloitte Touche Tohmatsu. Deloitte were asked by the OEA to assess the community partner arrangements for contractual compliance and value for money. Deloitte concluded that the program yielded limited returns for the OEA's expenditure, and the OEA at that time had no reason to doubt the accuracy of the information contained in the report. Deloitte recommended that the OEA consider alternative delivery channels to provide advice in a more efficient manner. On this basis, the employment advocate decided that the services provided by the community partner contractors could be more effectively delivered by the OEA.

Senator SIEWERT—Can you tell me why only certain parts of that program were evaluated, only the AWA parts, and why other areas about advice were not evaluated?

Mr Casson—The program was evaluated in accordance with the guidelines developed by the agency to see whether or not the contractors were delivering value for money. We had contracted with community partners from 1998 to 2006, and during that period only one limited evaluation of the program had been undertaken. We firmly believed that, in order to fulfil our obligations under the Commonwealth contracting guidelines, a further review needed to be undertaken.

Senator SIEWERT—I do not have a problem with a review being undertaken. You did not quite answer my question: why didn't the guidelines look at service provision beyond AWAs when, as I understand it, the partnership program delivered broader services?

Mr Casson—The evaluation did look at the entire service delivery of the community partners, including telephone advice and assistance that they gave. It also provided us with an insight as to whether that was being delivered efficiently and effectively.

Senator SIEWERT—Part of the report states that the community partners were able to fully meet their contractual obligations in a broader sense, so I ask again: if the report actually says the community partners were able to provide those services across what they are contracted to do, why concentrate on one specific part of it?

Mr Casson—I do not believe it did concentrate on one specific part. It looked at the terms of their contracts, compliance with those contracts and whether the service was delivered to the OEA in accordance with Commonwealth procurement guidelines; that is, did it provide value for money. The conclusion the audit arrived at in terms of compliance was that the parties audited were substantially compliant with their contractual obligations but it also, as I mentioned earlier, arrived at a conclusion that they were possibly not the most effective means of delivering that particular service to the OEA.

Senator SIEWERT—You will be aware that many of the community partners say that the report has a number of inaccuracies. Did you go back and check these with the organisations? Did you check the conclusions?

Mr Casson—Any alleged inaccuracies that have been brought to our attention we have referred back to the party contracted to undertake that audit on our behalf, Deloitte, and they have confirmed that the material relied upon in their report is accurate.

Senator SIEWERT—Has OEA checked that information then back with the agencies specifically, not the people who conducted the original audit?

Mr Casson—No.

Senator SIEWERT—So now you are relying on the organisation that did the audit in the first place to go back to those organisations to check to see if their audit was right, rather than you doing it specifically with those organisations?

Mr Casson—We are relying on the fact that Deloitte, in gathering the information to support their conclusions, are able to provide us with the comfort that the information gathered is correct.

Senator SIEWERT—Are you aware that OEA is still referring questions to the organisations that were involved in the community partners program?

Mr Casson—We have invited all the community partners, as I indicated at the previous Senate estimates hearing, to continue a relationship with the OEA as employee associates, and in certain circumstances it would be entirely appropriate to continue that dialogue and that association. What we are not doing is providing a contracted service through those particular providers.

Senator SIEWERT—Can you confirm that OEA is still referring people when they ring up to community partners?

Mr Casson—I cannot confirm that from my personal knowledge, but it is possible.

Senator SIEWERT—But you do not know. Is anybody auditing it; is anybody keeping a record within the agency?

Mr Casson—As to whether or not there are any referrals to former community partners? No. It is not the agency's practice to do so.

Senator SIEWERT—I have been told by CLCs that they have had clients referred to them by OEA.

Mr Casson—It is quite possible in providing advice and assistance where an employee would ring one of our contact centres seeking particular assistance or analysis of their contract which is outside the OEA's purview. It may well be that there is a referral to that particular authority. We try to be as helpful as we can to callers to our contact centre.

Senator SIEWERT—In that context do you have a list of centres that you refer people to?

Mr Casson—No.

Senator SIEWERT—So how do people know who to refer to?

Mr Casson—It may well be that they have looked at our employee associates. Certainly that would be one place where you would first find an opportunity to refer callers to our existing partners under the employee associates program. It may well be that officers who are aware of the existence of community legal centres and working women's centres may think it appropriate in a particular circumstance to indicate to the caller that those services also exist.

Senator SIEWERT—Can I go back to my earlier issue: the community partners were providing advice beyond just AWAs; they were providing general employment advice and assistance. When the review analysed the value for money, they did not actually review against that broader requirement, did they? They focused largely on the AWA?

Mr Casson—They focused on the OEA's delivery of service using the mechanism of the community partners program which was providing advice and assistance more generally. So, yes, they did focus on that particular aspect as well. We have a responsibility, and have had since 27 March last year, for all types of agreement making.

Senator SIEWERT—How did you come to the conclusion they were not providing value for money when the report actually says that they are meeting their contractual obligations?

Mr Casson—Compliance with the contract is a different concern to the considerations of value for money. The value for money considerations were, from memory, determined on the basis of the number of contacts made with a particular agency, the advice that was provided and Deloitte costed the provision of advice on a per advice basis. So if they had received 100 requests for advice and the cost of the contract to us was \$10,000, we were able to cost what we saw as the cost of that particular individual advice provision.

Senator SIEWERT—Do you do that for OEA?

Mr McIlwain—Unit transaction prices have been used by the OEA in the past. For example, the processing of AWAs under the pre-reform legislation was subject to a transaction unit cost analysis. That same rigour has been applied to the OEA's core business in the past; it has not been applied since the advent of work choices.

Senator SIEWERT—You have been applying it to community partners but not to yourself, so how do you actually value the provision of advice?

Mr Casson—We have a primary obligation to provide a service that provides advice and assistance, information and education to the parties to agreement making. We therefore are responsible for carrying a core load of officers in our client services area and in our contact centres. In examining the results of the Deloitte report we were satisfied we could take on that additional burden that was currently being handled by the community partners without the application of any additional resource. We saw it as in fact saving money for the government.

Senator SIEWERT—But now you are referring people to these very centres, which I am reliably informed is happening, yet you do not even keep any records of how many people you are referring or who you are referring them to.

Mr McIlwain—We will ask within the organisation to ascertain if that is occurring. As Mr Casson already has said, it may be entirely appropriate for an OEA or former DEWR officer now with the Workplace Authority to advise a caller, an employee in particular, about the existence of the community legal centre. However, we are not seeking to have services

provided by those former contractors for nothing, those contracts now having not been renewed as a result of the Deloitte report. But we will check within the organisation to see if we can determine the incidence of referrals and on what basis they are occurring.

Senator SIEWERT—I would like to know who they are being referred to, on what basis they are being referred and how many are being referred.

Mr McIlwain—We will take that on notice.

CHAIR—Order! The committee will suspend for the lunch break.

Proceedings suspended from 12.30 pm to 1.31 pm

[1.31 pm]

Senator McEWEN—The South Australian and Northern Territory Working Women's Centre had two contracts with the OEA under the Community Partners Program, which I understand are not going to be renewed. Is that correct?

Mr Casson—They have not been renewed.

Senator McEWEN—They also had service contracts with DEWR that I understand are going to be transferred to the Workplace Authority.

Mr McIlwain—That is correct. As a result of the transfer of some elements of DEWR output 2.2.3 to 2.2.2, Assistant to the Employment Advocate, responsibility for some contracts that exist between DEWR for the Commonwealth and Working Women's Centres in the Northern Territory and South Australia, transferred also to the Workplace Authority.

Senator McEWEN—Do those existing contracts go until 30 June 2007?

Mr McIlwain—Yes, I believe so.

Senator McEWEN—What is the state of negotiations with regard to the contracts from 1 July 2007?

Mr McIlwain—I am advised that at this point there has been no decision on the future contract arrangements.

Senator McEWEN—Can you tell me where the process is at?

Mr Brennan—With the change to the Workplace Authority we have not started considering the contracts for next year, and whether contracts might be offered. We would otherwise probably have been doing that in the last couple of weeks. We will be getting onto that shortly, but there has not been any decision yet about whether there will be a contract and, therefore, there have not been any negotiations.

Senator McEWEN—Are you mindful that the jobs of some people who work in those two Working Women's Centres are at risk if the Commonwealth funding does not continue and, therefore, there is considerable urgency that both centres know whether they are going to have funding from 1 July?

Mr McIlwain—We are aware that a decision needs to be made quickly. Whilst I have not yet been able to turn my mind to the matter as the current public servant in charge of the Workplace Authority, I will give it my attention this week when I return to the office.

Senator McEWEN—Do you intend to make a decision by end of this week, Mr McIlwain?

Mr McIlwain—I do not know. I need to consult with the officers from 2.2.3, who are now working for the Workplace Authority. I will give it priority this week and, if I am able to make a decision this week, I will.

Senator McEWEN—What criteria will you apply to decide whether a new contract will be entered into with the two Working Women's Centres I referred to?

Mr McIlwain—In the absence of any information beyond that which I have given to you now about the contracts and the former DEWR arrangement, I am not able to be specific. What I can say generally is that the Workplace Authority, like the OEA, looked always for an effective outcome, and an outcome that was value for money. Beyond that, I am not able to say whether other matters will be drawn to my attention, but certainly those two criteria are the ones that public servants properly apply to these sorts of contracted arrangements.

Senator McEWEN—I await your early decision, Mr McIlwain.

Senator GEORGE CAMPBELL—I refer to our discussion before lunchtime. You said 20,866 AWAs had been lodged from 7 May to last night. I think the minister said this would necessitate an arrangement of 200 contract employers to deal with applying the fairness test to those AWAs. Do you have a timeline on how long it will take these staff to complete the analysis of those AWAs?

Mr McIlwain—Conservatively, we are preparing to have those staff set up for at least four months.

Senator GEORGE CAMPBELL—So that will take us to October?

Mr McIlwain—Yes.

Senator GEORGE CAMPBELL—At the end of that process, presumably when you have caught up with those, will ongoing employment of some contract labour be necessary to continue the analysis, or will you boost the number of direct employees of the authority?

Mr McIlwain—We expect that some of those contractors will be successful for ongoing public servant positions in the Workplace Authority. We are planning to transition from contractors to a mix of contractors and permanent public servants to all public servants. Our preference is to have the work of the fairness test performed on agreements lodged into the future done by permanent public servants. It would be our intention to have permanent public servants conducting all of that work from some time in the future. Necessarily some contractors are required initially, and we would expect that some of those contractors will be successful in being appointed as permanent public servants.

Senator GEORGE CAMPBELL—Have you done an analysis on what the likely number is going to be?

Senator Abetz—We have a rough 200 figure on the board at the moment.

Senator GEORGE CAMPBELL—I am talking about once you have caught up. What is the likely increase in employment?

Mr McIlwain—In addition to the couple of hundred contractors that the minister mentioned being necessary to deal with agreements lodged before the legislation commences, we would need a similar but probably somewhat larger number of employees to deal with the ongoing lodgements into the future. They would be separate from the contractors; the contractors would not be kept on on a permanent basis.

Senator GEORGE CAMPBELL—So we are looking at an increase in staff of around 200?

Mr McIlwain—Again, you would be looking at a few hundred people to undertake that work.

Senator WONG—When were the costings done on the package of additional resources you have just outlined to us?

Mr McIlwain—There have been discussions with—

Senator WONG—Who prepared the costings?

Mr McIlwain—The costings were prepared by DEWR's FMG division.

Senator WONG—When did that commence?

Mr McIlwain—It commenced last week.

Senator WONG—When last week?

Senator Abetz—Or DEWR can answer these questions.

Senator WONG—Was Mr McIlwain involved in the preparation of the costings?

Mr McIlwain—Yes. Initial work commenced the week before last.

Senator WONG—'Initial work', what does that mean?

Mr McIlwain—That means work within the Workplace Authority to properly advise the government on the resource requirements for the implementation of the legislative changes to go into a financial impact statement which will be part of the legislative package introduced.

Senator WONG—When did you first see the draft costings?

Mr McIlwain—The week before last—an initial version the week before last.

Senator GEORGE CAMPBELL—Mr McIlwain, since the beginning of the year have any DEWR staff been reallocated to the Office of the Employment Advocate or Workplace Authority?

Mr McIlwain—Yes, Senator.

Senator GEORGE CAMPBELL—How many?

Mr McIlwain—I will give you a headcount number: a total of 263 staff persons were transferred from DEWR output 2.2.3 to DEWR output 2.2.2, which is entitled Assistance to the Employment Advocate.

Senator WONG—Sorry, I missed that, how many staff?

Mr McIlwain—Two hundred and sixty-three persons.

Senator WONG—This is existing staff?

Mr McIlwain—Yes.

Senator WONG—From 2.2.2 to 2.2.3?

Mr McIlwain—The other way around.

Senator GEORGE CAMPBELL—What classifications do they cover?

Mr McIlwain—Three SES staff, 11 EL2 staff, 17 EL1 staff, 38 APS level 6 staff, 44 APS level 5 staff, 46 APS level 4 staff, 98 APS level 3 staff, five APS level 2 staff, one APS level 1 staff.

Senator GEORGE CAMPBELL—What work are these 263 people allocated to?

Mr McIlwain—They are working on a range of functions: workplace agreement education management is four; support and administration is four; workplace infoline, 174; knowledge management, 40; the workplace advisory service, 34.5; and the employer advisory program, 6.5.

Senator WONG—Could I go back to the evidence that was given about the number of live AWAs in OEA's analysis or estimation: how many live AWAs did you say you thought were in place currently?

Mr McIlwain—It was a figure of some 700,000. I will just confirm that: 747,000 as at 31 March 2007 is the OEA's estimate.

Senator WONG—You on the last occasion told us that as at January it was 704,875; is that right?

Mr McIlwain—Yes.

Senator WONG—Reading the interchange between you and Senator Marshall previously, just so that I understand your methodology, you count the number of AWAs approved prior to the implementation of Work Choices and lodged post Work Choices implementation?

Mr McIlwain—Over a three-year window.

Senator WONG—Can you take me step by step through your methodology again?

Mr McIlwain—The methodology takes account of every AWA approved and then, after the advent of Work Choices, lodged in the previous three years.

Senator WONG—When you say 'takes account of', what does that mean?

Mr McIlwain—Counts.

Senator WONG—You count.

Mr McIlwain—The reason the three-year period is chosen is that three years is the most common nominal expiry date in agreements, notwithstanding the fact that five years may now be a nominal expiry date.

Senator WONG—So every AWA approved from which date?

Mr McIlwain—Every AWA approved from the day 36 months prior to the estimate.

Senator WONG—So it is a rolling estimate saying as at 31 March 2007 we look to all of those lodged and approved from 31 March 2004?

Mr McIlwain—Yes, that is it essentially—from 1 April 2004.

Senator WONG—You do not apply any statistical discount for AWAs which may have a nominal period of less than 36 months?

Mr McIlwain—No, we do not because we have taken that into account in the methodology.

Senator WONG—How?

Mr McIlwain—Some AWAs run for less than 36 months; some run for more than 36 months.

Senator WONG—Have you ever counted what proportion run for more and what run for less?

Mr McIlwain—No.

Senator WONG—So how have you taken it into account? Your answer would work if, say, five per cent are in both categories because then it evens out, but if one category is double the other category, it does not; am I right?

Mr McIlwain—Were that to be the case, but nobody has ever demonstrated that to us.

Senator WONG—You have not demonstrated the opposite.

Mr McIlwain—And that is my point. We believe that this is a defensible and robust methodology.

Senator WONG—Yes, but on what basis do you assert your methodology which applies no discount for shorter nominal terms nor, indeed, AWAs where people have transited or exited from that job—I am coming to that shortly; but, simply on the nominal term, on what basis do you assert it is fine not to discount the number for those which have a nominal period lower than 36 months on the basis that there is an equivalent number in excess of 36 months?

Mr McIlwain—Because we do both. We discount for those that would run less—

Senator WONG—That is not what you said. That is not your evidence.

Mr McIlwain—than 36 months and we discount or take into account those that run for more than 36 months.

Senator WONG—How? How do you discount?

Mr McIlwain—Because it is an even-handed approach—

Senator WONG—No, that does not work. That analysis only works—and you may have done so, in which case I would invite you to put that evidence before the committee—where the two categories are equivalent. Have you done any analysis of how many exceed and how many are less than 36 months?

Mr McIlwain—No.

Senator WONG—Thank you.

Senator Abetz—That was obvious in this morning's evidence.

Senator WONG—The second point: there is no statistical discount, is there, for those who exit employment?

Mr McIlwain—Sorry, who ended employment?

Senator WONG—Exit employment.

Mr McIlwain—No.

Senator WONG—I think Mr Brennan may have answered this on the ABS statistics issue: can you remind me on what basis do you say the ABS analysis which determined that 3.1 per cent of the Australian workforce was on AWAs is incorrect?

Mr McIlwain—We do not say it is incorrect; we just say it is different because it is derived from a different methodology.

Senator WONG—Okay. So you don't say it is incorrect?

Mr McIlwain—These are both statistical estimates. I can tell you the OEA's methodology, which I have, and I can tell you what I understand the ABS methodology to be.

Senator WONG—Sorry, Mr Brennan, you wanted to make a comment?

Mr Brennan—My evidence went to the total population of independent contractors in the economy. It was not really related to what that would mean for AWA calculations.

Senator WONG—Okay.

Senator Abetz—Another part of the methodology that should be taken into account is that I understand that the ABS figures relate to May 2006, whereas the OEA's methodology deals with figures up until a lot more recently—

Mr McIlwain—31 March.

Senator Abetz—31 March—and, as we have heard, there were 20,000 lodged in the month of May; is that right?

Mr McIlwain—Average lodgements in the last six months have been 30,000 AWAs per month.

Senator Abetz—When you combine that figure with the analysis, I daresay the OEA's figures are a lot fresher than the ABS's report, which is lagging by 12 months.

Senator MARSHALL—Mr McIlwain, do you recall the evidence you gave in the 15 February estimates, which you can find on pages 103 and 104, in relation to researchers being granted access to sample AWAs for research purposes? You advised me then that you had had no formal requests from any other organisation. I asked if there were any informal requests and you responded: 'We have had no requests. We have had inquiries, no requests.' Do you stand by that evidence?

Mr McIlwain—Yes. Since then we have had some formal requests.

Senator MARSHALL—Are you aware of a letter on 17 January this year from your office to Dr Kristin van Barneveld which starts:

Dear Kristin,

Thank you for your letter of 12 January 2007, requesting access to a sample of one thousand AWAs for research purposes.

That letter is signed by Manuel Radic, the assistant director of strategic services.

Mr McIlwain—Yes, that is the case. I am advised that that letter was sent as a result of an informal request over the telephone. The point of that letter was to obtain more information so that it could be dealt with as a formal request under the researcher access arrangements. I did say we had inquiries, but no requests that met with the requirements for a request under that program.

Senator MARSHALL—So you have a special definition of what ‘a request’ is?

Mr McIlwain—Yes.

Senator MARSHALL—It has to meet a category of request to be ‘a request’?

Mr McIlwain—We have a program. People must make their request addressing specific criteria.

Senator Abetz—It was quite clear at the last estimates. He said that there had been inquiries but no requests. Is that right?

Mr McIlwain—That is correct.

Senator Abetz—So at the last estimates that differentiation was already being made.

Senator MARSHALL—Mr Radic says:

Thank you for your letter of 12 January 2007, requesting access to a sample of one thousand AWAs for research purposes.

That must be wrong, was it? It was not a request?

Mr McIlwain—Mr Radic sent that letter in order to obtain from the person who had contacted him the information required for us to process a request under our researcher access program.

Senator MARSHALL—Just so I am clear, is Mr Radic wrong when he says that Dr Kristin van Barneveld requested access? He did not request it—is that what you are saying?

Mr McIlwain—Sorry, I was distracted there for a moment. The purpose of that letter, which we do not have a copy of with us, would have been to obtain from the researcher the information required to process a request under the OEA’s researcher access program.

Senator MARSHALL—I have heard you say that. I am trying to get to the point of whether the letter is accurate or not. You say that is not a request until it meets some criteria that makes it a request for you, but your officer has actually called it a request. Is he wrong? I am trying to ascertain whether the information provided in the letter is wrong. Because you seem to think a lot turns on the nonusage of the English language about what a request is—that we will not use it as common usage. You have your own definition of what ‘a request’ is and you thought I must have understood that from the last round of Senate estimates!

Senator Abetz—No, that is completely unfair.

Senator MARSHALL—You apply a different criteria to the English language meaning of ‘a request’. But Manuel Radic from your office must be under my misapprehension, too, that

a request is not actually a request in terms of your criteria. I am just trying to clarify it, because I hate this confusion to go on.

Mr McIlwain—I have explained the process that the OEA has in place. On 15 February, the advice to me was that we had received no requests; we had received inquiries. I assume in the light of the advice that Mr Radic's letter was sent as a result of an inquiry about obtaining access to AWAs for research purposes and with a second purpose of obtaining from the researcher the information that is required for us to process a research request under our researcher access program.

Senator MARSHALL—So the question is: why did your assistant director of strategic services thank Dr Kristin van Barneveld for his request on 17 January?

Mr McIlwain—I am not able to answer that. All I can tell you is how our process works. I am advised that the researcher had not provided the information required for a research request to be processed.

Senator WONG—You say you are not able to answer that. Why is that? This is a question about what has been communicated to a member of the public and a member of the academic profession by a staff member in your organisation. If you want to take time to get advice, Mr McIlwain, I am sure we can deal with that. But to simply say, 'I can't answer it,' without explaining to us why, I find puzzling.

Mr McIlwain—I cannot answer it because I did not draft the letter. But what I can tell you, as I repeatedly have—

Senator WONG—No, no, we are not going to—

Mr McIlwain—is the process that exists within the Workplace Authority, formerly the OEA, to deal with these sorts of matters.

Senator WONG—That is not the question that is being asked. I suggest that you might want to take the opportunity to get advice from the staff member concerned so you can properly deal with Senator Marshall's questions.

Senator Abetz—That is a gratuitous bit of advice, so thank you! But this is about questions—

Senator WONG—No, this is about the accountability to the parliament of this officer. A perfectly appropriate question has been asked. Neither you—

Senator Abetz—And a perfectly good answer has been given.

Senator WONG—Let me finish, Minister. Neither you nor the officer has indicated a willingness to take it on notice or that the question cannot be answered for some other reason. What I am saying is that Mr McIlwain ought to take advice and he ought to answer the question.

Senator Abetz—The question has been answered, Chair.

Senator WONG—It has not. He said he cannot answer the question. That is not an answer.

Senator Abetz—In relation to the preliminary aspects of it, but if Senator Marshall has got the full file of correspondence, that may be of some assistance to the table.

Senator MARSHALL—I can provide the letter. Let us be fair about this, Minister, you would not cop as a minister in a government this sort of doublespeak from a senior public servant. You would not. I find it incredible that you would expect a Senate committee to cop that without any protest.

Senator Abetz—Chair, the sort of inference of doublespeak on the officers is unacceptable and unnecessary.

CHAIR—As I understand it, Senator Marshall has asked the question to which Mr McIlwain does not know the answer—is that correct?—because the letter was written by another officer.

Senator WONG—Is the officer here, Chair?

Senator GEORGE CAMPBELL—If he is here, bring him to the table.

Senator WONG—Is the officer here, Mr McIlwain?

Senator Abetz—Not all officers are called to the table.

Mr McIlwain—The officer is here, but he is not a witness.

Senator Abetz—He is not a witness.

Senator WONG—This is extraordinary. What you are saying is that you cannot answer it because you did not draft it, the officer is here and you are refusing to bring him to the table.

Senator Abetz—Be very careful with the precedent you are trying to set here.

Senator GEORGE CAMPBELL—We are not setting any precedent.

Senator Abetz—No, about calling people lower in the food chain to the witness stand, which you would not allow for the workers that you allegedly protected in your former days. So just be careful.

Senator GEORGE CAMPBELL—The precedent has already been set, Minister. It was set in an economics estimates hearing about nine years ago.

Senator WONG—Chair, through you, I take Senator Abetz's point. The circumstance here is, though, that the officer who the department chooses to place at the table is saying he cannot answer the question because he does not know about the letter. He is now refusing to bring the officer who wrote the letter to the table and he is still not answering the question. If he does not wish for this officer to be brought to the table, my suggestion is that he should at least be required to take advice so he can answer Senator Marshall's question.

CHAIR—I understood Mr McIlwain to say about six exchanges ago that he would make inquiries about the letter from the person who wrote it, and I suspect we will have to leave it at that.

Mr McIlwain—I am happy to take the question on notice and to review any correspondence and any records of telephone conversations that surround the drafting of the letter.

CHAIR—Good, thank you for that.

Senator MARSHALL—I have some more questions, but I need some guidance on what word to use. I would have thought that if someone requests access to AWAs for research purposes, I could describe that as ‘a request’, but you will not accept that. If someone makes application, how should I describe that, so you are on the same wavelength as me, Mr McIlwain?

Senator Abetz—That would be a big ask.

Senator MARSHALL—I do not use English as eloquently as you, sometimes, Minister. I am just trying to struggle through with the English language. Yes, Mr McIlwain?

Mr McIlwain—Researchers may make an application to the OEA for access to AWAs for research purposes. In making that application, for it to be a valid application, they must provide certain information before the application can be properly considered.

Senator MARSHALL—That does not really help me in terms of requests, though; now you are talking about applications. My original question at the last round of estimates was whether you had had any requests for access.

Mr McIlwain—My advice, on the basis of advice available to me at the time, was that there had been inquiries and no requests.

Senator MARSHALL—So a request for information still does not actually mean it is a request?

Senator Abetz—I will try to be technology wise here, with this laptop. I now have in front me this letter to Dr Kristin van Barneveld. It says:

Thank you for your letter of—

the 12th—

requesting access to a sample of one thousand AWAs for research purposes.

What does the letter of 12 January 2007 tell us? I am not sure that we necessarily have that in front of us.

Senator MARSHALL—It goes on, Minister:

The Employment Advocate has determined that certain broad principles will apply to requests—

Senator Abetz—The letter starts off—and it is very interesting that Senator Marshall does not tell the committee this, and this is where it all comes together:

Dear Mr McIlwain

I am writing to request, for research purposes ...

So this Dr Kristin van Barneveld uses the word ‘request’ in her correspondence and then the officer, in responding, refers to her terminology requesting information, using exactly the same terminology as the letter writer. The important thing is that in the response letter, about halfway down the page, it says:

You are invited to submit an application which addresses the following:

- details of the research proposal (questions you will be testing, trends/issues you are exploring etc);
- the research proponent/s;

- proposed methodology;
- the detail/composition and timing of the AWA requirements;
- the nature of the product/s stemming from the research; and
- your publication/dissemination plans (if the work is not to be published, the OEA reserves the right to publish the results).

Researchers also need to show:

- recognised research credentials; and
- a demonstrated capacity to disseminate project outcomes.

If you have any queries regarding this matter, please contact me on—

and then a telephone number. So this clearly indicates why the word ‘requesting’ was used, which Senator Marshall has cleverly played on: it is a direct import from Dr van Barneveld’s letter of 12 January.

Senator MARSHALL—Thank you for that, Minister!

Senator Abetz—That is why you did not disclose the correspondence when I asked for it.

Senator MARSHALL—That assists me enormously.

CHAIR—Senator Marshall has a question to ask, and he will proceed.

Senator MARSHALL—This does assist me greatly because it makes the distinction between a request and the acceptance of the request by the Office of the Employment Advocate. It makes a clear distinction about applications. So we go back to the evidence given by Mr McIlwain. I was asking about requests, not about applications, and you told me that there have been none, and you are still standing by that.

Senator Abetz—There have been inquiries.

Senator MARSHALL—There have been requests, Minister. You just gave us this little run-through about requests.

Senator Abetz—Yes, because that was the terminology employed by Dr van Barneveld—right?

Senator MARSHALL—Because the doctor was requesting access to the AWAs.

Senator Abetz—That was her terminology. I definitely do not, and I assume OEA does not, count it against her that she was not aware, at the time of writing, of the formal requirements of an application which then becomes, if you like, an official request. In the normal approach she requested some information, and that request was responded to, setting out all the details that were required to be provided. As I understand it, discussions are still taking place.

Senator MARSHALL—All-right. We will move on from that. I think it is an extraordinary position, but anyway. I understand also that, in a letter from the OEA to Dr van Barneveld, the OEA says:

Further, the discretion to withhold or grant access to AWAs for research purposes is at the sole discretion of the Employment Advocate.

Is that correct?

Mr McIlwain—Yes.

Senator MARSHALL—In what circumstances would you decide to withhold access for research purposes?

Mr McIlwain—Where a convincing proposition for the research accompanied by a robust methodology had not been provided. In short, a failure to meet the criteria, which are available on our website, would result in the request not being met.

Senator MARSHALL—The request?

Mr McIlwain—It would result in the researcher not obtaining access to AWAs if there were a failure to meet the criteria, which are publicly available, for access to AWAs for research purposes.

Senator MARSHALL—Once an application to access AWAs or other material is received, what is the usual time frame for you to provide a response to the applicant?

Mr McIlwain—It varies. It may be a matter of weeks; it could be longer than that, depending upon the ongoing discussions.

Senator MARSHALL—Can you explain the reason for the delay in providing a response to Dr Bray and Dr van Barneveld.

Mr McIlwain—There have been many telephone exchanges between staff of the OEA and Dr van Barneveld.

Senator MARSHALL—Yes. And what is the problem?

Mr McIlwain—The issue is that I am still considering the application and whether further information will be required before I am able to decide whether access is to be granted.

Senator MARSHALL—What further information do you require?

Mr McIlwain—It has not yet been determined.

Senator MARSHALL—Is the original application with the research methodology unsatisfactory?

Mr McIlwain—There is not enough detail for me yet to be able to determine the application.

Senator MARSHALL—Have you been able to indicate to the applicants the extra detail they are required to provide?

Mr McIlwain—That is being considered and will be communicated in the near future.

Senator MARSHALL—Do you have any idea when the ‘near future’ might be?

Mr McIlwain—I would say within the next 14 days.

Senator MARSHALL—Has the decision been pushed back because the Office is focused on implementing changes recently announced by the Prime Minister?

Mr McIlwain—The decision has not been pushed back for that reason or indeed any reason. The decision has not yet been made because I am still turning my mind to issues raised in relation to the application by our research analysts.

Senator MARSHALL—Have there been any changes to the requirements of applications since the introduction of the work choices legislation?

Mr McIlwain—Criteria were made explicit in 2006. I cannot recall the exact timing but that can be taken on notice.

Senator MARSHALL—Have you had any requests or applications for access to AWAs since the commencement of WorkChoices?

Mr McIlwain—We have had four applications as at 7 May.

Senator MARSHALL—Can you tell me the dates of those applications? Were they preceded by requests?

Mr McIlwain—I do not have those dates.

Senator MARSHALL—Can you get them for me?

Mr McIlwain—I will take that on notice. They are recent.

Senator MARSHALL—What is the progress of those applications?

Mr McIlwain—One has been refused; two have been refused but the researchers have been invited to provide or make fresh applications with different methodologies or more information about their proposed research; and one, which is Dr Kristin van Barneveld's, is still under consideration.

Senator MARSHALL—Has your office had any request for access to other information or documents held by your office since the commencement of WorkChoices? My questions up to now have been about access to AWAs.

Mr McIlwain—The OEA receives requests for information in all sorts of forms. It receives several thousand a week through its call centres. It receives FOI requests. I am not able to give you a categorical answer. Clearly, over the last year we would have received requests for a whole array of information.

Senator Abetz—Do you have a particular category or person to focus on?

Senator MARSHALL—No, I am just asking about requests. When you say you get any number of requests, are they applications?

Mr McIlwain—We receive requests through many channels. But most are not applications for access to AWAs for research purposes.

Senator MARSHALL—In this sense, we are using the word 'request' in its proper meaning?

Mr McIlwain—I am using it in the sense that we receive many requests through many channels for all sorts of information. Most of those requests are not applications for access to AWAs for research purposes.

Senator MARSHALL—Do you keep a record of those requests?

Mr McIlwain—We keep a record of every telephone call that is made to our contact centres. The extent of information contained in that record depends on the nature of the call; most of it will be tick box information but if other issues arise there will be more detail available through free text entries.

Senator MARSHALL—What about other forms of industrial instruments? Have you had any requests for access to those? There are employer greenfield agreements, collective agreements, for example.

Mr McIlwain—Yes, we have had requests and until recently collective agreements were published on the OEA—now the Workplace Authority—website.

Senator MARSHALL—So you have had requests and you have simply referred people?

Mr McIlwain—We have had requests for information and some of those requests have been—

Senator MARSHALL—Or applications.

Mr McIlwain—concerning collective agreements, and they are available to the public on our website.

Senator Abetz—So they do not need to put in written applications.

Mr McIlwain—So no application process is necessary.

Senator WONG—Are the criteria which are applied to requests or applications for information regarding other data the same as those for AWAs, and are they the same as those for collective agreements? Do the criteria alter depending on the type of information sought?

Mr McIlwain—The first point to make is that collective agreements are on the public record so I see no point—

Senator WONG—You cannot hide them. You can hide the AWAs but you cannot hide them.

Mr McIlwain—I see no point in requiring people to meet criteria when they are documents of public record. AWAs established by the parliament of this country were set up as private documents between individual employees and employers. The parliament saw fit to create a regime where information about the parties to AWAs, in particular, would be subject to restrictions, for obvious reasons. So in that context it has been necessary for all employment advocates, including me, to turn their minds to criteria that are appropriate to be applied when researchers make application for access to those private documents.

Senator WONG—I understand you want to put the justification on the record, and you tend to do that—it is your right to do that. Can we just get information first? Do I understand that there are no criteria in relation to applications for requests for information for collective agreements?

Mr McIlwain—People need not make a request or an application because the information is available publicly to all comers on the OEA's website.

Senator WONG—Leaving aside AWAs, are there any criteria applied to requests for any other information held by the OEA?

Mr McIlwain—Clearly, there are. For example, FOI applications—

Senator WONG—Apart from FOI?

Mr McIlwain—Apart from FOI there may be other information that is subject to the normal information privacy principles.

Senator WONG—I am asking not about external legislative regimes in relation to the disclosure of data; I am asking about your own internal administrative processes. You have given evidence about the criteria which apply to AWA requests for information—inquiries/requests/applications. I am trying to ascertain whether those criteria apply only to requests for AWA information or whether they apply also in relation to requests for other data?

Mr McIlwain—That criteria which apply to the researcher access program apply only to AWAs sought under that program.

Senator MARSHALL—What does the strategic services branch of the OEA do?

Mr McIlwain—It is a unit of the Workplace Authority that is responsible for strategic planning, also known as corporate planning; for research; for statistical analysis; for parliamentary and ministerial liaison; and—as Mr Rushton reminds me—internal audit.

Senator MARSHALL—So that is where your statistical expertise would be based?

Mr McIlwain—Yes.

Senator MARSHALL—Is there any right of appeal to researchers if you deny a request for access to AWAs or is your decision final?

Mr McIlwain—Mr Rushton will advise me whether there are administrative appeal rights in that regard. While Mr Rushton is considering that legal question, I might observe that, where a research application has been made and failed but there may be merit, nonetheless, in the application, as I have explained, on two recent occasions a researcher has been invited to make a fresh application and address inadequacies against the criteria in that fresh application and it has been considered afresh. I would suggest to you that that is in fact the operation of an internal appeal mechanism—somebody who fails the first time, having made a serious attempt, is given another chance.

Senator MARSHALL—I am more interested in whether people can exercise a right to appeal, not whether you are going to be generous enough to grant them a second chance.

Mr Rushton—Aside from FOI requests, where there is an appeal to the Administrative Appeals Tribunal, generally speaking there is no appeal mechanism for the decisions of the Employment Advocate. I think we might have gone over that before. Hence, action to overturn those decisions have to be by way of prerogative writ to the High Court.

Senator MARSHALL—Mr McIlwain, in terms of the requests/applications for access to AWAs for research purposes that you have denied, did you have any discussion with anyone outside of your office about those applications?

Mr McIlwain—No, not to my knowledge. Only with the applicant.

Senator MARSHALL—Can you be more specific, then? Only with the applicant?

Mr McIlwain—I am advised only with the applicant.

Senator MARSHALL—Did your office receive any direction or communication from anyone outside your office in respect of granting access to AWAs?

Mr McIlwain—No.

Senator MARSHALL—I think I am done on that.

Senator WONG—Mr McIlwain, there was something I neglected to ask you when we were discussing—and I do not propose to traverse the entirety of our conversation again—the collation of data. I think your evidence was that, in terms of the time line we established, from sometime in November—so the October sample onwards—no further collection of data in relation to AWAs occurred. Is that correct?

Mr McIlwain—Yes. No sample—

Senator WONG—No, not sampling; collection of data, other than the lodgement.

Mr McIlwain—No sample to provide a sample from data to be collected was drawn after October—

Senator WONG—November, it might have been, in relation to—

Mr McIlwain—apart from the ongoing sample drawn for the purposes of encoding by the department's workplace agreements database team.

Senator WONG—Which is the 500 per month ongoing?

Mr McIlwain—That is correct, yes.

Senator WONG—Did you clarify with us on what basis those 500 were selected?

Mr McIlwain—Yes. They are selected on the basis of industry and employer size. The goal is to represent in the sample the cohort of lodgements from that month.

Senator Abetz—We were in fact told about this at, I think, 15 February estimates, on page 103, in answers to questions by Senator Marshall.

Senator WONG—Leaving aside that there are no samples, what occurs with an AWA when it comes in?

Mr McIlwain—Ninety per cent of AWAs are lodged electronically. The electronic lodgement system is a mirror of the paper lodgement system. It is an electronic version of the lodgement declaration form. In lodging the agreement, the employer must complete that form and enter into it information—data, if you like—on certain characteristics of their business; for example, the business size, its location, the ANZSIC industry in which it operates. All that information is collected electronically by our online lodgement system. In paper lodgements, the lodger completes the paper lodgement form, which is a mirror of the electronic form. The same information is collected. Those paper lodgements of declaration forms and agreements are sent to a contractor in Sydney, who scans all that information. It is sent electronically to the OEA. Then, once we have confirmed the declaration has been made and an agreement is present—this is in the case of paper lodgement—the agreement then passes into our electronic lodgement database. So whether there is paper lodgement or electronic lodgement, eventually

every agreement and all the information captured at the point of lodgement is in the same database.

Senator WONG—What information is trapped in the database?

Mr McIlwain—All that information that is entered onto the lodgement forms.

Senator WONG—Could you just remind me of that?

Mr McIlwain—Sure. For example, this is the latest form. It is a paper version, but the electronic version mirrors it. There is employer ABN, legal name, trading name, address, email address—

Senator WONG—I have seen one of those forms. That is on your website, I think. Just to confirm what your evidence is, basically the only data that you have collated in relation to AWAs, leaving aside the 500 per month sample, is the dataset entered on those forms. Is that right?

Mr McIlwain—Yes.

Senator WONG—Are we clear about that?

Mr McIlwain—Yes.

Senator WONG—Thank you.

Senator McEWEN—Does a person select the 500 or does a computer program select the 500?

Mr McIlwain—It is a mixture.

Senator McEWEN—Does a person look through the list of lodgements and say, ‘That one, that one and that one,’ or is it a computer program that randomly samples?

Mr McIlwain—Having established the characteristics of the lodgements for that month, that information is fed into a statistical program, which then identifies the first 500 agreements it comes across that meet those criteria for that sample.

Senator McEWEN—So who sets the sample—a person or a computer program? Who sets the criteria?

Mr McIlwain—The criteria are input by an analyst. The analyst has looked at lodgements for the previous month and determined the demographics, if I can describe them in that sense, and then feeds those demographic factors into a statistical program, which then identifies the first 500 AWAs that allow that statistical representation to be achieved in that sample.

Senator McEWEN—But it could be: for this month one of our criteria will be every AWA that has a pay increase of more than two per cent?

Mr McIlwain—No, it is not that. It would be: we need 30 per cent of the agreements to come from the retail sector and we need 45 per cent of agreements to be employers employing up to 49 employees.

Senator McEWEN—But, theoretically, it is possible to set a criterion that is: all the agreements that have a pay increase of more than five per cent.

Mr McIlwain—No, it is not, because that information is not available in our electronic lodgement system. The parameters that are used can only be those for which data is collected at the point of lodgement.

Senator GEORGE CAMPBELL—You are going to provide us with a sample.

Mr McIlwain—We will provide you with a break-up indicating so many agreements came from this industry, so many from—yes.

Senator GEORGE CAMPBELL—Under the new Workplace Authority will you still be referred to as the Employment Advocate or do you get a change in title?

Mr McIlwain—I cannot presume on the legislation that the parliament passes.

Senator Abetz—That was a good try, Senator Campbell.

Senator GEORGE CAMPBELL—At this stage you are the Employment Advocate?

Mr McIlwain—Yes, I am.

Senator GEORGE CAMPBELL—What is the current remuneration for the Employment Advocate?

Mr McIlwain—It is set by the Remuneration Tribunal. I am unable to recall the exact figure, but I will take that on notice. I provided it on another occasion.

Senator GEORGE CAMPBELL—You do not know what you are earning?

Mr McIlwain—I cannot recall the exact figure. It is not all superannuable. Some is of an allowance nature. I would need to be accurate, but I have provided it on another occasion.

Senator GEORGE CAMPBELL—Are you saying there is a fixed component and a performance component?

Mr McIlwain—Like all professional executive officers, I participate in a performance pay scheme. That can be a component of my overall income, depending of course upon the minister's view of my performance.

Senator GEORGE CAMPBELL—The minister? So that is not set by the Remuneration Tribunal?

Mr McIlwain—No, but the professional executive officer structure sets up this arrangement and in my case, being a statutory officer—and I understand that it would be the same for other statutory officers in the portfolio—it is for the minister to determine the level of my performance and whether I qualify for any performance pay.

Senator GEORGE CAMPBELL—What are the criteria that are used to assess the performance component of your remuneration?

Mr McIlwain—The minister determines the level of my performance against the discharge of my statutory functions. So I would provide advice to the minister on the discharge of my statutory functions, the minister would consider that and then determine the level of my performance.

Senator GEORGE CAMPBELL—Are there no set criteria? Are there no key performance indicators against which you are benchmarked?

Mr McIlwain—My performance indicators are my statutory functions.

Senator Abetz—Section 151.

Senator GEORGE CAMPBELL—Are you saying, Minister, that he is judged against his application of section 151?

Senator Abetz—That is what the evidence is. Part of it is, for example, to promote better work and management practices through workplace agreements. Clearly, that is something that you cannot necessarily measure by something physical. It is something that you have to make an assessment on as to how you think that has gone.

Senator GEORGE CAMPBELL—So it is just a judgement that the minister makes about whether he has been good, bad or indifferent?

Senator Abetz—At the end of the day, if what the Employment Advocate is telling us is correct—that it is the minister's decision—he will take into account all of those factors.

Senator GEORGE CAMPBELL—Has this method of measurement changed since you have been the Employment Advocate? Are you aware of whether or not that applied to the previous Employment Advocate—in other words, has there been a consistent approach?

Mr McIlwain—I do not know what the previous Employment Advocate's arrangements were.

Senator GEORGE CAMPBELL—From the period that you have been in the job, the same approach has been—

Mr McIlwain—For the period I have been in the position, that is how my performance has been judged.

Senator GEORGE CAMPBELL—How often is your performance reviewed by the minister?

Mr McIlwain—Annually.

Senator GEORGE CAMPBELL—When was the last review?

Mr McIlwain—July 2006.

Senator GEORGE CAMPBELL—What were the outcomes of that review—that judgement?

Senator Abetz—Can we take that on notice?

Senator GEORGE CAMPBELL—Why, Minister?

Senator Abetz—Because there may well be sensitive matters in it. I have no idea but it is not beyond the realm of possibility that a review might express concern because of absenteeism or because of a certain circumstance in one's life and whatever. Before we dredge it all before a Senate committee, I think we need to be careful.

Senator GEORGE CAMPBELL—Just to clarify for you, Minister: I am asking Mr McIlwain what the outcome of the assessment was in monetary terms.

Mr McIlwain—I cannot remember the exact outcome. I will take that on notice so I can give you an accurate answer as part of my response on my total remuneration package. It is a percentage calculation, as best I recall, up to 15 per cent at the highest.

Senator GEORGE CAMPBELL—So there is a maximum ceiling on it?

Mr McIlwain—It is set out in the professional executive officer arrangements.

Senator GEORGE CAMPBELL—Did you get the full 15 per cent?

Mr McIlwain—Yes, I did.

Senator GEORGE CAMPBELL—Have you always got the full 15 per cent?

Mr McIlwain—On both occasions, when I have been eligible, I have been assessed at the level of 15 per cent.

Senator GEORGE CAMPBELL—So obviously the government is more than satisfied with your performance in the job?

Mr McIlwain—The minister was satisfied with my performance.

Senator GEORGE CAMPBELL—He is acting on behalf of the government.

CHAIR—Do we have another question?

Senator WONG—Yes, I was just trying to cull a few.

Senator Abetz—Don't let us disturb you in that case!

Senator WONG—I thought you might say that. I have some questions about the period pre Work Choices in terms of the application of the no disadvantage test. I think we did ask this at the time, but are you able to remind me of the percentage of AWAs that failed the no disadvantage test?

Mr McIlwain—That was around two per cent. They were referred, as the legislation required, to the AIRC for its consideration.

Senator WONG—Two per cent?

Mr McIlwain—Over time, yes, approximately two per cent.

Senator WONG—Have you done an analysis of the totality of the experience of the OEA in relation to AWAs under the previous NDT?

Mr McIlwain—Yes, indeed. Over time, I cannot remember the exact percentage points, but it was around two per cent.

Senator WONG—Aggregate or points in time?

Mr McIlwain—Just to clarify: of the two per cent, the agreements referred to the AIRC, some were then approved by the AIRC and some were failed by the AIRC. I do not have with me figures on that. Mr Rushton reminds me further that the AIRC was able to approve AWAs under a public interest test, which the OEA was not able to do. Some were also approved by the AIRC on the strength of the no disadvantage test alone, without the application of the public interest test.

Senator WONG—In terms of the analysis that we were discussing earlier about the AWAs that failed the NDT, did your survey extend to proportions or percentages within particular industries or employer types?

Mr McIlwain—We do not believe that we have those statistics, but we will check to see whether, over the space of the nine years, any work was done on that sort of disaggregation.

Senator WONG—I now have a question in relation to the additional appropriation from additional estimates—\$20.5 million for the workplace relations advertising campaign for OWS and OEA.

Mr McIlwain—That was not an appropriation to this output, so I am not able to answer questions on that.

Senator WONG—Because it was appropriated to the Office of Workplace Services?

Mr McIlwain—That is correct.

Senator WONG—But it does relate—and I am reading from page 124 of the PBS—to ‘Advertising campaign for OWS and the Office of the Employment Advocate’. So I am asking about your involvement in that. Given that it relates to your agency as well, I am asking whether you have any knowledge of where that campaign is at. Have you been involved in discussions about that campaign? To your knowledge, have any funds been drawn down with respect to that appropriation?

Mr McIlwain—I have no knowledge of the funding arrangements. The money was never appropriated to the OEA. I am advised that that activity has not continued—the OEA has no continuing involvement.

Senator WONG—‘The OEA has no continuing involvement’—what does that mean?

Mr McIlwain—It means that I am unaware of the outcome of that activity.

Senator WONG—What activity was undertaken prior to you no longer being involved in that activity in relation to this appropriation? Mr McIlwain, to be fair to you, I should be clear that answers were given in Prime Minister and Cabinet estimates about this appropriation which indicated that these moneys were to be spent on campaigns to provide information about the functions of the respective offices. That was the Prime Minister and Cabinet evidence.

Senator Abetz—And?

Senator WONG—I want to know what is being done in relation to the OEA, Minister.

Senator Abetz—Yes, but this has been appropriated out of a different area.

Senator WONG—But it includes advertising or something in relation to Mr McIlwain’s office. He must have some involvement or some knowledge; if he does not, he can tell us.

Mr McIlwain—The OEA participated in a process calling for tenders for some focus group research with the Office of Workplace Services. I am advised that that tender process never proceeded.

Senator WONG—When did the process of calling for tenders commence and when did it discontinue?

Mr McIlwain—To clarify that, I am advised that a successful tenderer was selected but the activity did not proceed.

Senator WONG—Who was the tenderer selected?

Mr McIlwain—A company called Open Mind.

Senator WONG—Was OEA involved in making a submission to the Ministerial Council for Government Communications in respect of this funding or this campaign?

Mr McIlwain—The OEA was a joint signatory to that initial focus group proposal.

Senator WONG—When did that go to the MCGC?

Mr McIlwain—We do not have the dates.

Senator WONG—Are you able to give an approximate indication? Was it at the end of 2006 or early 2007? Can we at least get that?

Mr McIlwain—It was certainly this year but the exact date we will take on notice.

Senator WONG—That is fine. Do you know whether it was before or after additional estimates?

Mr McIlwain—It was after additional estimates.

Senator WONG—The process for calling for tenders was engaged in and the tenderer was selected. Are you able to tell me approximately when that occurred? I have just found some evidence which I will put to you: 3 April was indicated in the PM&C estimates. Does that sound correct?

Mr McIlwain—We believe that sounds about right.

Senator WONG—Do you recall the approximate value of the tender contract?

Mr McIlwain—I am advised that it was approximately \$130,000.

Senator Abetz—If that proves to be incorrect, we will correct the record.

Senator WONG—I understood that. You would obviously clarify that if it is not correct, because we are dealing with figures here. When was the decision made to discontinue this contract?

Mr McIlwain—We are not certain of that but it was shortly after 3 April.

Senator WONG—Who made the decision to discontinue these activities?

Mr McIlwain—The project was being managed by the Office of Workplace Services—

Senator WONG—That was not my question.

Senator Abetz—It flows—it would be from them.

Senator WONG—Did the OEA make the decision?

Mr McIlwain—The OEA was not the lead in the project management. We did not make the decision.

Senator WONG—Did the OEA participate in the decision to discontinue these activities?

Mr McIlwain—No.

Senator WONG—How did you become aware of the decision to discontinue?

Mr McIlwain—We believe we would have obtained that information from the Office of Workplace Services, which was managing the project. But we will confirm that.

Senator WONG—What was the name of the project? What was its working title?

Mr McIlwain—We are unaware of it having a name.

Senator WONG—Was it called ‘community understanding of workplace relations’?

Mr McIlwain—No, we are not aware that that was the name of the project.

Senator WONG—Was any money expended in relation to this project prior to the decision to end it?

Mr McIlwain—Some money was expended on the development of a proposal for an information campaign.

Senator WONG—Is this the proposal that went to the ministerial committee?

Mr McIlwain—No.

Senator WONG—Another one?

Mr McIlwain—This was a forerunner that was undertaken by the OEA in 2006.

Senator WONG—You did not get the additional appropriation until February this year.

Mr McIlwain—That is correct.

Senator WONG—But you expended moneys in relation to a proposal to run an information campaign, in 2006?

Mr McIlwain—The proposal was prepared in August 2006.

Senator WONG—So in August 2006, the OEA commissioned—would that be correct?

Mr McIlwain—Yes.

Senator WONG—The OEA commissioned a contracted party to develop a proposal for an information campaign?

Mr McIlwain—Dealing only with the OEA.

Senator WONG—And some of the \$20.5 million that has been appropriated has been accounted against that expenditure. Is that right?

Mr McIlwain—With the agreement of the Office of Workplace Services. I think the figure was around \$100,000.

Senator WONG—So it was approximately \$100,000. You will confirm that?

Mr McIlwain—I will confirm the exact figure.

Senator WONG—To whom was that paid?

Mr McIlwain—It was paid to one of the agencies, we believe, on a panel contract—HMA Blaze.

Senator WONG—That was a select tender?

Mr McIlwain—Yes, it was done from a panel contract arrangement, I understand.

Senator WONG—It did not go to open tender?

Mr McIlwain—No.

Senator WONG—Was the tender process a select tender process?

Mr McIlwain—Yes, from a panel arrangement.

Senator WONG—Did you tell me where the \$100,000 was accounted from? Is that the totality of the expenditure in relation to this campaign that did not proceed?

Mr McIlwain—It was the total expenditure with regard to that work done in August 2006. The initial expenditure was billed to and paid by the OEA with the agreement of the Office of Workplace Services. Funds were transferred out of the appropriation made to OWS in the additional estimates.

Senator WONG—What is the totality of the funds on this project from the OEA?

Mr McIlwain—Currently none because the entire amount was accounted for by OWS out of additional estimates.

Senator WONG—How much was accounted for out of your budget appropriations?

Mr McIlwain—None.

Senator WONG—I see what you are saying. But you are saying that, to your knowledge, it was \$100,000.

Mr McIlwain—It was around \$100,000. We will check the exact figure.

Senator WONG—Was there any other expenditure for which you were reimbursed through this accounting process?

Mr McIlwain—No.

Senator WONG—Are there any other advertising campaigns that OEA is currently involved in or involved in preparation for?

Mr McIlwain—No.

Senator WONG—Has the OEA commissioned any other market research?

Mr McIlwain—No.

Senator WONG—Does the OEA currently have, or are they currently preparing, any submissions to the Ministerial Committee on Government Communications?

Mr McIlwain—No.

Senator WONG—Is the OEA involved in preparing any advertising or public relations campaign of any sort?

Mr McIlwain—No.

Senator Abetz—Other than appearing in front of estimates.

Mr McIlwain—Senator, just for abundant caution, we have commissioned and undertaken some focus group work that is designed to ascertain whether an online product that we are

currently developing to assist the parties to make agreements is heading in the right direction. It goes to whether people are able to easily use the IT system that we are developing. I do not consider that to be market research—I consider it to be usability testing—but we have undertaken that.

Senator WONG—How much is that?

Mr McIlwain—I do not have a figure. We will get you that figure. I am also reminded that we conduct an annual client service survey. I think this is about the sixth year. That is a telephone survey of clients of the former OEA. It commences tomorrow.

Senator WONG—So you do that annually. Who conducts that for you?

Mr McIlwain—It is the Wallis Consulting Group. The value of the contract for this year is around \$47,000.

Senator WONG—And you are getting me the information on the online product market research?

Mr McIlwain—Yes, I will provide you with a cost. Just to be clear: I do not believe it is market research. It is in fact usability testing to make sure that what we have developed can be used by both employers and employees. Nonetheless I will provide you with the cost.

Senator WONG—Can you tell me the figure that was spent on advertising campaigns in relation to the OEA in 2006-07?

Mr McIlwain—None.

Senator WONG—How much is intended to be spent in 2007-08

Mr McIlwain—I am not aware of any.

Mr Brennan—There is some expenditure for the independent contractor seminars as part of the implementation of that program. I think in this financial year that expenditure is retained within DEWR but I guess it is in relation to functions that are now part of the Workplace Authority. So that is informational advertising to tell people about the existence of seminars, and that amounts to around \$200,000 this financial year.

Senator WONG—Is that attributed against your output or against a DEWR output?

Mr Brennan—It was in 2.2.3. I am not quite clear whether it is staying there or moving.

Ms Skarratt—It is staying there.

Senator WONG—And you have no current campaigns that are before the MCGC, nor are you working on any applications for approval before the MCGC sits?

Mr McIlwain—No.

Senator WONG—You have indicated that there has been market research, with a caveat that you think it is called usability testing. Has there been any other market research, opinion polling or evaluation?

Mr McIlwain—Only the client service one that I have mentioned already. There is nothing additional.

Senator WONG—I assume there are occasions on which OEA refer AWAs to OWS for investigation.

Mr McIlwain—Yes.

Senator WONG—Have any AWAs where an employer organisation is a party to the AWA been subject to such referral?

Mr McIlwain—I am assuming that you are talking about where the industry association or employer association is the employer. Is that the case?

Senator WONG—Well, ‘a party to the agreement’ implies that.

Mr McIlwain—I am not aware of that but I cannot say that that has not occurred.

Senator WONG—The proposed rebranding of your organisation was included in the Prime Minister’s announcement about restructuring. Have you provided advice as to the cost of the restructure and the rebranding to the government?

Mr McIlwain—I have been consulted, yes.

Senator WONG—When were you consulted about that? Was that part of the consultation on the Wednesday before the announcement?

Mr McIlwain—No. I think I have answered these questions. The Workplace Authority has gone through a consultative process with DEWR’s FMG division. That commenced the week before last.

Senator WONG—That is right, I asked you that. Do you have an indication of the likely cost?

Mr McIlwain—That will be in the financial impact statement that will be part of the bundle of documents tabled with the bill.

Senator WONG—Are you aware of any advertising campaign proposed to be associated with the rebranding?

Mr McIlwain—I am not aware of one.

Senator WONG—You have not been asked to advise about one—

Mr McIlwain—No.

Senator WONG—Or participate in one?

Mr McIlwain—No.

Senator WONG—What about market research associated with the name?

Mr McIlwain—No.

ACTING CHAIR (Senator Marshall)—There are no further questions for the Office of the Employment Advocate.

[3.14 pm]

Department of Employment and Workplace Relations

CHAIR—I welcome Dr Boxall and officers of the Department of Employment and Workplace Relations in the section of cross-portfolio. Do you wish to say anything, Dr Boxall?

Dr Boxall—No, thank you.

CHAIR—Do we have some questions?

Senator WONG—Can we start with the inevitable question about answers to questions on notice. Dr Boxall, at the commencement of this budget estimates process, 87 per cent of the department's answers were still outstanding. Of the answers that were not still outstanding—that is, that had been received—over 95 per cent had been received late. Can I just take you through what senators have received in the last week. We received 82 answers from additional estimates on Tuesday and Wednesday. On Friday, we received 285 answers, which in fact were from the supplementary budget estimates. We then received some 70 at 2.10 pm today, also from the additional estimates rounds. Obviously it makes it somewhat difficult for senators to be across answers when we receive 350-odd in the last week and around 350 between Friday afternoon and today.

Senator Abetz—That is a statement.

Senator WONG—Why were you so noncompliant with the Senate procedures and requests of this committee in terms of the provisions of answers?

Senator Abetz—I am not sure that that is necessarily a question that should be addressed to the department because, at the end of the day, the answers that are provided go through the minister's office and it may well be that the department was completely compliant, the minister wanted extra information or he needed time to consider the draft responses and then to table them in the circumstances that Senator Wong has just outlined. Chair, you will recall that the delay in getting responses was a matter of discussion in the Senate by Senator Marshall about two or three weeks ago, and I outlined the reasons on that occasion.

CHAIR—That is correct, Minister.

Senator WONG—Of the answers provided since Tuesday, 22 May—so that comprises 82 on Tuesday and Wednesday, 285 on Friday afternoon and 70 from about an hour ago—how many of those were held up because of the minister delaying providing an answer?

Senator Abetz—I think you have had an indication in the past that literally hundreds of questions that were placed on notice. You then had a change of minister, which delayed the situation, and there have been other issues. It is to be regretted that there have been these delays and hopefully we can do better in the future.

Senator WONG—So Minister Hockey is responsible for the delay in answers, Minister?

Senator Abetz—At the end of the day, the minister takes responsibility for these things. I am not sure whether there was a delay with each answer. The minister may have been dissatisfied with a draft answer or wanted more information in a draft answer so it got bounced back and forth between the department and his office. I will not take an analysis of

each question in relation to that other than at the end of the day the buck does stop with ministerial officers. We accept that. But there has been an immense workload by anybody's measure: 700 or 800 questions on notice. Sorry, there were 1,151.

Senator WONG—Let us be clear: this department has a backlog from November last year. That is what you were clearing. You have a lot of questions on notice that were unanswered, frankly. I would suggest that that is because this department has had such a backlog and has been so poor in providing to the Senate answers to questions on notice as required.

Senator MARSHALL—At the last round of estimates, I think you told us that the questions on notice from the previous round were all answered by the department in the time frame required and passed onto the parliamentary liaison officer in the ministerial office. That was correct, wasn't it?

Dr Boxall—No.

Senator MARSHALL—You had not answered all the questions but thought you had?

Dr Boxall—No, we did not say that. The chair asked a question of me about whether the questions that had been answered by the Office of Workplace Services and the Office of the Employment Advocate had been held up in the department. The answer to that was no. The answer to the more general question is the same as it was about three or four estimates ago—that is, that the department makes every effort to provide draft answers as soon as practicable and as soon as we can. It is up to the minister when he or she tables the answer.

Senator MARSHALL—So have you provided draft answers to all the questions on notice from the last round of estimates?

Dr Boxall—That is a question that we do not normally answer, because that is a question that goes between the department and the minister. If you have further questions on that, I would like to ask the minister to take them.

Senator WONG—Hang on, that is a process question. The content of the advice is not being sought; it is a process question—they are routinely asked and answered in these estimates, Dr Boxall.

Dr Boxall—Is that a question?

Senator WONG—Yes it is. Answer the question.

Dr Boxall—I beg your pardon?

Senator WONG—I would like you to answer the question.

Senator Abetz—No, it was a statement.

Dr Boxall—It was a statement.

Senator MARSHALL—Well, answer my question.

Dr Boxall—The answer to your question, Senator Marshall, is that we provide the draft answers to the minister and their office as soon as practicable and it is up to the minister when they table them. We are not prepared, and we have not been prepared in the past, to go through question by question, or groups of questions by groups of questions, as to when we forwarded the draft answer to the office.

Senator MARSHALL—You might want to explain that.

CHAIR—If you could rephrase your question to Dr Boxall.

Senator MARSHALL—I am not asking in relation to question by question. The Senate sets a time for the response to questions taken on notice. My question to you, Dr Boxall, is: did the department provide those draft answers to the minister's office within the time that was required by the Senate?

Senator Abetz—As I indicated earlier, in this situation, at the end of the day the minister is responsible for the department et cetera. We are not going to get into a situation where the department says, 'We provided a perfectly reasonable draft answer to the minister, but the minister wanted more information on it—

Senator MARSHALL—No-one has suggested that, Minister.

Senator Abetz—or wanted some other information.' So what I have said, right from the outset, is that the minister's office takes responsibility for the delays, which are unfortunate and to be regretted. I do not know why I was labouring under the illusion that there were only 700 and something questions on notice. Well over 1,100 questions have been placed on notice in the past 12 months. That is a huge workload, especially when you have a change of minister in between time, who needs to satisfy himself that all the answers that have been prepared are satisfactory and is getting his head around the department et cetera. An unfortunate convergence of events has led to this result, but at the end of the day the minister takes responsibility for it.

Senator MARSHALL—I think it is fair to talk about the resourcing issue. I am happy about that. No-one suggested that I want to create any competition between the department and the minister about what might have been a fair or unfair draft response to a question. But I think it is a very fair question for us to ask whether the department has provided draft answers to the questions that were taken on notice at estimates. If they have not, and it is a resourcing issue, the department should tell us. If they have, it is not a resourcing issue, is it?—and they should tell us. I suppose you are not going to tell us—that is what you have indicated. But I would like you to tell us, Dr Boxall.

CHAIR—I think Dr Boxall has provided a response and so has the minister.

Senator Abetz—I have already indicated that the minister takes responsibility.

Senator MARSHALL—So the department will not tell us whether they have provided draft answers. Is that the case?

Senator WONG—Does he take responsibility? I am not sure, in terms of the minister's public statements in his interview with Mr John Laws, that he took responsibility. I understood he was effectively blaming his department, Minister.

CHAIR—I think we are venturing wider than budget estimates here.

Senator Abetz—Yes.

Senator WONG—Okay, I will move on.

CHAIR—I think that is a very wise idea.

Senator WONG—I have one query in relation to an answer to a question I asked, No. W1144-07. The outcome was corporate, Dr Boxall.

Senator Abetz—Is that 1144?

Senator WONG—Yes, 1144-07.

Dr Boxall—We have the answer that was tabled by the minister.

Senator WONG—Thank you. My first question is: has the department done any cost-benefit assessment in relation to opinion polls, focus groups or market research?

Dr Boxall—Not that we know of.

Senator WONG—Well, you are the secretary of the department, Dr Boxall, and I would assume you would know.

Dr Boxall—Not that I know of is the answer.

Senator WONG—Could you explain something else to me. There is a calculation of the expenditure and time associated with this answer, and the number of hours is 10.5. The answer is nine words long. Can someone explain to me how an answer of nine words can take 10½ hours to prepare?

Dr Boxall—The amount of preparation to answer any question is not directly proportional to the number of words in the answer.

Senator WONG—I appreciate that, but the answer does not answer the question. I asked: What benefit-cost assessments have been done which assess the returns from opinion polls, focus groups or market research?

The answer says:

Projects are evaluated and financial expenditure is regularly reviewed.

Can someone explain to me how it took a public servant 10½ hours to give that advice to a Senate committee?

Dr Boxall—Yes. This question, for example, took quite a lot of coordination. It required somebody in Corporate to coordinate around the department and to get input to make sure that we did not answer—that we answered the question correctly.

Senator WONG—There was a Freudian slip there, I think, Dr Boxall.

Senator Abetz—Very droll.

Senator WONG—A Freudian slip very early on.

Dr Boxall—I have probably been watching too much Senate estimates, all morning.

Senator WONG—Who prepared the answer—which officer?

Senator Abetz—No, no, no—

Dr Boxall—No, we cannot go into that. The draft answer was sent to the minister and the minister tabled this answer.

Senator Abetz—Yes, the minister takes responsibility. We are not going to get into—

Senator WONG—Which officer took the 10½ hours?

Senator Abetz—No, we are not going to have the game of ‘Which officer?’

Senator WONG—Hang on; the person you are representing, Minister, has chosen to place on the public record, regularly—and that is their right, if they wish to do that—how many hours it takes a public servant to answer a question. The assertion in this answer is 10½ hours for an answer that simply says, ‘We regularly review it.’ There is no indication in the answer that any investigation of other sections of the department actually occurred. They may well have. Dr Boxall’s evidence is that they did. I am entitled to ask, ‘What was the 10½ hours spent on?’

Senator Abetz—That is completely different to trying to identify the individual officer. That is a very sleazy approach to try to get out of your original question. What we are seeing more and more, unfortunately, is the Labor Party trying to finger individual officers, getting individual names on the public record.

Senator WONG—You are not the person to lecture anybody about sleaze, Senator Abetz.

Senator Abetz—We as the government are seen once again as the defenders of the workers.

CHAIR—A question has been asked and a response has been given.

Senator WONG—No, a response has not been given.

Senator Abetz—We are not prepared to give the name of the officer who prepared the answer.

Senator WONG—I am not asking for the name; I am asking—

Senator Abetz—You did.

Senator WONG—I am no longer asking for the name.

Senator Abetz—Right, thank you.

Senator WONG—I accept that. I want to know: what was the work that took 10½ hours?

Senator Abetz—Dr Boxall has explained that to you.

Senator WONG—No, I would like to know what was the work that took 10½ hours on this answer. He has given a general answer. I would like to know in relation to W1144: what work comprised the 10.5 hours?

Dr Boxall—I am advised that the officer involved had to check with other areas of the department, call around the department and get input before formulating the answer which was provided to the minister. The minister has subsequently tabled an answer.

Senator WONG—Which is not the same?

Senator Abetz—It is.

Senator WONG—It is not the same as the answer provided. Is it?

Senator Abetz—That was an assertion.

CHAIR—I think the moment has passed.

Senator WONG—Is it the same as the answer provided by the department?

Dr Boxall—I cannot disclose what advice we give to the minister.

Senator Abetz—Oh, is that what you were on about? Right. I thought that the verbal answers were not the same.

Senator WONG—Can I turn now to the *A stronger safety net* ‘non-campaign advertising’ undertaken on the weekend of 5-6 May. I presume, Dr Boxall, you have been briefed on the evidence GCU gave in the PM&C estimates?

Dr Boxall—The department has been briefed on that.

Senator WONG—I understand that DEWR is a proponent or applicant department in terms of that advertising campaign?

Ms Fairweather—Yes, we were.

Senator WONG—When were you advised that this campaign would be undertaken?

Ms Fairweather—You are talking about the advertising on 5 and 6 May?

Senator WONG—Yes, what was described as the ‘non-campaign advertising’ on 5 and 6 May.

Ms Fairweather—On 4 May.

Senator WONG—When on that day—in the morning?

Ms Fairweather—Morning.

Senator WONG—Who advised you?

Ms Fairweather—GCU—the Government Communications Unit at PM&C.

Senator WONG—Was there any contact from the Prime Minister’s office to your area?

Ms Fairweather—I will have to confer. No, the department only dealt with PM&C.

Mr Pratt—I was aware on the morning of 4 May that that advertising was going to take place, probably a couple of hours ahead of Ms Fairweather.

Senator WONG—How were you advised, Mr Pratt?

Mr Pratt—It was in discussions with members of the minister’s office and the Prime Minister’s office.

Senator WONG—Was that discussion initiated by you or by them?

Mr Pratt—By them.

Senator WONG—Was this a telephone discussion or a conversation in person?

Mr Pratt—A direct conversation.

Senator WONG—A direct conversation? So there was a meeting?

Mr Pratt—It was not a meeting to discuss this point, but it was brought up in discussion.

Senator WONG—In what context was this discussion?

Mr Pratt—This was the morning of the Prime Minister’s announcement in Melbourne. I and a number of my staff were in the Melbourne offices assisting the minister’s office and

indirectly the Prime Minister's office. In discussions about the announcement and what was going to come forth, it arose that there was going to be some advertising.

Senator WONG—Who told you that?

Mr Pratt—It was a ministerial staffer.

Senator WONG—From which minister's office?

Mr Pratt—My recollection is that it was from Minister Hockey's office.

Senator WONG—What did they tell you?

Senator Abetz—Let's be careful here.

Senator WONG—It does not work the other way around. I am not asking Mr Pratt what advice he gave.

Senator Abetz—'What did they tell you?' covers a potential multitude of things, and that is why I am just suggesting caution.

Senator WONG—What did they tell you in relation to the advertising campaign?

Mr Pratt—It was simply that there was going to be advertising done to communicate what the Prime Minister was announcing that morning in relation to the fairness test. The Prime Minister's statement was:

... there will be a public information campaign to explain the details of the changes and to reinforce in the minds of the public the protections that are available under the present law.

Essentially, that was it.

Senator WONG—Were you aware at that time of the nature of the campaign?

Mr Pratt—I was aware that the intention was to run some newspaper advertisements.

Senator WONG—Was that communicated by the ministerial adviser?

Mr Pratt—Yes.

Senator WONG—Did they tell you that it would run as a full-page advertisement in most major dailies?

Mr Pratt—I am not sure whether we went into that sort of detail. The expectation was that, as has happened in the past, there would be advertisements run in the major newspapers and the regional newspapers to tell people about the content of the Prime Minister's announcement.

Senator WONG—Were you aware that they would be full-page advertisements?

Mr Pratt—I cannot tell you. I do not recall.

Senator WONG—Whose decision was that? Was that a DEWR recommendation?

Mr Pratt—I will just check.

Ms Fairweather—No, it came from the Department of the Prime Minister and Cabinet.

Senator Abetz—Through GCU, the Government Communications Unit.

Senator WONG—Who from DEWR was involved in the preparation of an application to MCGC, or was there no application in respect of this campaign?

Ms Fairweather—There was no application to MCGC for this.

Senator WONG—Were you aware of the fact that the advertising was undertaken as non-campaign advertising?

Ms Fairweather—Yes, we actually asked GCU directly whether this was regarded as non-campaign and we were advised that it was being placed in accordance with non-campaign advertising procedures.

Senator WONG—Who gave you that advice?

Ms Fairweather—GCU.

Senator WONG—When did you ask that?

Ms Fairweather—That same day, 4 May.

Senator WONG—Did anyone explain to you why it was being placed as non-campaign advertising?

Ms Fairweather—We did not ask for an explanation; we just asked for an assurance when we were told that it was to be placed as non-campaign advertising—and therefore through HMA Blaze—that these were regarded as non-campaign advertisements, and that was the answer we got.

Senator WONG—So you asked for assurances that this kind of advertising was within the guidelines associated with non-campaign; would that be correct?

Ms Fairweather—Yes.

Senator WONG—It is the case, isn't it, that non-campaign advertising would generally be associated with things like meeting notices, recruitment and those sorts of very non-controversial issues?

Senator Abetz—That is a question for GCU.

Senator WONG—What does Ms Fairweather understand—

Senator Abetz—What her understanding is—

Senator WONG—She runs this aspect of the department.

Senator Abetz—Yes, but GCU is the one that has the guidelines. In fact, she has indicated to you that she asked advice from GCU and acted on that advice. Therefore, to ask her what her view is is to ask her to second-guess the advice she got from GCU.

Senator WONG—Ms Fairweather, have you previously in your role been involved in placing non-campaign advertising?

Ms Fairweather—Yes.

Senator WONG—In your experience, apart from this instance, what sort of material has been funded and placed as non-campaign advertising?

Senator Abetz—Once again, this witness is appearing as an officer of DEWR, not in relation to her life's experience in a whole host of different areas.

Senator WONG—I shall attempt to rephrase the question because clearly Senator Abetz is sensitive about this embarrassing issue.

Senator Abetz—No, not at all. I would have thought, over the last weekend, the Labor Party might have seen the need for even more advertising so that employers do not make inadvertent errors. I would not be going down that track if I was you.

Senator WONG—Ms Fairweather, in your experience in your current position, I presume you have placed non-campaign advertising. Is that correct?

Dr Boxall—Ms Fairweather has only been in her current position for less than a month.

Senator WONG—Is that right? Have you placed anything in the last month, Ms Fairweather, or would I be unlucky?

Ms Fairweather—No.

CHAIR—It is now 3.45 so we will have a 15-minute tea break.

Proceedings suspended from 3.45 pm to 4.00 pm

CHAIR—The committee will resume.

Dr Boxall—I was just wondering whether, apart from the advertising and campaigns—

Senator WONG—I was about to clarify that with you. First, can I just confirm—and I always forget this—where APS employment advice is located? That is in outcome 2?

Dr Boxall—Outcome 2.

Senator WONG—Apart from advertising, I do not believe I have any further questions in cross portfolio. I do not know if that assists.

Dr Boxall—That would assist. That means that people in corporate other than advertising and marketing can go.

CHAIR—Yes.

Senator MARSHALL—I have some questions in relation to the potential change in responsibility from the Work Choices Infoline to the Workplace Infoline. My questions really relate to two questions that have been answered on notice, which are W42607 and W42707. Really my question is: would that answer stand, given the new responsibilities? I do not expect an answer right now, but I wanted to ask it before people go, just in case it is in this area.

Dr Boxall—Thank you. I think that is in outcome 2 as well.

Senator WONG—I have forgotten what my question was before the break.

Senator Abetz—And you expect us to help?

Senator WONG—Not you, Minister; I would not expect that. Ms Fairweather has only been in her present position for a month, so I wonder whether there is someone else in the area. I am trying to work out DEWR's past practices in relation to non-campaign advertising, Dr Boxall.

Senator Abetz—And the question is?

Senator WONG—I am waiting for somebody to come to the table who has been in that area of the department for longer than a month. I asked Ms Fairweather the question—

Senator Abetz—If you ask, we might see what we can do.

Senator WONG—If I can finish. I asked a question. Dr Boxall pointed out that Ms Fairweather has only been there for a month, so I want to know to whom I address questions about DEWR's past practices in relation to non-campaign advertising.

Dr Boxall—Ms Fairweather can answer some of that question based on her previous experience in the department.

Senator WONG—Thank you. Apart from the 5 May and 6 May advertising, what is your understanding of DEWR's past practices in relation to non-campaign advertising? What sort of advertising has generally been applied through that category?

Ms Fairweather—The normal practice is that if there is seen to be a need for communication of some kind we would always go to the GCU for advice on whether it would be regarded as non-campaign advertising or campaign advertising—and we go with GCU's advice. An example of a non-campaign would be to announce an upcoming event.

Senator WONG—Recruitment?

Ms Fairweather—The area I am involved with does not do recruitment, but yes.

Senator WONG—So would the announcement of an upcoming event be for something like a speech or a meeting? Can you tell me that?

Ms Fairweather—Yes; it could be an awards event. It might be seeking nominations for an awards event. It is often a one-off activity, or it might be an awareness week.

Senator WONG—To your knowledge—

Ms Fairweather—GCU always provide advice.

Senator WONG—Yes, I know that is the line.

Senator Abetz—It is the truth, and I do not like the implication in that assertion.

Senator WONG—Ms Fairweather, on any occasion other than the advertising over the weekend of 5 and 6 May, can you recall non-campaign advertising using full-page advertisements in national newspapers?

Ms Fairweather—No, not in this position.

Senator Abetz—Look, whether—

Senator WONG—Let her finish the answer, Minister. She has not finished the answer.

Senator Abetz—I am the minister at the table. When something is classified in a particular way you do not determine that classification on the size of a newspaper advertisement.

Senator WONG—That is rhetoric. That is fine. You can have that argument in the chamber. I am asking the question whether or not Ms Fairweather—

Senator Abetz—No, I am giving you that response now.

Senator WONG—I was asking the question whether, to her knowledge, there had ever been. I think Ms Fairweather's answer was, not to her knowledge.

Ms Fairweather—Not in this position.

Dr Boxall—The department's position is that we are aware of previous non-campaign advertising which was one page.

Mr Pratt—I recall that back in, I think, July 2005, when the government announced its intended reforms to the workplace relations system there were extensive one-page ads put out at that stage. That was non-campaign advertising from memory.

Senator WONG—They have done it before on Work Choices, is that right?

Mr Pratt—I cannot recall whether it was Work Choices at that stage—probably not.

Senator WONG—Was it pre Work Choices?

Mr Pratt—It was what turned into Work Choices.

Senator WONG—Before the legislation, presumably—

Mr Pratt—That's correct.

Senator WONG—because it was December, I think.

Mr Pratt—And that was non-campaign advertising.

Senator Abetz—It just goes to show, chair.

CHAIR—It just goes to show you are a serial offender, Minister.

Senator Abetz—No, it goes to show that the size of the advertisement has nothing to do with the way it ought to be classified.

Mr Pratt—As I recall, that was subject, also, to GCU advice.

Senator GEORGE CAMPBELL—Mr Pratt, we are not laughing at you; we are laughing at the minister.

Senator WONG—Are you able to provide me with a list of advertising campaigns within this portfolio in relation to which DEWR is currently participating?

Ms Fairweather—Yes.

Senator WONG—Thank you.

Ms Fairweather—There is what is known as the Welfare to Work campaign—that is its umbrella name—the Support the System that Supports You campaign and the Workplace Relations System campaign.

Senator WONG—Workplace Relations System campaign?

Ms Fairweather—Yes; it has just finished.

Senator WONG—The first tranche has just finished.

Ms Fairweather—The communication activity has finished.

Senator WONG—This is for 5 and 6 May?

Ms Fairweather—No, the 20th to the 26th.

Senator WONG—Sorry, the \$4.1 million.

Ms Fairweather—Yes. It is actually not quite \$4.1 million, but I can come back to that if you wish.

Senator WONG—That was the evidence given by Prime Minister and Cabinet, so we certainly will—

Ms Fairweather—It has come down since then.

Senator WONG—come back to that. Are there any other campaigns that have not yet started, that DEWR is working on?

Ms Fairweather—No.

Senator WONG—No other planned campaigns?

Ms Fairweather—The Welfare to Work campaign has an upcoming media phase, but that is part of an ongoing campaign.

Senator WONG—Are you able to provide me with a total figure of what has been spent on advertising campaigns on the year to date?

Ms Fairweather—I can give it to you broken up.

Senator WONG—Okay. Let's do it broken up. Ms Fairweather, in terms of my experience with other committees, is it possible for you to give me expenditure to date and budget for the campaign?

Ms Fairweather—Yes.

Senator WONG—Thank you.

Ms Fairweather—For the Welfare to Work campaign, the 2005-06 budget allocated \$29 million over three years for communication purposes.

Senator WONG—How was that broken up?

Ms Fairweather—The first year, 2005-06, was \$8.7 million; 2006-07, \$11.1 million; 2007-08, \$8.9 million.

Senator WONG—And expenditure to date in relation to that?

Ms Fairweather—Do you want just media—

Senator WONG—No, I am going to ask it to be broken down. I am happy to go for the total and then the breakdown, or do you want to do it cumulatively? However the data is recorded there for you, do whatever is easiest.

Ms Fairweather—Do you want just this year or 2005-06 as well?

Senator WONG—I want the total expenditure.

Ms Fairweather—Okay. In 2005-06, there was a total—this is excluding GST—media cost of \$6.06 million. How many figures do you want?

Senator WONG—How many do you have?

Ms Fairweather—I am just thinking of how many figures down you want to go. Anyway, \$6.06 million is the total media cost for 2005-06. There was a media dispatch figure of \$70,000. Creative agency fees—

Senator WONG—Are you now breaking down the \$6.06 million?

Ms Fairweather—Yes.

Senator WONG—Media dispatch; is that media buy?

Ms Fairweather—No, media dispatch is the cost of getting the media placed in TV, press and so on. The media placement agency does that all for us but we pay a media dispatch fee.

Senator WONG—This is, I suppose, their fee component of that.

Ms Fairweather—It is an actual cost. It costs them to get it all out.

Senator WONG—What is the distinction between media dispatch and media buy?

Ms Fairweather—The media buy is the space on the TV, the space in the papers and the space on the radio.

Senator WONG—The cost of that?

Ms Fairweather—Is \$6.06 million.

Senator WONG—That was the total cost?

Ms Fairweather—That is total media cost for 2005-06.

Senator WONG—We are talking at cross-purposes here. Let us recap. \$29 million was budgeted on the Welfare to Work campaign. I asked you for full expenditure to date. I understood you said in 2005-06 it was \$6.06 million and that you were now going to give me a break down.

Ms Fairweather—That is right.

Senator WONG—You have just given me a figure where the total cost to the media buy is equivalent to the total expenditure to date. That cannot be true.

Ms Fairweather—Yes, I gave you the media buy. The total for 2005-06 was the \$8.7 million figure I gave you.

Senator WONG—No, that was the budgeted figure.

Ms Fairweather—Yes, and I have just been detailing all the costs within that.

Senator WONG—The first question then is: is the budgeted figure the same as the actual expenditure, because that is unusual?

Ms Fairweather—It is very close.

Senator WONG—Let's start again.

Ms Fairweather—Yes.

Senator WONG—The Welfare to Work 2005-06 budgeted figure please?

Ms Fairweather—\$8.7 million.

Senator WONG—And expenditure to date?

Ms Fairweather—I have not actually got it totalled up—that is the trouble—but my understanding is that it is \$8.7 million. That is what I have got here broken up.

Senator WONG—You only have it in components.

Ms Fairweather—In components.

Senator WONG—We can do that. Let us do it in components. So what is the expenditure to date, by component of that campaign, for 2005-06?

Ms Fairweather—\$6.06 million.

Senator WONG—Do I understand that to be media buy?

Ms Fairweather—Yes, that is media buy. Media dispatch was \$70,000.

Senator WONG—Yes.

Ms Fairweather—Creative agency fees, \$796,000. That covers production and so on.

Senator WONG—Anything else?

Ms Fairweather—Public relations agency, \$110,000. I am rounding this a little. Research and evaluation was \$611,000. In the first year there were pitch fees, so that is \$70,000.

Senator WONG—Sorry?

Ms Fairweather—In the first year of a campaign there are fees that are paid to agencies to pitch. It is part of the tender process outlined by GCU.

Senator WONG—You get paid just to put a bid in. I did not know that.

Ms Fairweather—Yes, there is a lot of work that goes into the pitch.

Senator WONG—There you go! How much?

Ms Fairweather—That was \$70,000 altogether, but that was for several agencies. That is the collective amount.

Ms Fairweather—Printing and distribution, \$75,000—say \$76,000 rounded up. Website, \$19,000. There was a series of industry and employer breakfast seminars; in this year, \$446,000. And employer of the year awards, which is recognising employees—

Senator WONG—Yes, I know what it is.

Ms Fairweather—Rounded up, \$154,000. There would have been allowance for corporate overheads and staffing, but I can get those if you—

Senator WONG—I am sorry?

Ms Fairweather—The budget allocation also covers corporate overheads and staffing, and cost attached to that, so I could get that for you if you so desire.

Senator WONG—If you can give an approximate cost. Anything else? We are talking tens of thousands, though, not millions there?

Ms Fairweather—That is right.

Senator WONG—Anything else on that?

Ms Fairweather—No.

Senator WONG—So for 2006-07 we have got the budgeted figure, which was 11.1?

Ms Fairweather—That is right.

Senator WONG—Can you tell me costs to date?

Ms Fairweather—Some of this is anticipated because we have a media buy coming up at the end of 2006-07, so this may change later, just for the record. But the total media anticipated is \$7.01 million. That has an associated media dispatch cost of \$345,000.

Senator WONG—Creative agency?

Ms Fairweather—Creative agency, \$1.28 million. That covered two phases of the campaign. There was a creative phase last year—October—and there is one coming up. So that creative fee is actually covering two different phases, just for the record. Public relations agency, \$162,000. Research and evaluation, \$937,000.

Senator WONG—\$937,000?

Ms Fairweather—That covers concept testing and also gets into the quantitative benchmark and tracking research.

Senator WONG—Okay. Print and distribution?

Ms Fairweather—Print and distribution, \$138,000. Employer of the year awards, \$132,000. And, finishing off, the industry employer breakfast seminars, 71,000. We also had a direct mail component—say \$310,000. Call centres and website, \$148,000.

Senator WONG—You are combining website and call centres.

Ms Fairweather—Yes, we did not actually have call centre costs in the first phase.

Senator WONG—Okay.

Ms Fairweather—The first phase, the call to action was mainly the Centrelink call line.

Senator WONG—So plus call centre was how much?

Ms Fairweather—\$148,000.

Senator WONG—Is that it?

Ms Fairweather—And because we were also talking very much to employers and to our providers, the Australian government employment services, we have information for them, so \$221,000 for specific products.

Senator WONG—For specific products for whom?

Ms Fairweather—To communicate with our providers of employment services and with employers.

Senator WONG—What is that called? Communications?

Ms Fairweather—Provider/employer information.

Senator WONG—What did that comprise, do you know?

Ms Fairweather—Things such as specifically talking to providers—informing employers about employing people with a disability or parents or our target groups for Welfare to Work.

It is guides to hiring mature-age people, people with a disability, parents, and the resource services and support that are open to them to call on should they—

Senator WONG—Has there been any change to the \$8.9 million budgeted for 2007-08?

Ms Fairweather—No.

Senator WONG—So it is still 8.9.

Ms Fairweather—Yes, that is right.

Senator WONG—Have any media costs been incurred or arrangements entered into in relation to the 2007-08 financial year?

Ms Fairweather—Yes. The next phase that we are planning will run over both financial years, so the anticipated media buy for 2007-08 is 6.97.

Senator WONG—What is the time frame for that placement?

Ms Fairweather—From 17 June for five weeks.

Senator WONG—17 June 2007 for five weeks?

Ms Fairweather—Yes, that is right.

Senator WONG—How much of the \$7.01 million and \$6.97 million relates to that component?

Ms Fairweather—The June 2007 component is \$3.25 million.

Senator WONG—What is the remainder of the 6.97, so 4.72, for the 2007-08?

Ms Fairweather—No, it is the full—the amount I just quoted you for 2007-08 is for the July buy, the three weeks July.

Senator WONG—Okay, let us be clear here. The 3.25 for the five weeks came out of which financial year's budget?

Ms Fairweather—2006-07.

Senator WONG—So the total cost of the five-week campaign?

Ms Fairweather—I have to do a quick addition there. It is 3.25 plus 6.97.

Senator WONG—\$10.22 million.

Ms Fairweather—Yes, that looks right.

Senator WONG—So \$10 million over five weeks: the next round of the welfare advertising.

Ms Fairweather—Yes.

Senator WONG—So that is one. We now have Support the System; is that right?

Ms Fairweather—Yes.

Senator WONG—Can we go through that in the same way?

Ms Fairweather—Yes.

Senator WONG—Unless you want to table all this, Ms Fairweather?

Ms Fairweather—No, I will go through it.

Senator WONG—I thought so.

Ms Fairweather—In the 2004-05 budget, the Support the System campaign was allocated \$20 million over four years. The campaign budget in 2005-06 was 11.5.

Senator WONG—There was no expenditure in 2004-05?

Ms Fairweather—No. The issue was that the campaign was transferred from FACS and so there was no—

Senator WONG—Yes, I remember. So no expenditure in 2004-05. It commenced in 2005-06?

Ms Fairweather—That is right. The campaign budget in 2005-06 was \$11.5 million.

Senator WONG—In 2006-07?

Ms Fairweather—4.86.

Senator WONG—In 2007-08?

Ms Fairweather—3.5.

Senator WONG—So you rephased—that is the total of the 20. So 2004-05's was brought into 2005-06—or most of it.

Ms Fairweather—Yes, and there was also some brought forward as well. But I do not have all those figures.

Senator WONG—What do you mean 'brought forward'; brought forward the 2006-07 expenditure into the 2005-06 year?

Ms Fairweather—Yes. There was a little bit from 2006-07 and a bit from 2007-08. That was before my—

Senator WONG—Actual expenditure for 2005-06?

Ms Fairweather—For 2005-06, the total media buy—this is all excluding GST, by the way—is \$9.66 million. Would you like me to continue with the other components?

Senator WONG—Yes, please.

Ms Fairweather—Media dispatch was \$259,000; the creative agency fees and production costs, \$639,000; research and evaluation, \$547,000. Printing, distribution, website—now, I am sorry; I am going to be a bit thrown here because staffing has been put into this figure as well—\$338,000 is printing, distribution, website and staffing. So I might come back to you with that minus the staffing figure if I could.

Senator WONG—Three?

Ms Fairweather—It was \$338,000. Direct mail was \$88,000.

Senator WONG—How much for 2006-07?

Ms Fairweather—That was the \$4.86 million. The media buy was \$3 million—

Senator WONG—No, that was the budgeted figure. We're doing the actuals.

Ms Fairweather—Yes, the budget was \$4.86 million. The media buy—

Senator WONG—And the actual is the sum of what you are about to give me, correct?

Ms Fairweather—Yes: \$3.39 million, with a media dispatch figure of \$92,000. Research and evaluation was \$385,000. I am not doing this in the same order, sorry. Creative agency fees and production was \$315,000.

Senator WONG—Printing, distribution, website, staffing?

Ms Fairweather—It was \$320 million, just rounding slightly, and direct mail, \$208,000.

Senator WONG—Expenditure already committed in 2007-08?

Ms Fairweather—No, we have not come to a determination on what we are doing in 2007-08 yet.

Senator WONG—No mail-outs planned or TV ads being prepared?

Ms Fairweather—It is possible we will do a media phase again, but there has been no decision made on that. We have not discussed it—

Senator WONG—And the third campaign?

Ms Fairweather—mainly because we are still evaluating the last phase. That is the cost of the workplace relations advertising, the week of the 20th?

Senator WONG—You are including only campaign, not non-campaign.

Ms Fairweather—What would you like me to break down to?

Senator WONG—I want to know all the costs.

Ms Fairweather—The cost of the full-page ads you were referring to before was \$472,000.

Senator WONG—Any other costs associated with those?

Ms Fairweather—There were smaller ads also placed the week of the 7th as non-campaign advertising which were a call to action to the info line. That was \$29,000—I am sorry, that was split between metro and regional. The smaller ads were \$116,000.

Senator WONG—So the full-page ads were \$472,000 and then the smaller ads in the week of 7 May were \$116,000.

Ms Fairweather—That's right, yes.

Senator WONG—All non-campaign advertising?

Ms Fairweather—Yes.

Senator WONG—Who drafted the text of the ads?

Ms Fairweather—The text of the non-campaign ones?

Senator WONG—Yes.

Ms Fairweather—The full-page ad was from PM&C, from GCU.

Senator WONG—Did DEWR have any involvement in the text?

Ms Fairweather—They cleared it, but I was not involved in that.

Senator WONG—Would that be outcome 2, Dr Boxall?

Dr Boxall—Yes.

Senator WONG—I will come back to that. Ms Fairweather.

Ms Fairweather—The campaign—

Senator WONG—What is this campaign called, by the way?

Ms Fairweather—The workplace relations campaign.

Senator WONG—We have had a few of them. Just ‘the workplace relations campaign’?

Ms Fairweather—Yes, that is all I have been referring to it as, yes.

Senator WONG—Go on.

Ms Fairweather—The total media buy—

Senator WONG—Non-campaign now or campaign?

Ms Fairweather—Sorry, I finished with the non-campaign.

Senator WONG—So this is campaign advertising?

Ms Fairweather—This is campaign. The total media buy is \$3.3 million, with a media dispatch figure of \$157,000; total research cost—that includes developmental and concept testing and evaluation research—of \$439,000; creative agency fees, including production, of \$438,000; and public relations consultancy fees of \$13,000.

Senator WONG—Anything else?

Ms Fairweather—No, that is it.

Senator WONG—What is the full budget for this campaign for 2006-07?

Mr Pratt—Up to \$5 million.

Senator WONG—What is the budget for the campaign for 2007-08?

Mr Pratt—There is no campaign for 2007-08. Sorry, there have been no decisions by government to give us money for 2007-08.

Senator WONG—Is any media buy being considered post the media buy which occurred last week?

Ms Fairweather—There has been nothing formally discussed or decided.

Senator WONG—What does ‘formally discussed’ mean?

Ms Fairweather—We have had discussions with our consultants evaluating what we have just done and possible ways forward, but that is it.

Mr Pratt—The authority we have from government was to spend up to \$5 million.

Senator WONG—Have you been instructed to develop any further concepts, for example, for advertising post last week?

Ms Fairweather—No. No instructions.

Senator WONG—How about you, Mr Pratt?

Mr Pratt—No.

Senator WONG—Was there any other advertising expenditure, Ms Fairweather?

Ms Fairweather—No.

Senator WONG—The research evaluation of the Welfare to Work campaign, the \$611,000 and \$937,000, or in fact the PR—do any of these activities involve focus group testing?

Ms Fairweather—Sorry, which research?

Senator WONG—The Welfare to Work PR and research evaluation—do they involve focus group activities?

Ms Fairweather—Some of it, yes—concept testing.

Senator WONG—And concept testing as well.

Ms Fairweather—Concept-testing research is generally focus groups.

Senator WONG—So research evaluation is concept testing?

Ms Fairweather—The evaluation is generally quantitative. The research costs cover both.

Senator WONG—Sorry?

Ms Fairweather—The research costs cover both qualitative and quantitative.

Senator WONG—Do I understand from the evidence in relation to the workplace relations campaign that there is no more TV advertising planned for the current financial year?

Ms Fairweather—No, there is nothing planned.

Senator WONG—Is that right?

Mr Pratt—That is correct.

Senator WONG—Who prepared the brief to go to the MCGC in relation to the workplace relations campaign?

Ms Fairweather—Is this the consultant briefs?

Senator WONG—As I understand the evidence from PM&C, a brief goes to the MCGC.

Ms Fairweather—Yes. A brief for the advertising and a brief for the public relations were prepared by DEWR.

Senator WONG—Did the brief discuss how the fairness test would work?

Mr Pratt—I stand to be corrected, but I would be surprised if we would go into that much detail.

Senator WONG—Was the brief cleared with the Prime Minister's office before it went to MCGC?

Ms Fairweather—It contained only the information in the PM's announcement of 4 May. That is all it had. It did not go into any further detail.

Senator WONG—Was the brief cleared with anyone in the Prime Minister's office before it went to the MCGC?

Ms Fairweather—No. It went to PM&C. GCU are always given a chance to provide comments on communication strategies in briefs and then it goes to the committee for consideration, but we did not provide it to the PMO.

Senator WONG—Did it go to the minister's office?

Ms Fairweather—Yes.

Senator WONG—Was it cleared with the minister's office?

Ms Fairweather—Yes.

Senator WONG—Were any alterations made to the brief by the minister's office?

Dr Boxall—We cannot answer that.

Senator WONG—I am not asking what the alterations were; I asked if any were made.

Dr Boxall—I know, and I just said that we cannot answer that.

Senator WONG—Was media buy of \$3.3 million in relation to the workplace relations advertising that you have just described mainly television?

Ms Fairweather—No, it was more even spread than that. I can provide you with the breakdown, if you wish.

Senator WONG—Yes.

Ms Fairweather—Television was \$1.26 million, radio was \$669,000, press was \$1.26 million and internet was \$113 million—\$114 million, if I round it up. Indigenous, NESB and print handicapped mediums are included in those total costs.

Senator WONG—They are included?

Ms Fairweather—Yes.

Mr Pratt—It is probably worth mentioning just so it is clear that GCU's evidence, I think, was that that media buy would be \$4.1 million. We were able to get some—I know you do not like the term—'cost efficiencies' through the actual media buy and that is why it is so much less.

Senator WONG—Not because there was actually less bought, or was there actually a decision to buy less?

Ms Fairweather—No. The placement agency were just able to achieve efficiencies. They gave us an up-front cost, but then it did not cost as much. Basically, that is how it worked.

Senator WONG—Remind me of which consultant is doing the research for \$439,000?

Ms Fairweather—The research is being done by Open Mind Research Group.

Senator WONG—Can you remind me of when the decision was made to undertake this advertising—the campaign, not the non-campaign?

Mr Pratt—The Prime Minister announced it on 4 May.

Senator WONG—When did you become aware that there would be advertising in relation to the change?

Mr Pratt—Advertising was under consideration from 2006 when the money was appropriated for the OWS and OEA's campaign.

Senator WONG—Is this expenditure being accounted for against that appropriation?

Mr Pratt—That is correct.

Senator WONG—Against the \$20.5 million?

Mr Pratt—Against the \$7 million appropriated for this financial year.

Senator WONG—It was \$20.5 million all up I think in the additional estimates.

Mr Pratt—Over four years, yes.

Senator WONG—So it is against the \$7.3 million?

Mr Pratt—That is right, up to a maximum of \$5 million.

Senator WONG—So this was being considered from 2006 onwards?

Mr Pratt—That is correct.

Senator WONG—Mr Pratt or Dr Boxall, in estimates on the last occasion, I asked at page 154 of *Hansard*:

Is there anything else in that broad category of education campaign under outcome 2?

The answer was:

Mr Kovacic—No.

Senator WONG—Is there any other advertising campaign in outcome 2?

Mr Kovacic—No.

Mr Pratt—That advice was correct.

Senator WONG—I thought you just said advertising was under consideration since late 2006.

Mr Pratt—Yes, by the Office of Workplace Services.

Senator WONG—Which is in outcome—

Mr Pratt—No, it is a separate agency in the portfolio.

Senator WONG—But this is not advertising for the Office of Workplace Services. Come on, Mr Pratt; you can do better than that.

Mr Pratt—No, seriously it is.

Senator WONG—The advertising that you have just given evidence about—the \$4-odd million, or where you have got up to \$5 million—is clearly not for Workplace Services. It is about a change to the fairness test.

Mr Pratt—The advertising covers the fairness test. It also covers the role of the Workplace Authority, formerly known as the Office of Employment Advocate, and it covers the role of the Office of Workplace Services, which will become the Workplace Ombudsman. It is very consistent with that funding that was appropriated for the Office of Workplace Services.

Senator WONG—That is not the question. There may well be funding consistent with that appropriation, but I asked one of your officers a specific question on 15 February—whether or not an advertising campaign was ever being planned in outcome 2—and you cannot tell me, because are you responsible in outcome 2 for drafting the fairness test, that the current advertising round has nothing to do with that. There are two explanations, one of which might be that he was not aware, at the time, of this plan.

Mr Pratt—What Mr Kovacic said was correct because the advertising at that stage was being handled by the Office of Workplace Services, which is not in outcome 2.

Senator WONG—So as at 15 February there was no plan to undertake the sort of campaign which we have now seen and about which you have given evidence. Is that right?

Mr Pratt—There was an intention to undertake a campaign around the role of the Office of Workplace Services and the Office of Employment Advocate which have been changed into the Workplace Authority and Workplace Ombudsman under the announcement of the Prime Minister. At that stage that was being managed by the Office of Workplace Services and not by outcome 2 in the department.

Senator WONG—Are you now involved in managing that?

Mr Pratt—Yes.

Senator WONG—When did you become involved?

Mr Pratt—We took over the running of this in early April. It was on about 3 April.

Senator WONG—What prompted that?

Mr Pratt—That was a government decision.

Senator WONG—So the minister's office contacted you? How does it work?

Mr Pratt—The government decided that it wanted DEWR to run the campaign.

Senator WONG—How was that communicated to DEWR?

Mr Pratt—From memory, 'Mr Pratt, we would like to you run the campaign.'

Senator WONG—I am sorry?

Mr Pratt—It was basically communicated that the department—

Senator WONG—By whom?

Mr Pratt—It was from the minister's office.

Senator WONG—A ministerial adviser?

Mr Pratt—Yes.

Senator WONG—At the time that the campaign was transferred to DEWR had any production costs been incurred?

Mr Pratt—I am aware that the Office of Workplace Services may have incurred some start-up costs with their campaign at that stage.

Senator WONG—Staff costs?

Mr Pratt—It would have been start-up costs. What exactly they were I am not sure. It was a minor amount, I believe.

Senator WONG—Any production costs?

Mr Pratt—Not to my knowledge.

Senator WONG—Any production costs?

Mr Pratt—Not to my knowledge?

Senator WONG—Any advertising space booked already?

Mr Pratt—Not to my knowledge.

Senator WONG—When did you start to book advertising space et cetera?

Ms Fairweather—There was approval for the media plan with the Ministerial Committee on Government Communications on 14 May.

Senator WONG—On 14 May?

Ms Fairweather—Was your question in order for media to be purchased?

Senator WONG—Yes. Are you telling me you did not start to book advertising space until post that?

Ms Fairweather—Universal McCann were not able to purchase any media space until the plan was approved.

Senator WONG—Okay, so post 14 May. Your evidence is that no advertising space was bought—that there was no media buy until post 14 May?

Ms Fairweather—That is right.

Senator WONG—What about production costs prior to that time?

Ms Fairweather—The advertising agency was selected by the ministerial committee on 9 May, and they started work immediately. So costs started to be incurred with the ad agency from 9 May.

Senator WONG—What focus group research was undertaken prior to the campaign's commencing?

Ms Fairweather—There was developmental research, which started after the researcher was selected on 3 April. They commenced research around 11 April.

Senator WONG—Were the costs associated with that amongst the costs you gave me?

Ms Fairweather—Yes.

Senator WONG—So \$439,000 by Open Mind?

Ms Fairweather—That was part of it. The cost of development research is included in that \$439,000.

Senator WONG—So the advertising agency appointed is Whybin TWA?

Ms Fairweather—Yes.

Senator WONG—So they are responsible for the media buy?

Ms Fairweather—No, the ad agency creates the creative.

Senator WONG—So the 438 is the creative agency cost?

Ms Fairweather—Yes.

Senator WONG—When was that tender issued?

Ms Fairweather—On 7 May.

Senator WONG—Just remind me when you put your brief up to MCGC to request commencement of and get approval for the campaign?

Ms Fairweather—It was the 7th.

Senator WONG—So the tender was issued on the same day?

Ms Fairweather—Yes.

Senator WONG—When was the decision made to grant the tender?

Ms Fairweather—On the 9th.

Senator WONG—How many agencies pitched for this tender?

Ms Fairweather—Two.

Senator WONG—Is this what you would call a select tender process or open?

Ms Fairweather—Select.

Senator WONG—Were any other agencies invited to pitch?

Ms Fairweather—No, only two agencies were invited to pitch for advertising.

Senator WONG—That is creative content?

Ms Fairweather—That is right.

Senator WONG—Is it unusual to only have two selected agencies tender, in your experience?

Ms Fairweather—The GCU make the decision on who we get to invite. I would not like to say whether it was unusual or not because they do a lot more campaigns. The GCU provide us with the list of consultants when we are doing a campaign.

Senator WONG—Yes, but the brief was yours. Who was the tender process managed by—GCU or you?

Ms Fairweather—We manage it insofar as we write the brief. Then the GCU provide us with a list of consultants. The MCGC approve the brief and the list of consultants and then the MCGC make the selection.

Senator WONG—So GCU provided you with a list of only two consultants?

Ms Fairweather—Yes.

Senator WONG—It was their decision to only invite two. Is that right?

Ms Fairweather—Yes.

Senator WONG—Is this process consistent with Commonwealth procurement guidelines?

Ms Fairweather—Yes, it is.

Senator WONG—The tender was issued on 7 May and granted on 9 May. Was there a written pitch or only a verbal presentation?

Ms Fairweather—Written.

Senator WONG—From both companies?

Ms Fairweather—Yes.

Senator WONG—And a verbal presentation?

Ms Fairweather—Yes.

Senator WONG—To MCGC?

Ms Fairweather—That is right.

Senator WONG—On 9 May?

Ms Fairweather—Yes.

Senator WONG—Did you or someone from your unit deal with the two companies who were pitching for this? Who advised them?

Ms Fairweather—The department provided the brief and also conducted a question-and-answer session with them as part of the process.

Senator WONG—Was that done by you?

Ms Fairweather—Yes, and the Government Communications Unit takes part as well.

Senator WONG—Who advised the companies?

Ms Fairweather—The department.

Senator WONG—Someone in your area?

Ms Fairweather—Yes, and the program area.

Senator WONG—How does that process occur? Can you explain it to me.

Ms Fairweather—They are provided with the brief and we ask them if they have any questions. It is a session for them, not for us. We provide a written brief and they have an opportunity to ask questions, and then they go away and prepare their proposal.

Senator WONG—Was there any consideration of direct mail initiatives as part of this campaign?

Ms Fairweather—No.

Senator WONG—No development of any material for possible direct mail?

Ms Fairweather—No, there have not been any products.

Senator WONG—No brochures?

Ms Fairweather—No. The only reason I am hesitating is that we had a fact sheet in the media launch.

Senator WONG—Can I turn now to the original Work Choices campaign. Has any evaluation been undertaken in relation to the Work Choices campaign?

Mr Kovacic—At this stage an evaluation of the campaign has not been undertaken.

Senator WONG—An evaluation is required by MCGC guidelines, is it not?

Mr Kovacic—An evaluation will be undertaken at the conclusion of the campaign. At this stage—

Senator WONG—What is still going?

Mr Kovacic—As I mentioned at the last estimates hearings, the Employer Advisor Program is part of the campaign. Until that part of the campaign concludes an evaluation will not be undertaken.

Senator WONG—After the Employer Advisor Program is concluded?

Mr Kovacic—That is correct.

Senator WONG—What polling or market research has been conducted or commissioned by the department in relation to outcome 2 matters, other than those that Ms Fairweather has given evidence about?

Mr Kovacic—In terms of the original Work Choices communication campaign, Colmar Brunton was engaged to undertake qualitative and quantitative tracking research. My understanding is that that is continuing.

Senator WONG—That is continuing?

Mr Kovacic—That is my understanding.

Senator WONG—Who can tell me about that, if that is your understanding?

Mr Kovacic—Can we take that on notice and see whether we can confirm the information later this evening?

Senator WONG—I am sorry?

Mr Kovacic—Can I perhaps seek to get that information and provide it to the committee a little bit later?

Senator WONG—Okay. So what are we waiting for—for you to get some advice about that?

Mr Kovacic—Correct.

Senator WONG—I am going to ask some details about the market research that has been undertaken within your outcome area. I am happy to do that later this evening. If you are able to have the relevant officers available, I would appreciate that.

Mr Kovacic—Okay.

Senator WONG—Mr Pratt, how are your booklets going? I did not ask that on the last occasion. I am sure you were very disappointed!

Mr Pratt—I was, Senator. I was watching, actually. The total number of booklets distributed is now about 2.5 million. So we have remaining just over 3.5 million.

Senator WONG—Given that Work Choices as a brand has been dumped, what are you going to do with the booklets? Are they going to be pulped?

Mr Pratt—Without commenting on your introductory point there, those booklets at this stage are suspended pending the outcome of the legislation which is being introduced today. We will have a look at those booklets in the light of what happens as that legislation is considered by parliament.

Senator WONG—The position articulated in those booklets is inconsistent with the position articulated in the Prime Minister's announcement, is it not?

Mr Pratt—I do not want to pre-empt the consideration of the bill by the parliament.

Senator WONG—I did not ask you about the bill. You have had the Prime Minister of the country make an announcement. Is it not the case that the Prime Minister's announcement and the description of the laws as they are contained in those booklets are inconsistent?

Mr Pratt—There are certainly aspects of it that we may wish to change if the law changes.

Senator WONG—You cannot change them—they are printed.

Mr Pratt—Depending on the significance of the change, we could—

Senator WONG—Are you going to put stickers in there?

Mr Pratt—Perhaps not three million of them. But it is possible to have things like addenda and so forth.

Senator WONG—Remind me again how much you are paying per week to house these.

Mr Pratt—The current cost is \$4,581 per month.

Senator WONG—What has been the total cost of housing them this financial year? Does it go down?

Mr Pratt—Yes, it reduces as we distribute them.

Senator WONG—Yes, so you have distributed some. What is your cost to date?

Mr Pratt—I will correct this on notice if it is significantly out, but I expect it must be around \$45,000 or \$50,000.

Senator WONG—What about the mouse pads with 'Work Choices' on them? What is going to happen to them? Are they still being given out? No-one else is talking about Work Choices. There are all these products that you have paid for, with 'Work Choices' emblazoned all over them. You could give them all to Senator Abetz.

Senator MARSHALL—You can just turn them over and use them.

Mr Pratt—Certainly some are still going out.

Senator Abetz—I do not think that works, Senator. It just goes to show.

Senator MARSHALL—They are on both sides, are they?

Senator Abetz—No, the top is smooth and the bottom is usually of some gripping substance to keep them on the table. It looks as though you do not use your mouse very often.

Senator MARSHALL—It is right here.

Senator Abetz—It is on display.

Senator MARSHALL—Can I have a mouse pad? Does anyone have one?

Mr Pratt—We will take that on notice!

Senator WONG—How many mouse pads do you still have?

Mr Pratt—I have no idea. I will have to take that on notice.

Senator WONG—How many products have you still got with ‘Work Choices’ all over them?

Mr Pratt—I imagine we have some. I do not know the quantities.

Senator WONG—Some millions or hundreds?

Mr Pratt—Not necessarily. I will see if I can find out.

Senator WONG—Are we coming back to market research? Is that what you want me to do?

Mr Pratt—Yes.

Mr Kovacic—There is an officer on their way up to assist.

Senator WONG—All right. I will come back.

Senator MARSHALL—Is she bringing samples?

Mr Kovacic—I am not so sure that she is bringing the samples with her.

Senator WONG—I cannot proceed on those issues; I would like to deal with them as a block.

CHAIR—While we are waiting for the officer to appear, there are some issues in outcome 2 which Senator Marshall might like to proceed with to save time later on.

Senator MARSHALL—I have some questions in relation to the policy development time lines for the fairness test. Can you tell me when the department received instructions to commence the development of the fairness test?

Mr Pratt—30 April.

Senator MARSHALL—Where did the instruction come from?

Mr Pratt—It was from government—it was ministerial instruction.

Senator MARSHALL—From the Prime Minister’s office or the minister’s office?

Mr Pratt—The minister’s.

Senator MARSHALL—In what form did it come?

Mr Pratt—There was contact with me by the minister.

Senator MARSHALL—Verbal?

Mr Pratt—That is right.

Senator MARSHALL—He called you Mr Pratt?

Mr Pratt—My recollection is he said ‘Finn’, in fact.

Senator WONG—Now we know he is on a first-name basis.

Senator MARSHALL—Can you tell me what the nature of the instruction was?

Mr Pratt—I am uncomfortable about going to the nature and content of policy discussions with the minister.

Senator MARSHALL—What was the time line for the work?

Mr Pratt—There was no set time line.

Senator MARSHALL—So it did not have to be finished by any particular time—it was just a ‘develop a fairness test when you get around to it’ thing?

Mr Pratt—It was not expressed in quite that way, but there was no instruction on the time line at that stage.

Senator MARSHALL—Has there since been?

Mr Pratt—The government has introduced or is going to introduce legislation today around the fairness test. It is up to government as to when it wants that legislation to commence operation.

Senator MARSHALL—We can assume safely, though, it cannot go into operation until the fairness test is developed.

Mr Pratt—As you know, the fairness test will operate from midnight on 6 May. It will operate once the legislation commences, which is subject to the legislation passing through the parliament.

Senator MARSHALL—So, by virtue of that, you do have a time frame. Are you expected to—

Mr Pratt—I know when the government intends the legislation to take effect, but that is a matter for government.

Senator Abetz—It depends on stalling tactics in the Senate and all sorts of things.

Senator MARSHALL—‘Stalling’? Can you tell me when you received instructions to commence the development of a change in functions and rebranding of the Office of the Employment Advocate and the Office of Workplace Services?

Mr Pratt—In my recollection, it would have been 30 April; however, I am aware that there had been other discussions about the rebranding of the authorities preceding that, but I do not know what dates those were.

Senator MARSHALL—With DEWR and not simply with you?

Mr Pratt—Yes, with DEWR but not specifically with me.

Senator MARSHALL—What about the changes to duress and bargaining fee provisions? When did that instruction come?

Mr Pratt—The first time—

CHAIR—The point of discussing this in this committee is that the bill is at present before parliament, if it has been introduced today, and I would caution senators against debating or discussing the content of the bill in that way.

Senator MARSHALL—I do not think we are really going to debate the content; these are sort of objective—

CHAIR—Duress and the other aspects you mentioned surely would be part of it.

Senator MARSHALL—They are announcements that have been made.

Senator Abetz—All the announcements stand.

CHAIR—I am prepared to let it go to some extent but I would just point that out to senators.

Mr Pratt—As I said, I am not comfortable about talking about the nature and the content of the policy discussions the department has had with the minister. It is safe to say that we had significant policy discussions on these matters from 30 April, but there are some matters which we have been discussing with the government for an extended period of time. Our monitoring and analysis of the operation of the workplace relations system has been ongoing, so we are in constant discussion with the minister about those sort of matters.

Senator MARSHALL—Was there a different discussion in respect of the duress and bargaining fee provisions as opposed to the rebranding and the change of functions of the OEA and the OWS?

Mr Pratt—I will go back to what I said before: some of those things were discussed beforehand and some were discussed from 30 April.

Senator MARSHALL—Again, where did the instruction come from in respect of the development of changes to the functions and the rebranding of the two?

Mr Pratt—I report to Minister Hockey, so it is the minister and his office who advise me of these things.

Senator MARSHALL—Again, what form was that in? Was that a verbal discussion?

Mr Pratt—Initially.

Senator MARSHALL—Initially, and then it was followed up in writing?

Mr Pratt—I do not recall. We have many types of communication with the minister's office, both verbal and written.

Senator MARSHALL—Can you tell me what was the nature of the instruction?

Mr Pratt—No.

Senator MARSHALL—Was there a time line set for that work to be done?

CHAIR—That would surely indicate the nature of the discussion, Senator.

Mr Pratt—It goes back to my earlier answer on the time line.

Senator MARSHALL—So as I said, there was no time line set.

Mr Pratt—There was no specific time line expressed at that stage.

Senator MARSHALL—Is the rebranding and the change of functions part of the legislation?

CHAIR—That is content.

Senator MARSHALL—Is it tabled yet?

Mr Pratt—I refer to the Prime Minister's statement on 4 May. It identified the changes that the government proposed in relation to the fairness test and the organisational underpinnings.

Senator MARSHALL—When did work actually commence in relation to the development of the fairness test?

Mr Pratt—From the department's point of view, from 30 April.

Senator MARSHALL—Right from the discussion. What about the change in functions and the rebranding of the Office of Employment Advocate and the Office of Workplace Services?

Mr Pratt—The same applies to the change in function relating to the Workplace Authority and the Workplace Ombudsman. But as I mentioned before, in terms of branding of agencies, those sorts of issues had been under consideration for a period earlier than that. I do not know the specifics.

Senator MARSHALL—Roughly how long, in terms of the rebranding? You said that had been under consideration prior to the—

Mr Pratt—It would be a month or two, I imagine.

Senator MARSHALL—A number of months. Can you tell me what work has been undertaken so far in relation to the rebranding and also the development of the fairness test? Where are we at?

Mr Pratt—In relation to the fairness test, that goes to the nature of policy advice to government, but there has been policy advice, legal advice, operational advice and financial advice.

Senator MARSHALL—I am interested in who is involved in the work. Is any of the work in relation to the rebranding and the development of the fairness test being outsourced?

Senator Abetz—What aspect are you talking about?

Senator MARSHALL—The development of the fairness test and the work that has been done on the rebranding.

Senator Abetz—Government, at the end of the day, does not outsource policy. It is responsible for the policy that is finally determined but it stands to reason that in the course of developing policy, the minister and the government would consult a range of people, including getting departmental advice.

Senator MARSHALL—So is any of the work in respect of the development and rebranding being outsourced?

Mr Pratt—The department has not outsourced any of its advice to the minister.

Senator MARSHALL—Have you engaged any additional consultants or contractors to assist in that process?

Mr Pratt—Not to my knowledge. I would like to distinguish here between the fairness test and the identification of the new authorities and the actual naming of them. They are quite

separate things. The 'badging', as you refer to it, is something that has been developed quite independently of the policy work that the department has done with the government.

Senator MARSHALL—I am happy to deal with them separately. I was trying to save time rather than ask the same questions for both areas. Should I take it from that that there may be consultants in terms of the rebranding but not the development of the fairness test?

Mr Pratt—No, I think the discussion we have had on the advertising and the research goes to the heart of communications and can go to the heart of labelling. Everything else I am talking about is in relation to policy advice to the government on the Prime Minister's announcement of 4 May.

Senator MARSHALL—Is it your expectation that all this work will be able to be done in-house?

Mr Pratt—Yes, although as you would be aware, the Office of Parliamentary Counsel does the actual drafting of the legislation and we regularly get advice from the Australian Government Solicitor. This is a standard process of government.

Senator MARSHALL—So we are not going to see a lawyer's picnic go on in this process?

Mr Pratt—It is hard to say that in relation to anything to do with workplace relations but there has been no outsourcing as there was with Work Choices.

Senator MARSHALL—Did any of your work in relation to the issues we are talking about involve modelling or other research in relation to the economic, employment productivity or other impacts of the proposed changes?

Mr Pratt—No.

Senator MARSHALL—I have a few questions about pattern bargaining. Is pattern bargaining prohibited under the Work Choices legislation?

Ms James—Industrial action cannot be taken in support of pattern bargaining under the Workplace Relations Act. There are a number of points where this prohibition kicks in. There is a penalty provision that can apply when pattern bargaining occurs. If you go to apply for a secret ballot to take protected action and you have engaged in pattern bargaining you will not be able to obtain that secret ballot authority and so you will not be able to take protected action in support of pattern bargaining.

Senator MARSHALL—But that is not really my question. My question is: is pattern bargaining prohibited under the Work Choices legislation? I understand what you say—that some actions to pursue that may be unlawful—but is pattern bargaining illegal?

Ms James—I think it is important to be precise about what we mean by pattern bargaining. The Workplace Relations Act uses the term 'pattern bargaining' when it deals with those prohibitions I have just spoken of in relation to industrial action in support of pattern bargaining. It also requires that parties are genuinely trying to seek agreement before they can access protected action. Other than in those circumstances, the act does not use the terminology of 'pattern bargaining'.

Senator Abetz—I was wondering when you were going to break out into a smile.

Senator MARSHALL—You nearly distracted me enough to talk about the Australian Wheat Board and the single desk there for a minute, but I probably should not.

Senator Abetz—What is your position?

Senator MARSHALL—Is there a prohibition in the legislation on the making of common claims by unions on employers?

Ms James—I will need to check that but from my recollection the prohibition in relation to common claims relates to the taking of industrial action in support of those claims by a union or employee.

Senator MARSHALL—Could you clarify whether there is a prohibition in the legislation on the making of common claims? Is there a prohibition on employers making common claims on their workforce?

Ms James—I do not believe employers usually make claims on their workforce.

Senator MARSHALL—I suggest that you are wrong. Employers often make claims on their employees. Legislation is being introduced in an hour or so to stop much of that happening—or to try to stop it happening. If you do not know right now, you can get back to us with an answer. The question is whether there is a prohibition on employers making common claims on employees.

Ms James—If what you mean is are there restrictions on the nature of the terms and conditions that employers can offer employees, then I think my answer is the same. I mean, protected action in the way of lock-outs cannot be taken in concert. I believe the prohibitions apply in that way. But the act does not restrict conduct of that nature beyond where industrial action is involved for either side.

Senator MARSHALL—Would the legislation prohibit an employer organisation distributing a template agreement for their members' use?

Ms James—I do not know that that kind of conduct would be considered part of the bargaining process. Providing information to members is not regulated by the Workplace Relations Act in the way that you are suggesting.

Senator MARSHALL—So the answer would be that there is no prohibition.

Ms James—There is no prohibition on a union or an employer organisation distributing information.

Senator MARSHALL—I want to be more specific: what about a template agreement?

Ms James—There is no restriction on distributing information in that form. The Workplace Relations Act does not directly cover that kind of conduct.

Senator MARSHALL—You touched on this in an answer to an earlier question, but can you just confirm that, to be successful in an application for an industrial action ballot, the applicant must show that they have genuinely attempted to reach agreement with the other bargaining parties?

Ms James—That is correct. Can I take you back to the question before? You were asking about the distribution of template agreements. There is one provision of the act that could

apply. There is generally speaking a prohibition on misleading conduct on agreement making. Should the information that was being distributed contain misleading information, then you would be at risk of breaching that civil penalty provision.

Senator MARSHALL—So it is only if the template was misleading in some form.

Ms James—Or if information connected with the template was misleading.

Senator MARSHALL—Is it the case that under Work Choices more than one employer can bargain for a single agreement with employees and/or unions in their workplace?

Ms James—There is scope for multibusiness agreements in the act. They are quite rare and they need to pass, I believe, a public interest test.

Senator MARSHALL—Would they form part of a single agreement?

Ms James—They can when they meet the requirements of the act.

Senator MARSHALL—Does the current Workplace Relations Act discourage pattern bargaining?

Ms James—I would say that it does for the reasons that I have already outlined—the various prohibitions on industrial action in support of common claims across an industry.

Senator MARSHALL—Can you tell me what information the department has provided to government in relation to how pattern bargaining can be discouraged?

Mr Pratt—That goes to the nature and content of policy advice.

Senator WONG—I think that means he is not going to answer it.

Senator MARSHALL—I want to ask about the Work Choices website. Can someone tell me when the website was last updated?

Mr Pratt—It may have been today. The Work Choices website may have been updated today. It was certainly updated on 4 May.

Senator MARSHALL—So it may have been today.

Mr Pratt—It will be updated when the bill is introduced.

Senator MARSHALL—Can you tell me whether it has been updated today? Is there someone who knows? If it has been, I will not—

Mr Pratt—The Work Choices website?

Senator MARSHALL—If it was updated today, that would be helpful.

Mr Pratt—It is my expectation that it will be updated today. Certainly the last entry I saw on it was the Prime Minister's announcement of 4 May. That is not to say that there was not something else put on it—it is conceivable. Anyone with a laptop here can access it now, but I know it is going to be updated to host the links to the bill once the bill is introduced.

Senator MARSHALL—How many telephone numbers are used by the government for general workplace relations information?

Mr Pratt—I think I would have to take that on notice.

Senator Abetz—Is there anything in particular you want to grapple with?

Senator MARSHALL—We will get there. Can you confirm that the Work Choices fact sheets issued in 2006 referred Australians to the Work Choices info line number, which is a 1300 number, 1300 323 264?

Mr Pratt—That sounds correct, yes.

Senator MARSHALL—Can you confirm that people calling the number for the Work Choices info line are now answered by the words ‘Welcome to the workplace info line’?

Mr Pratt—That is correct.

Senator MARSHALL—Can you confirm that the telephone number for the workplace info line, as it is currently being advertised by the government, is the same number as the Work Choices info line—the 1300 number?

Mr Pratt—Yes.

Senator MARSHALL—A lot of this is in the public domain, but it is important that we just get the formal response from the department.

Senator Abetz—I am not sure how important it is, but you are entitled to ask.

Senator MARSHALL—Thank you. That is very generous of you minister—it must be getting late.

Senator Abetz—It is still quite early, unfortunately.

Senator MARSHALL—Can you confirm that the 16-page Work Choices booklets referred Australians to the Work Choices hotline, which is a different number from the 1800 025 239 number?

Mr Pratt—I can confirm that it refers to a hotline with a number of 1800 025 239.

Senator MARSHALL—That is different to the Work Choices info line.

Senator Abetz—You should have put in your request for a booklet, Senator Marshall. Then you would know that.

Senator WONG—You have got three-and-a-half million of them, so you can hand them around like confetti.

Senator Abetz—I am amazed that you have not availed yourself of one of them.

Senator MARSHALL—Have you pulped them yet?

Senator Abetz—We could mail one on request.

Senator MARSHALL—So you can confirm that the people calling the Work Choices hotline, as listed in the Work Choices booklets, are now answered by ‘Welcome to the workplace info line’?

Mr Pratt—That is correct. They transfer to the workplace info line.

Senator MARSHALL—Can you confirm that the agreement-making assistance service general inquiry line for the Office of the Employment Advocate is 1300 366 632?

Mr Pratt—I cannot confirm that. That is a matter for the Workplace Authority.

Senator WONG—You do not know?

Mr Pratt—I do not. I have not had cause to use it.

Senator WONG—I do not think that is the criteria. You do write policy and legislation for this area.

Senator Abetz—What are you suggesting?

Mr Pratt—By the way, going back to your question about the Work Choices website, it was last updated on 21 May, pending today's introduction of the bill.

Senator MARSHALL—So the expectation is that it will be updated as soon as the bill is introduced?

Mr Pratt—Yes.

Senator WONG—Introduced or passed?

Mr Pratt—Introduced.

Senator MARSHALL—I have a couple of questions in relation to the review of the Commonwealth Occupational Health and Safety (Commonwealth Employment) Act and the Occupational Health and Safety Act. Can you provide me with an update of where the review is at?

Mr Pratt—I will just wait to till Ms Parker joins us.

Senator MARSHALL—Can you provide us with an update of the review and explain where it is at?

Ms Parker—The review of the OHS Act is still under consideration.

Senator MARSHALL—Do you know when it might be completed?

Ms Parker—I am not able to say at the moment.

Senator MARSHALL—Do you have an expectation of when it should be completed?

Ms Parker—It is a matter for the minister.

Senator Abetz—How about I take that on notice and get back to you.

Senator MARSHALL—Can you provide us with a list of people or companies or organisations who made submissions to the review?

Senator Abetz—Can we take that on notice, because I am not sure whether individuals who have made submissions should necessarily be publicised.

Senator MARSHALL—Is the expectation that they are going to be made public?

Ms Parker—Some of the submissions were actually confidential. We asked those who were submitting to that whether they wanted to remain confidential and some of them did indicate that. But for those that were not confidential, we can provide those.

Senator MARSHALL—Will the report when it is finalised be made public?

Ms Parker—That is up to the minister. Certainly the decisions of the minister will be made public.

Senator MARSHALL—Is the report in a draft form yet?

Ms Parker—We have made recommendations to the minister.

Senator MARSHALL—Is that recommendations resulting from a draft report? I am just trying to get a feel from where it is at. I understand that it is not ultimately your report—it is the minister's—but I am just trying to get a feel for where the process is really at.

Ms Parker—We have provided the report to the minister. There has been some clarification, so there has been some discussions with the minister, but the review, as it is at the moment, is with the minister.

Senator MARSHALL—Thank you.

Dr Boxall—Senator Marshall raised two questions, question number 426-07 427-07. We have just dug out the questions. They were questions of the Office of Workplace Services. The last part of the answer to 426-07 says:

The Department of Employment and Workplace Relations has responsibility for communication and education in relation to the Act.

I am advised that actually that was one of the functions that was transferred over to the Workplace Authority.

Senator MARSHALL—That was my purpose of re-asking the question: would that answer stand with the changes that have been made, and you are saying it will not. So what would be the answer if I were to ask that now under the new proposed arrangements?

Mr Pratt—I imagine if the OWS was to redraft this answer, the final paragraph in each case would say that the Workplace Authority has responsibility for communication and education in relation to the act.

Senator WONG—But, Dr Boxall, you used the phrase, 'was transferred'. Has it been transferred yet?

Dr Boxall—Yes

Mr Pratt—Yes, it has.

Senator WONG—Administratively, before the act.

Dr Boxall—No, it does not need it.

Senator WONG—I am just confirming.

Dr Boxall—It does not need legislation; it is a transfer.

Mr Pratt—It is a transfer, as a function, from 2.2.3 to 2.2.2. The Office of the Employment Advocate is assisted by people under the department from 2.2.2.

Mr Kovacic—Senator, the officer that we are waiting on still has not arrived. She is travelling from our offices out at Brindabella Park near the airport, so I am assuming the traffic is causing the delay.

Senator WONG—Okay. Mr Pratt, I have a question in relation to the \$20.5 million appropriation we were discussing on the last occasion—the additional estimates appropriation to OWS. As I understood your evidence, it was the budget measure against which the current expenditure on workplace relations advertising was accounted.

Mr Pratt—That is correct.

Senator WONG—Has there been any other expenditure in relation to that appropriation, other than what you have given evidence about?

Mr Pratt—Not to my knowledge. Can I just clarify: the \$5 million that we are allowed to spend up to on the advertising is being paid from the department's budget and we will get that \$5 million transferred to us from the OWS.

Senator WONG—That has not occurred as yet?

Mr Pratt—That will occur in additional estimates.

Mr Kovacic—Senator, the officer has now arrived, if you wish to go to the advertising questions.

Senator WONG—Okay. Is it intended—and I will ask OWS this as well—that the remainder of that budget measure will be utilised for another advertising campaign?

Mr Pratt—There has been no government decision on the usage of that.

Senator WONG—There has been a government decision to appropriate \$20 million.

Mr Pratt—That is correct.

Senator WONG—And \$5.1 million has been spent.

Mr Pratt—We will spend \$5 million. The Office of Workplace Services has spent a small amount of the \$7.3 million appropriated for this financial year. But, other than that, there are no plans or decisions to utilise the rest of the appropriation.

Senator WONG—Okay. Is there anything other than the campaigns which have been described here that the MCGC has approved in relation to the DEWR portfolio?

Mr Pratt—Not to my knowledge. I will just check with Ms Fairweather.

Ms Fairweather—I did not catch the question, I am sorry.

Mr Pratt—Senator, could you repeat the question.

Senator WONG—Other than the campaigns and expenditures about which there has been evidence given, have any other measures been approved by MCGC within the DEWR portfolio?

Ms Fairweather—No.

Mr Kovacic—Senator, to come back to your original question in terms of market research as part of the—

Senator WONG—Are you going to explain to me your answer in the February estimates, Mr Kovacic, while you are at the table?

Mr Kovacic—Which one is that?

Senator WONG—The one where you told me there was no advertising planned for outcome 2.

Mr Kovacic—As Mr Pratt previously indicated, it was correct.

CHAIR—It has been answered.

Mr Kovacic—Certainly at that stage I was aware that OWS was considering a campaign, but certainly I was not aware of the department contemplating a campaign.

Senator WONG—Okay.

Mr Kovacic—In terms of the question that you asked before on market research related to the Work Choices campaign, I am advised that that market research concluded in July 2006. There has not been any further market research undertaken as part of that campaign since then.

Senator WONG—I am sorry, market research concluded when?

Mr Kovacic—July 2006.

Senator WONG—Have any briefs been prepared by the department or contracts entered into commissioning research in relation to workplace relations more generally?

Mr Kovacic—The only other market research contract that I am aware of is an AC Nielsen contract that was commissioned in the context of the work of the award review task force and the award relevance study.

Senator WONG—The AC Nielsen award study?

Mr Kovacic—It was an award relevance study as part of the work of the award review task force.

Senator WONG—The suggestion that the Open Mind Research Group provided a draft report to DEWR on 24 April is already on the public record. Are you aware of that?

Mr Kovacic—I am aware of the report.

Senator WONG—Why does that not fall under the market research issue or rubric?

Ms Fairweather—That was part of the research I reported on. That has already been reported to you. That was part of the research that I was detailing.

Senator WONG—I asked a question of Mr Kovacic in relation to market research. Do you want me to go back and focus on what we previously asked? Where did that come under? Is that the \$439,000 workplace relations campaign?

Ms Fairweather—Yes.

Senator WONG—How many reports have been provided by Open Mind?

Ms Fairweather—Two final ones.

Senator WONG—How many reports in total?

Ms Fairweather—Four in total, but two of those were preliminary.

Senator WONG—Give me the dates on which the preliminary reports were provided, please.

Ms Fairweather—20 April and 3 May.

Senator WONG—2007?

Ms Fairweather—They were the two preliminary reports. The final reports were provided on 24 April and 4 May.

Senator WONG—What did those reports relate to?

Ms Fairweather—Developmental research for communication purposes.

Senator WONG—By the way, Mr Kovacic, I am going to come back to you. We have previously gone through the Work Choices campaign expenditure. Can we update all those figures? I am going to come back to you; I am giving you notice of that.

Mr Kovacic—Can we do that after the dinner break?

Senator WONG—I am happy to do that. When was the contract between DEWR and Open Mind entered into?

Ms Fairweather—They were selected by the MCGC on 3 April.

Senator WONG—And the total cost of the contract is \$439,000 or more?

Ms Fairweather—\$439,000.

Senator WONG—Are there any more reports pending?

Ms Fairweather—They are involved in some evaluation research of the communications we have just completed.

Senator WONG—So they are checking how well the \$4 million campaign from last week went. Is that right?

Ms Fairweather—Yes. They are checking on how clearly the information got through. There will be a report from that as well.

Senator WONG—Essentially, there will be three sets of preliminary and final reports.

Ms Fairweather—Yes.

Senator WONG—I presume the reports presented on the 20th and the 3rd were the same report.

Ms Fairweather—Yes.

Senator WONG—And the reports presented on the 24th and the 4th were the same report.

Ms Fairweather—That is correct, yes.

Senator WONG—Was Open Mind asked to conduct focus group testing?

Ms Fairweather—What we do is say what we need the researcher to do, and then they recommend the methodology. But it did turn out to be focus groups, yes.

Senator WONG—And was telephone polling or telephone canvassing done?

Ms Fairweather—The quantitative research that they will be doing for evaluation will include telephoning.

Senator WONG—What other methodology is used?

Ms Fairweather—There will be a small amount of qualitative research as well, so focus groups again.

Senator WONG—What apart from that? You have qualitative research through focus groups and you have phone polling. What else is there?

Ms Fairweather—That is it.

Senator WONG—Was Open Mind asked to provide advice based on their research in relation to misinformation adding to a sense of insecurity?

Ms Fairweather—I believe that that is going into the content of the report and I cannot discuss that here.

Senator Abetz—It would not be surprising if the research were to disclose that, I must say, given the dishonest and misrepresentative campaigns run by the ACTU.

Senator WONG—Were they asked to look at whether Australians feel insecure due to industrial relations issues?

Dr Boxall—Ms Fairweather has already outlined the nature of the brief for Open Mind and these questions go to the content of the report.

Senator WONG—And you do not wish to provide or disclose the contents of the report.

Dr Boxall—We are not going to comment on the content of the report. Ms Fairweather has already outlined the brief which was let and the cost of the exercise. The department is in no position to comment on the content of the report which was subsequently provided.

Senator WONG—Who made the decision to commission this research?

Ms Fairweather—The MCGC selected the researcher. It was a government decision that communications would be required, and the MCGC selected the—

Senator WONG—When did the government decide that this kind of market research and testing with focus groups and phone polling was required? When did government make that decision?

Ms Fairweather—My understanding is that it was in early April.

Senator WONG—In which office was that made?

Ms Fairweather—That I cannot answer. As the communications area we are called on to facilitate the process, so I was informed in early April.

Senator WONG—Who communicated the decision to DEWR that this sort of research was required?

Mr Pratt—That would have been advice from the minister's office.

Senator WONG—I am asking whether it was from the minister's office, the Prime Minister's office or the GCU.

Mr Pratt—We take advice from the minister's office.

Senator WONG—Ms Fairweather sometimes takes advice from the GCU—that was the evidence earlier today. On this occasion—

Dr Boxall—No, Ms Fairweather did not say that. She said that with respect to whether something is campaign or non-campaign, she relies on the criteria and the judgement of the GCU. In terms of conducting a campaign, we work with our minister.

Senator WONG—Did the department receive any instruction from anyone other than the minister's office in relation to this research?

Mr Pratt—No. The instructions we received were from the minister's office and, as I referred to before, there were discussions about this over several months and the government took a decision on this on 3 April.

Senator WONG—When did discussions commence?

Mr Pratt—I know there were discussions about the possibilities of advertising in this area across the course of March and April.

Senator WONG—Discussions about the need to do focus testing and to restructure—

Mr Pratt—No, about doing advertising. When we do advertising, there is as a matter of course focus group testing. These things are conventional.

Senator WONG—So there were discussions from March onwards about the need for more advertising on industrial relations within government.

Mr Pratt—Yes, March.

Senator WONG—From March onwards?

Mr Pratt—Yes.

Senator WONG—Have the reports that you have described been provided to the minister's office?

Mr Pratt—Yes.

Senator WONG—When were they provided?

Ms Fairweather—At the time they were provided to the department.

Senator WONG—Is that correct?

Mr Pratt—Yes.

Senator WONG—So Mr Hockey's office saw both the preliminary and the final reports on the days on which you outlined before, Ms Fairweather?

Ms Fairweather—Yes, that is correct.

Senator WONG—Can you explain why the minister answered, in the House on Tuesday, 8 May, when he was asked about the Open Mind Research Group reports, 'I cannot comment on a document I have not seen'?

Dr Boxall—We cannot explain and critique what the minister said in the House. The department cannot do that.

Senator WONG—It is inconsistent with the evidence that has just been given.

Senator Abetz—No, it is not.

Dr Boxall—No, it is not.

Senator Abetz—The department provides it to the minister's office and it may well be that, whenever date that was, he had not seen the document as yet. There is nothing inconsistent. It also depends on the question he was asked; we would need to see that as well.

Senator WONG—Is the government going to make any of the report findings public, Minister?

Senator Abetz—The common practice is not to, so I cannot see why that would change.

Senator WONG—Has the report been provided to the Prime Minister's office?

Senator Abetz—You would have to ask—

Senator WONG—No, it was your report.

Dr Boxall—We know. We would have to check with the minister's office whether it has been provided to the Prime Minister's office.

Senator WONG—I am sorry—by the department?

Dr Boxall—We do not provide things directly to the Prime Minister's office. It might well be that PM&C provided it to the Prime Minister's office, but that is for them to comment.

Mr Pratt—We certainly did not provide it to the Prime Minister's office.

Senator WONG—Has the department commissioned any research in relation to the name 'Work Choices'?

Dr Boxall—I am sorry?

Senator WONG—Has the department commissioned or conducted any research in relation to the name 'Work Choices', qualitative or quantitative?

Dr Boxall—No.

Senator WONG—Has that formed part of any of the market research briefs to which we have referred?

Dr Boxall—The answer to your first question is no, therefore I am not sure how the second question follows.

Senator WONG—Was Open Mind asked to undertake any testing of the phrase 'Work Choices'?

Dr Boxall—Ms Fairweather has already given the department's testimony on the contract with Open Mind.

Senator WONG—Yes, and I am asking whether Open Mind was asked to evaluate or undertake any research into the Work Choices name.

Dr Boxall—No.

Senator WONG—Has the department commissioned any polling or market research in relation to the name 'Work Choices'?

Dr Boxall—No.

Senator WONG—Has there been any other market research commissioned in relation to the government's industrial relations legislation or industrial relations policy?

Mr Pratt—Can I just clarify something. We would have market tested 'Work Choices' back when the Work Choices name was chosen for the legislation back in 2005. I just want to be crystal clear on that.

Senator Abetz—But I think, as Senator Wong has been asking those questions, she has been going through a document from Open Mind; I am not sure.

Senator WONG—I am sorry?

Senator Abetz—I understand that you might be going through a document from Open Mind as you have been asking this last bracket of questions, and I think the officers have taken the questions you have been asking in relation to the Open Mind research as opposed to that which occurred in 2005—

Senator WONG—I am asking a more general question.

Senator Abetz—And Mr Pratt is now—

Mr Pratt—The last time we would have done any testing around the Work Choices nomenclature would have been in 2005.

Senator WONG—When did that conclude?

Mr Kovacic—That would have been part of the market research leading up to the information campaign that was conducted in October 2005.

Senator WONG—So your evidence is that there is nothing post that in relation to the brand ‘Work Choices’; is that right?

Mr Pratt—That is my understanding and I will just confirm it.

Senator WONG—Thank you.

Mr Pratt—My answer stands.

Senator WONG—Has the department utilised Crosby Textor for any market research, public opinion polling or any other functions in the last two years?

Ms Fairweather—No.

Senator WONG—There are no current negotiations with Crosby Textor in relation to market research, public opinion polling or any other services?

Ms Fairweather—No.

Senator WONG—What evaluation work has been undertaken to date on the Work Choices campaign?

Mr Kovacic—On the Work Choices campaign?

Senator WONG—I understand that you said it was not finalised because you are awaiting the EAP.

Mr Kovacic—No. The evaluation has not been conducted; it has not been commenced.

Senator WONG—It has not been commenced?

Mr Kovacic—No.

Senator WONG—By DEWR?

Mr Kovacic—That is correct.

Senator WONG—I am a little confused about the basis on which you say the Work Choices campaign has not been concluded, when we now have a ‘stronger safety net’ campaign, a new set of campaigns, being run.

Mr Kovacic—There were two components to it. Firstly, there was the actual advertising campaign that was conducted in October 2005. There was also an information and education campaign, which was also part of the campaign. That information and education campaign is continuing through the employer adviser program and, until that program concludes, the campaign has not concluded. It is at that stage the evaluation will be conducted—or undertaken, I should say.

Senator WONG—Is your evidence that there is not currently any survey, study or research being undertaken in relation to the evaluation of the Work Choices campaign?

Mr Kovacic—I can confirm that there isn't any work being undertaken in relation to the evaluation of the Work Choices campaign. The market research I mentioned before will contribute to the evaluation, but at this stage no work has been done on the evaluation itself.

Senator WONG—But that market research was in 2005.

Mr Kovacic—It continued through until July 2006.

Senator WONG—Yes—concluded, July 2006. Was that ACNielsen? No.

Mr Kovacic—No, that was Colmar Brunton.

Senator WONG—That's right. What about tracking research reports and campaign tracking reports?

Dr Boxall—What about them?

Senator WONG—Are they still being undertaken?

Mr Kovacic—In terms of which campaign?

Senator WONG—Work Choices.

Mr Kovacic—No. That is the market research that I indicated concluded in July last year.

Mr Pratt—We have found that.

Senator WONG—Thank you. Do these tracking reports relate to the Work Choices campaign?

Mr Kovacic—That is correct.

Senator WONG—Are there any more, other than those which have been identified here? I notice that it does not continue beyond 2005.

Mr Kovacic—There would be the ones that would have been conducted during the first half of 2006.

Senator WONG—Can you add those?

Mr Pratt—Yes, we will take it on notice.

Senator WONG—Are you able to add them verbally after dinner? If that is not possible, it is not possible.

Mr Kovacic—I will see if I can provide it after the dinner break.

Senator WONG—I notice in this answer that the assertion from the department is that the timing and nature of any advice to the minister is confidential. I have no difficulty with the

assertion that the nature of advice to the minister is confidential, but the timing of the provision of such advice is not—

Dr Boxall—Madam Chair, this is not the department's answer; it is the minister's answer.

Senator WONG—I am asking you to provide the dates on which these reports were provided to the minister.

Mr Pratt—We are going to have to take that on notice. We would also have to take on notice 'if' they were given to the minister.

Senator WONG—I am sorry?

Mr Pratt—We will take the whole thing on notice, but my point is that these reports weren't necessarily provided to the minister. We do not know that.

Senator WONG—I am sure someone could have said that.

Mr Pratt—Yes.

Senator WONG—I refer to question on notice W591-07. Actually, there are three which we can probably deal with together: 591, 592 and 593. Firstly, in relation to 591—do you have that, Mr Pratt?

Mr Pratt—Yes.

Senator WONG—It says:

Details of any research will not be released at this stage as it is informing the communication campaign. Can you tell me which communication campaign that is referring to? Is that Work Choices or—what is the new one called?

Mr Pratt—I will correct this if I am wrong, but it would have been the Work Choices campaign.

Senator WONG—Is it still informing the EAP?

Mr Pratt—It is informing the campaign itself.

Senator WONG—What is the current campaign on Work Choices?

Mr Pratt—EAP.

Senator WONG—EAP? That is it?

Mr Pratt—That is right. That is the remaining part of it.

Senator WONG—How is the employee experience continuing to inform that campaign?

Mr Pratt—As Mr Kovacic has indicated, there will not be any evaluation of that campaign until the EAP has been completed.

Senator WONG—That is not the question in the question on notice.

Mr Pratt—This sort of material contributes to that process.

Senator WONG—Which process?

Mr Pratt—The process of evaluation of the Work Choices campaign, of which the EAP is a component and the advertising element was a component.

Senator WONG—You have to keep that EAP program running so you don't have to do an evaluation of the Work Choices campaign. In 592-07 it says:

Details of any research will not be released—

et cetera. That campaign is Work Choices?

Mr Kovacic—That is correct.

Senator WONG—Would someone explain 593-07 to me.

Dr Boxall—Explain what?

Senator WONG—Unless there is some definitional issue in the question, which there may well be, it seems quite clear that attitudinal surveys were undertaken by Colmar Brunton and others.

Mr Kovacic—The question asks about industrial relations programs run by the department. In terms of late 2006, the only programs would have been the GEERS program and additional programs such as the Unlawful Termination Assistance Scheme—

Senator WONG—It is the phrase 'run by the department', isn't it?

Mr Kovacic—Yes.

Senator Abetz—What is it about the word 'no' that you don't understand, Senator?

Senator WONG—You are spending millions of dollars and all you can say is no, Minister.

Senator Abetz—The answer was no.

Senator WONG—Mr Kovacic, is the issue 'run by the department'? You took that to mean actually administered?

Mr Kovacic—Well, yes, that is—

Senator WONG—I am not a bureaucrat; I do not understand public servant speak. Do I understand that, in public servant speak, 'run by the department' means 'administered', not things for which you have policy responsibility?

Mr Kovacic—Administered would be the interpretation put on the question.

Senator WONG—Thank you.

Senator MARSHALL—Can I ask about some of the new budget measures, specifically the continuation of the Work Choices Employer Adviser Program and reinforcing the regional network of the Office of Workplace Services..

Mr Pratt—The latter one I would imagine is a question for the Office of Workplace Services.

Senator MARSHALL—All right. There may be some questions you might be able to answer anyway; we will see how we go. You are the man, Mr Pratt?

Mr Pratt—Ms Connell is the woman who will take questions on the EAP. I should point out that while we are happy to assist you to the extent we can, the Employer Adviser Program transferred to the Workplace Authority back in early May.

Senator WONG—You can answer questions about anything associated with that program to that date, presumably.

Mr Pratt—We will do our best.

Senator MARSHALL—In relation to the measure allocating an additional \$10.1 million to the EAP, can you advise me where this takes the total spending so far on this program?

Mr Pratt—Perhaps it would be easiest for us to tell you the total amount allocated, because the \$10.1 million relates to funding which will be spent across the first half of next financial year.

Senator MARSHALL—Where is spending so far in total on this program?

Ms Connell—There were three phases for EAP, with the first phase commencing in March 2006. The total expenditure to date is \$21.2 million.

Senator MARSHALL—Is there a tender process involved with the implementation of this program?

Ms Connell—There was an initial tender and a second phase tender, and then there was a third tender that established a panel, which is currently active.

Senator MARSHALL—The last tender was what?

Ms Connell—Setting up a panel.

Senator MARSHALL—All those processes are now finished?

Ms Connell—The tender processes are completed, yes.

Senator MARSHALL—Can you tell me why an additional \$10.1 million has been allocated to the program?

Mr Pratt—That is to fund the running of the program through the rest of this calendar year.

Senator MARSHALL—Was there any assessment or evaluation of the program prior to the additional allocation of \$10.1 million?

Mr Pratt—Yes.

Senator MARSHALL—Are you able to provide us with the outcomes of that?

Mr Pratt—I will have to take that on notice.

Senator MARSHALL—Can you tell me why only one year's additional funding has been provided for?

Mr Pratt—It is a government decision. I would point out that the funding for the EAP has been done in blocks of six month or so. That is how we have received money from government on this program.

Senator MARSHALL—Is there an expectation that future funding will be sought, or is it anticipated that it will be wound up at the end of—

Mr Pratt—I cannot say; I do not know.

Senator MARSHALL—But you are not indicating that, because only \$10.1 million has been allocated for one year, that means that the program necessarily will finish at the end of that?

Mr Pratt—That is correct.

Senator MARSHALL—In relation to the measure—which you may not want to tell me about—which provides an additional \$46.3 million to the OWS for enforcement in regional areas, can you explain the rationale behind this increase in resources for compliance in regional areas?

Mr Pratt—I cannot. That is something you should ask the Office of Workplace Services later on.

Senator MARSHALL—In terms of an update on the budget estimates, I have a page of budget measures—I do not have a page number—and I was seeking the current budget funding profile for each of the measures and advice on which measures have had underspends or overspends. Those budget measures are for the building and construction industry, implementing the reforms of the royal commission. They go down the page and finish with the Office of the Employment Advocate.

Mr Pratt—What document are you referring to?

Senator MARSHALL—It is budget paper No. 2.

Mr Pratt—Do you have a page number?

Senator MARSHALL—That is the problem: I do not have the page number. I might have to come back to that. I do not want to put you in an impossible situation.

Senator Abetz—Get one of your staff to reference it.

Senator MARSHALL—I am waiting for the email. I just thought I would talk around in circles for a couple of moments! It still has not come. I have some more questions on the Employee Assistance Program. Can you tell me the current profile of funding for this program across the forward estimates?

Dr Boxall—There is nothing in the forward estimates—just the \$10.1 million, which is in the budget.

Senator MARSHALL—Okay. How much is currently committed in terms of its allocations to organisations?

Mr Pratt—It is subject to another arrangement, as Ms Connell identified.

Ms Connell—The current contract value is \$4.4 million. There is \$4.4 million committed for the current phase.

Senator WONG—For the 2006-07 year? What is the period of the contract?

Ms Connell—It is to the end of June.

Senator MARSHALL—When will the next round of funding allocations under the program occur?

Ms Connell—We will have those finalised before the end of June.

Senator MARSHALL—Can you tell me who are the current recipients of funding under the scheme?

Mr Pratt—Just before we go to that, I need to inform you that in fact those decisions will be taken by the Workplace Authority. The funding and the management of this program have been transferred to the Workplace Authority.

Senator MARSHALL—That is the OEA?

Mr Pratt—That is correct.

Senator WONG—And OWS?

Dr Boxall—No. The Employee Assistance Program has gone to the Workplace Authority.

Senator MARSHALL—So the decisions for future recipients of funding will be a decision for them?

Dr Boxall—That is correct.

Senator MARSHALL—And that will be done before June?

Dr Boxall—We anticipate that, but it is up to them.

Senator MARSHALL—I understand that. Are you able to tell me who the current recipients of funding under the scheme are?

Ms Connell—There are a number of organisations that have been successful on the tender that are on the standing offer panel.

Senator MARSHALL—Is there a list or somewhere you might be able to point me to?

Ms Connell—Yes, it is the same list that was read out at the last estimates hearing by Mr Kovacic.

Senator MARSHALL—It has not changed?

Ms Connell—No.

Senator WONG—Mr Kovacic read it out. I had asked him some questions. He would not give me the answers. We had to wait for the list to be read out late at night.

Senator MARSHALL—There has been no change?

Ms Connell—No change.

Mr Pratt—By that stage the contracts had not been signed, so there was some sensitivity.

Senator WONG—But you gave us the answer any way.

Mr Pratt—There was no sensitivity about the names.

Senator MARSHALL—Can you explain to me how the money is allocated? Is it essentially a grant? Is it tied somehow?

Ms Connell—It is a service level contract. The organisations submit a proposal as to how they deem it appropriate to have their education activities. Those proposals are reviewed, and the department agrees with those parties the level of servicing that they will purchase for the period of time.

Senator MARSHALL—Is there some guide or pro forma that people have to meet to receive the funding?

Ms Connell—There are certain tender requirements, and they must meet them.

Senator MARSHALL—Is that a public document?

Ms Connell—It was published on the AusTender website. So, yes, it is a public document.

Senator MARSHALL—What about your internal guidelines for awarding the moneys? I understand that it is separate to the tender process. Is there an internal process you go through for measuring?

Ms Connell—We follow the evaluation process, which is also part of that public document. We advise parties how their proposals will be evaluated, and a waiting system also applies.

Senator MARSHALL—Who awards the tender? Is it a panel or an officer?

Ms Connell—The contracts are signed between the department and the organisation.

Senator MARSHALL—But who internally decides who wins the tenders? Do you have an internal panel?

Ms Connell—We do. We have an evaluation panel.

Senator MARSHALL—How is that made up?

Ms Connell—There is an SES officer and two or three other departmental officers involved.

Dr Boxall—This is all in the past, Senator Marshall.

Senator MARSHALL—Sure. Is there any checking of companies after they get access to the funding to ensure that what they deliver corresponds with their application?

Ms Connell—Yes, there is.

Senator MARSHALL—How is that done?

Ms Connell—The organisations are required to report weekly on the level of activity they have committed to do. They also provide feedback from clients that use the services provided, and we get those on a weekly basis.

Senator MARSHALL—So the checking goes to the extent of their reporting back to you.

Ms Connell—Correct.

Senator MARSHALL—So you do not actually do any checking on top of that? If they write to you and say, 'It's all going very well, thanks for the money,' do you say, 'Terrific'?

Ms Connell—We do have some of our officers attend some of the functions as well but, primarily, we are relying on the parties to produce the information for us.

Senator MARSHALL—And you do not test the veracity of that information?

Mr Pratt—Ms Connell indicated that we do—we have people attend the seminars to see the quality of them.

Senator MARSHALL—Is that in a structured sense? How do you organise that?

Ms Connell—We have officers around Australia. We use our state-based offices.

Mr Pratt—We used to have officers around Australia.

Ms Connell—We did.

Senator MARSHALL—Does every recipient of the money get tested or checked?

Ms Connell—I would say that most organisations would have our staff attend some of their functions.

Senator MARSHALL—Is that at random, or are they advised in advance?

Ms Connell—It can be a mixture of both.

Senator MARSHALL—I would be interested to know how many random checks were done. Please take that on notice.

Mr Pratt—We will pass that onto the Workplace Authority.

Senator MARSHALL—Has the department encouraged the promotion of template AWAs in these seminars run by the EAPs?

Mr Pratt—Not to my knowledge.

Senator MARSHALL—Does the department monitor the use of template AWAs?

Mr Pratt—No.

Senator MARSHALL—Has the department ever been called in to investigate the content of EAP seminars?

Ms Connell—Sorry, Senator; I do not understand the question.

Senator MARSHALL—Have you ever been called in as a result of a complaint? Has anyone complained to the department about the seminars?

Mr Thomas—On the odd occasion we have received feedback on seminars, which we have followed up.

Senator MARSHALL—Feedback of a negative nature, negative feedback?

Mr Thomas—Yes. Feedback of either a negative or a positive nature we have taken up with the provider and investigated.

Senator MARSHALL—Can you tell me how many complaints you have received?

Mr Thomas—No, I could not.

Senator MARSHALL—Are you able to get that information for me?

Mr Pratt—We can ask the Workplace Authority.

Senator MARSHALL—While you are doing that, can you find out how many complaints have resulted in a visit by an officer to investigate?

Dr Boxall—We will ask the Workplace Authority to do that too.

Senator MARSHALL—Thank you. If an organisation were subject to an OWS investigation or have been referred to the OWS, would that make them ineligible to apply for EAP funding?

Mr Thomas—As part of the awarding of the contracts for the standing panel, due diligence checks were conducted on all the providers. There were requirements within the criteria as to the nature of the providers.

Senator MARSHALL—Yes, but that was not really my question.

Mr Pratt—I think in general terms it is impossible to answer that in the sense that we would need to know what the complaint was about the potential provider. I do not want to speculate, but if it was a severe complaint then perhaps that would factor into our decision as to whether or not to give them a contract. If it was a complaint which resulted in no action being taken, it may be irrelevant.

Senator MARSHALL—If they were under investigation, would you award a contract during the investigation period?

Dr Boxall—That is a hypothetical, isn't it?

CHAIR—Yes, it is.

Senator MARSHALL—Do your guidelines exclude the awarding of a contract to anyone that is under investigation by the OWS?

Mr Pratt—Generally our processes are such that we would avoid a high-risk contract. It would depend on the judgement made about the level of risk.

Senator WONG—But the question was whether they are specifically excluded under the terms of the contract. I appreciate that you have given an answer that is a risk management answer.

Dr Boxall—I am advised that all the providers have been through a due diligence process.

Senator MARSHALL—But again that does not answer my question.

Mr Pratt—We will take that on notice.

Senator MARSHALL—If they are under investigation by the OWS, would they fail the due diligence—

Dr Boxall—We will check the guidelines for due diligence and advise the Workplace Authority and they in turn can respond to the question on notice.

Senator MARSHALL—If it is not part of the due diligence document, if investigation by the OWS does not lead to a failure of the due diligence, the answer would be no, wouldn't it? Is that what you have said to me, or is there some other process?

Dr Boxall—No. We are referring this question to the Workplace Authority and we will advise them to look at the due diligence and answer your question on notice.

Senator WONG—I appreciate that in respect of prospective arrangements, but what has occurred in the past for the period which this outcome was responsible for programming?

Dr Boxall—The department has been incredibly tolerant and flexible in this line of questioning. The general approach is that functions follow, and these questions, in an ideal setting, should have been asked of the Workplace Authority.

Senator WONG—Thank you for the lecture, but the point is there was—

Dr Boxall—It is not a lecture. If I could just continue—

Senator WONG—The point is the questions relate to the transfer of the functions.

Senator Abetz—Be gracious—let Dr Boxall finish.

CHAIR—Senator Wong, Dr Boxall is speaking.

Dr Boxall—Thank you, Chair. The answer is that this function was transferred to the Workplace Authority. Advice was given to the committee secretary beforehand. If one wanted to be a stickler, these questions should have been put to the Workplace Authority. We have now answered the questions as best we can. They have the staff to do the investigation. It is not Mr Thomas's job to rake through this to answer the question. With the chair's consideration, we will refer the questions to the Workplace Authority and they can draft a question on notice.

CHAIR—Fine. Thank you.

Senator WONG—Mr Kovacic, did you want the Work Choices issues after dinner?

Mr Kovacic—Yes, please.

Senator MARSHALL—I will try and get that page number for the budget measures I am seeking some funding profiles on after dinner too.

Senator WONG—I wanted an update on the biennial agreement-making report under section 358A. Evidence was given earlier today by Mr McIlwain in which he indicated that a sample of 500 AWAs per month was provided to the department. Is that to your section, Mr Kovacic?

Mr Kovacic—Yes.

Senator WONG—Can you tell me what analysis you undertake in respect of that 500?

Mr Kovacic—As I indicated at the last estimates hearing, the sample is coded against over 200 criteria, which look at a number of matters, including conditions. The information in respect of AWAs is then used for the purposes of preparing the report on agreement making.

Senator WONG—And that would include protected award conditions?

Mr Kovacic—In terms of the conditions, it would include the incidence of a range of conditions, including protected award conditions in particular agreements.

Senator WONG—Once that analysis has been undertaken, what occurs?

Mr Kovacic—It is being undertaken at the moment in the context of preparing the report on agreement making.

Senator WONG—But has there been—

Mr Kovacic—There are no regular reports prepared in respect of AWAs.

Senator WONG—So that happens on a monthly basis?

Mr Kovacic—Sorry, Senator?

Senator WONG—There are no regular reports, or there are?

Mr Kovacic—There are no regular reports in terms of data from the AWA database. As I mentioned, that data is used for the purposes of preparing the report on agreement making. We also have a collective agreement database, and that is used to prepare a quarterly report on trends in enterprise bargaining which provides an overview of wage movements in collective agreements.

Senator WONG—In relation to the AWA database, what happens to that analysis? In relation to the 500 each month, you undertake analysis against the 200-plus criteria.

Dr Boxall—We look at each AWA that is provided to us by the Workplace Authority and we enter data against a range of criteria in the database. The only analysis that is undertaken in terms of the data that is entered is for the purposes of preparing the report on agreement making.

Senator WONG—Has any of the information arising out of that analysis been provided to the minister's office?

Dr Boxall—Not at this stage. The report is still in the process of being produced.

Proceedings suspended from 6.29 pm to 7.31 pm

CHAIR—The committee will resume, and I will ask Senator Wong to go on with questioning.

Senator WONG—Mr Kovacic and I were discussing the biennial agreement-making report. Just to confirm, you simply code against the 200 criteria, but do I understand your evidence to be that you do not then produce any data as a result of that coding?

Mr Kovacic—That is correct, Senator. The only data that we actually produce is used for the purposes of the report on agreement making.

Senator WONG—When is that report going to be—

Mr Kovacic—The report is due to be provided to the minister by 30 June and then the minister is required to table the report in the parliament within 15 sitting days of having received the report.

Senator WONG—Has work commenced on preparing the report?

Mr Kovacic—It has, Senator.

Senator WONG—Has the OEA been involved in any analysis of the AWAs?

Mr Kovacic—Not to my knowledge, Senator.

Senator WONG—We were going to recap on the Work Choices advertising campaign, Mr Kovacic.

Mr Kovacic—Yes.

Senator WONG—So what have you got?

Mr Kovacic—I have got the detailed breakdown of the expenditure on the campaign.

Senator WONG—Can you table that?

Mr Kovacic—I can read it out. It has not changed, I think, since previous answers, where I put the same information on the record.

Senator WONG—So there has been no further expenditure since then?

Mr Kovacic—No.

Senator WONG—Could we go through it?

Mr Kovacic—Certainly. In terms of the communications campaign, media consultancy costs totalled \$4.654 million. This was in 2005-06. That is comprised of research, which is \$1.665 million; public relations expenditure, which was \$0.36 million; advertising and creative, which was \$2.629 million, and other consultancy costs of \$5,000. In terms of the media advertising campaign, the media spend was \$33.676 million for the campaign that was conducted during October 2005 and there is also non-campaign advertising, which is the newspaper ads that were run in July 2005, which was \$2.745 million. In terms of the information and education campaign, there was an amount of \$5.66 million spent in 2005-06. That was comprised of call centres, which was \$3.58 million; printing and distribution, which was \$2.009 million, and mail house services of \$0.71 million.

Senator WONG—That is it?

Mr Kovacic—The total spend was \$43.997 million, and that excludes GST.

Senator WONG—So there were no other costs associated with that campaign?

Mr Kovacic—In terms of research, there was an extension of the contract for Colmar Brunton beyond the end of January 2006. That relates to that market research that I was talking about previously. If you can just bear with me, Senator, I will just get the additional amount. That was in the order of an additional \$335,000.

Senator WONG—I was going to ask you a question about the last occasion but it was actually quite a long time ago, Mr Kovacic. You and I have been having conversations for a long time, haven't we?

Mr Kovacic—We have indeed.

Senator WONG—In November 2005 you gave me a figure of \$10.8 million, including a notional budget of \$8.1 million for call centres.

Mr Kovacic—That might have been the budgeted expenditure at that stage, Senator.

Senator WONG—Okay. Was there any 2006-07 expenditure other than the Colmar Brunton expenditure that you have referred to?

Mr Kovacic—That would have been all 2005-06.

Senator WONG—Yes. It was—

Mr Kovacic—But beyond that, nothing in 2006-07.

Senator WONG—No 2006-07 expenditure?

Mr Kovacic—Not in terms of advertising.

Senator WONG—What was the Jackson Wells Morris contract?

Mr Kovacic—That was a public relations component. That was \$360,000.

Senator WONG—Has the department been advised to cease using the name 'Work Choices'?

Mr Pratt—No, Senator.

Senator WONG—Has there been any instruction issued to any staff to cease using the name ‘Work Choices’?

Mr Pratt—Not in the sense that I think you might be suggesting, Senator. The staff of the Work Choices Infoline, which became the Workplace Infoline, were instructed to answer the phone with the name of the new service.

Senator WONG—Is the department currently utilising the phrase ‘Work Choices’ in any form?

Mr Pratt—The Work Choices website still exists. The Work Choices act was the act which amended the Workplace Relations Act at the time.

Senator WONG—That is not your act.

Mr Pratt—The term ‘Work Choices’ is used to describe the changes which were introduced in late 2005.

Senator WONG—Is there any communication material that you are producing currently that has the phrase ‘Work Choices’ on it?

Mr Pratt—I do not know, Senator, whether or not we have communications materials with the term ‘Work Choices’. I will just check.

Senator WONG—That you are currently producing or utilising.

Mr Pratt—I am not sure we are actually producing anything at the moment.

Senator WONG—Are you utilising any materials with the phrase ‘Work Choices’ on it?

Mr Pratt—There are the 16 pages which we talked about earlier which—

Senator WONG—They are your booklets, Mr Pratt.

Mr Pratt—That is right, and no doubt—

Senator WONG—That is what you are going to be remembered for, Mr Pratt—millions of little yellow and orange booklets floating around the country with a name that no-one wants to use anymore.

Senator MARSHALL—Who wants to claim the mousepads?

Mr Pratt—I think mousepads would be going out and things like that.

Senator WONG—Are you still sending out mousepads and booklets, are you?

Mr Pratt—Yes, Senator—mousepads, anyway.

Senator WONG—But not booklets?

Mr Pratt—No, the booklets I think are being held until we see what happens with the bill, as we discussed earlier.

Senator WONG—So staff of the Work Choices Infoline were instructed to answer using the new name. Remind me what that new name is.

Mr Pratt—It is the Workplace Infoline.

Senator WONG—The Workplace Infoline. And when was that instruction given?

Mr Pratt—It would have been 4 May.

Senator WONG—And whose decision was it that that name change occur?

Mr Pratt—It was a government decision, Senator. It was done at the same time that the OEA was renamed the Workplace Authority and that the OWS was identified to be known as the Workplace Ombudsman into the future. We badged the Work Choices Infoline the Workplace Infoline and we still of course use the Workplace website. As you can see, the theme there is it is all about the workplace.

Senator WONG—The rebadging?

Senator Abetz—It is going to the generic term again.

Mr Pratt—The workplace.

Senator WONG—Why did government make that decision, Senator?

Senator Abetz—It is like—I do not know; let me think of something—when your colleagues in the United Kingdom marketed themselves as New Labour for a while. They now refer to themselves as Labour again. We had the A New Tax System as it was marketed at the time which people now refer to as ‘the tax system’. We had Medicare Plus I think at one stage, but that was part of a campaign. People refer to it as ‘Medicare’. I am sure if Ms Gillard’s harebrained scheme of Medicare Gold had been introduced, it would have been referred to as ‘Medicare’. So after a short campaign, people go back to the generic. There is nothing untoward about that.

Senator WONG—No. It was a political decision, was it not, Minister?

Senator Abetz—Whether it was or was not—

Senator WONG—Because you knew that, as a brand, it was poisonous.

Senator Abetz—I know that it has been heinously misrepresented by a dishonest campaign that you have been egging along. As a result it would be fair to say that its utility may not have been as good as it otherwise may have been. But, at the end of the day, Work Choices was part of industrial relations reform and to call it Workplace Infoline gives it the complete, wide aspect for workers to feel comfortable in ringing; it would be a line that will enable workers, and employers for that matter, to get the full suite of services that they might want.

CHAIR—I trust you are satisfied with that answer?

Senator WONG—No, I do not think ‘satisfied’ would be an accurate description of my mindset, but will I move on, yes. Mr Pratt, how was the decision to rebadge the Work Choices Infoline as Workplace Infoline communicated to the department?

Mr Pratt—I am not absolutely sure, but it would have been in discussions over the course of the period I talked about with Senator Marshall. Certainly, it was part of what we were discussing during late April and early May. My vague recollection is that those sorts of names were getting considered before then.

Senator WONG—And has the department stopped using the name ‘Work Choices’ on the workplace.gov.au website?

Mr Pratt—No, the Work Choices website is still operational.

Senator WONG—When did the department receive drafting instructions in relation to the proposals in the Prime Minister's announcement?

Mr Pratt—We actually developed the drafting instructions. We got advice about the government's policy intention, as we discussed earlier, on 30 April.

Senator WONG—That was the discussion you and I have discussed earlier.

Mr Pratt—Yes.

Senator WONG—When were those issued?

Mr Pratt—We started issuing instructions to the drafters from 4 May.

Senator WONG—And were any external consultants or external lawyers involved in the drafting of the legislation?

Mr Pratt—No.

Senator WONG—When was the—

Mr Pratt—I am sorry; yes, the Australian Government Solicitor contributed to that.

Senator WONG—When were drafting instructions provided to the AGS?

Ms James—The Australian Government Solicitor person who has been involved is a current and ongoing secondee within Workplace Relations Legal Group. She has been with us since mid-2005 and she was involved on an ongoing basis throughout the project.

Senator WONG—When was the bill finalised?

Ms James—The bill was finalised immediately before it was introduced.

Senator WONG—What does that mean?

Ms James—It means that it was finalised until it was ready—it was worked upon until it was ready for introduction.

Senator WONG—How long before it was introduced into the House was the bill finalised?

Senator Abetz—A bill is only absolutely finalised and signed off at the time that it is introduced. Up until that stage it is always open for potential amendment.

Senator WONG—When was the bill provided to the minister's office?

Ms James—The final of the bill would have been provided to the minister's office on Friday.

Senator WONG—Friday just gone?

Ms James—That is correct. We, of course, consulted with the minister's office on an ongoing basis throughout the development of the bill.

Senator WONG—Had a draft bill been provided to the minister's office prior to Friday?

Ms James—I would rather not go into the details of exactly what went back and forth other than to say that there was ongoing consultation about the content of the bill from 7 May.

Senator WONG—Can you explain to me how this new fairness test will work as proposed in the bill?

Ms James—I am happy to answer questions about the operation of the fairness test. I think the bill, the Prime Minister's statement and the principles set out in the statement speak for themselves.

Senator Abetz—I can give you a bit of a summary, if you like.

Senator WONG—Ms James, I am just waiting for my copy of the bill. Do you want me to come back to you? I can do public sector employment advice while we are waiting on that.

Dr Boxall—I think that is a good idea.

Senator WONG—The chair wants a copy, too. Mr Maynard, DEWR has policy parameters for agreement making in the APS, does it not?

Mr Maynard—That is correct.

Senator WONG—When were they last revised?

Mr Maynard—The government's supporting guidance was issued last in April 2006.

Senator WONG—Policy parameter 1 includes a point saying that this is not the reference to the government's workplace relations policy and that the requirements for agreements be consistent with same. Can you explain to me what DEWR means by direct relations between employers and employees?

Mr Maynard—The government's policy parameter in relation to direct relations between employers and employees seeks to ensure that there is an ongoing relationship there. It does not prescribe a particular form of agreement. It does not preclude third parties where one or other of the parties seeks to include them, but it seeks to ensure that there is an ongoing relationship and dialogue between the employers and employees in agreement making and in relation to all workplace relations matters.

Senator WONG—What is DEWR's role in relation to considering agreements against the policy parameters?

Mr Maynard—Perhaps the simplest way of explaining that is to refer you to the supporting guidance. On page 8 of the supporting guidance to the policy parameters for agreement making there is a flow chart which sets out the process whereby the policy parameters are applied to—

Senator WONG—You might need to give me that, or is it on the website?

Mr Maynard—It is on the web site: workplace.gov.au.

Senator WONG—One of my favourite websites. I said that with humour.

Mr Maynard—I noted the expression on your face at the time, Senator! Both for your benefit and for those referring to the *Hansard*, at www.workplace.gov.au you will find four categories. Under the category relating to organisations there is a link to government. There is then a link to federal government. The next link is to agreement making.

Senator WONG—For individuals where is the link?

Mr Maynard—The young lady with the blond hair.

CHAIR—You too know this website very well, Mr Maynard!

Senator WONG—The federal government—got it. Agreement making, employment framework—what am I looking at?

Mr Maynard—Underneath agreement making you will find a link to supporting guidance. The first link, I believe, is policy parameters and the second link is supporting guidance.

Senator WONG—It is the other way round. But that is pretty good; you have done very well.

Mr Maynard—Thank you, Senator.

Senator WONG—That is all right. And now I have to download it?

Mr Maynard—Yes, if you open that document you will be able to find the flow chart on page 8. In essence, the role of the department is to provide policy advice to agencies in relation to agreement making and to provide them with an assessment of their proposed agreement against the government's policy parameters.

Senator WONG—So agency X, say, makes a certified agreement or an AWA?

Mr Maynard—We do not do assessments against all AWAs. That is the responsibility of the individual agency. However, agencies may seek our advice on individual items that they wish to put into AWAs or ask us about the starting point of their AWA negotiations.

Senator WONG—But you do not vet individual AWAs generally?

Mr Maynard—Absolutely not.

Senator WONG—But you do vet certified agreements?

Mr Maynard—No. We provide an assessment against the government's policy parameters and leave it to the agency to then determine what it wishes to do with that advice.

Senator WONG—If your advice is that the agreement does not comply with the policy parameters, how do you provide that advice? Is that written or verbal advice?

Mr Maynard—It is written advice.

Senator WONG—Is it open to the agency to proceed with the agreement in any event?

Mr Maynard—The short answer is yes. The arrangements within the APS agreement making framework are that agencies negotiate the proposed terms and conditions. They then provide the proposed collective agreement to the agency minister along with advice as to its compliance with the government's policy parameters. It is then up to the agency minister to determine whether or not to proceed.

Senator WONG—So the minister can take on or disregard DEWR's advice as to the compliance or otherwise with the policy parameters?

Mr Maynard—That is correct.

Senator WONG—I presume you are aware of the occasions on which that occurs?

Mr Maynard—Yes, I am aware of the advice that we provide to agencies. Sorry—in the cases where agency ministers determine that they wish to proceed and they agree to proceed with matters that are contrary to the policy parameters.

Senator WONG—Can you tell me how many such agreements there have been since these parameters were introduced?

Mr Maynard—I will endeavour to find that answer for you. I am advised that we will need to take that on notice. I hope that we might be able to give you an answer tomorrow during the department's hearings as we do not have the information here.

Senator WONG—Perhaps we could start off with that then. I will come back to that tomorrow.

Mr Maynard—I can say that it is a very small number.

Senator WONG—Five?

Mr Maynard—It is something in that order perhaps.

Senator WONG—You do not have that information now?

Mr Maynard—No, unfortunately not. I would much prefer to give it to you now than first thing tomorrow morning, Senator.

Senator WONG—Would you?

Mr Maynard—Yes, I would.

Senator WONG—I would like to know which ones they are, too.

Mr Maynard—I will also endeavour to find that information for you.

Senator WONG—In terms of your work in this area, Mr Maynard, which part of DEWR deals with the administration of the policy parameters?

Mr Maynard—The Workplace Relations Industries Group has a team of people who work on this particular function.

Senator WONG—Where is that?

Mr Maynard—It is at 2.2.1.

Senator WONG—And how many people work on this issue?

Mr Maynard—The unit is the public sector branch. It performs a range of functions, not just doing assessments against the policy parameters. Therefore it is a proportion of the time for the 24 staff who work in that branch.

Senator WONG—What else do they do?

Mr Maynard—They provide a range of services. The description is contained on page 113 of the annual report.

Senator WONG—Well, I am asking you now, Mr Maynard.

Mr Maynard—We provide advocacy services within the Defence Force Remuneration Tribunal on behalf of the employer. We provide services to agencies in relation to general policy advice on workplace relations matters.

Senator WONG—In terms of your flow chart and DEWR's assessment of policy parameter consistency, what sorts of timeframes are involved in your undertaking of that assessment? Do you track that?

Mr Maynard—The time taken to assess an individual proposed collective agreement will depend upon the nature of the agreement and the provision of any clarifying information or associated information such as the underpinning financial data that is provided by the agency.

Senator WONG—Do you track how long it takes you? In relation to various agreements, do you track how long it has taken you to assess them?

Mr Maynard—My understanding is that we do have obviously on clerical files the incoming and outgoing timetable for any individual requests. It is in the order of between two and three weeks.

Senator WONG—What is the longest timeframe it has taken you to undertake the analysis?

Mr Maynard—I do not know.

Dr Boxall—It would depend on the information provided by the agency. Often it is outside our control.

Senator WONG—Not always, Dr Boxall, presumably. Sometimes it might be and sometimes—

Dr Boxall—No, we probably always—

Senator WONG—I had not finished actually. Sometimes it may be an issue of the information required. I am not sure how you can make a blanket statement that it is always that issue.

Dr Boxall—What I can say to you is that there is no way the department would delay the assessment of the agreement against the policy parameters. To the extent that it takes any period longer than what Mr Maynard said, it would be due to the fact that the agency in question has not provided sufficient information.

Senator WONG—How many agreements have taken in excess of 30 days for a DEWR assessment, Mr Maynard?

Mr Maynard—I doubt that any would have taken in excess of 30 days once the required information had been provided.

Senator WONG—That is the caveat.

Mr Maynard—Senator, we cannot do an assessment without the required information.

Senator WONG—How many have taken in excess of 30 days?

Dr Boxall—Mr Maynard has just testified that he doubts that any have taken beyond 30 days once we have been provided with the required information.

Senator WONG—How often does it go back and forth? Is it a normal process that you would get an agreement put to you and then you would go back to the department requesting more information? What is the process there?

Mr Maynard—It varies dramatically. Some agencies will have very well-developed agreements and associated information that they provide to us and it is a simple process. Others will come to us and say: ‘We have a few ideas as to what we might put on the bargaining table. Could you talk to us about individual clauses and individual elements?’ It dramatically differs from agency to agency.

Senator WONG—Do you assess both union and non-union collective agreements?

Mr Maynard—We assess all collective agreements.

Senator WONG—Has DEWR approved against the policy parameters any union collective agreement in calendar year 2007?

Mr Maynard—Yes.

Senator WONG—How many?

Mr Maynard—Just bear with me, Senator. We will have that counted up.

Senator WONG—I am asking about DEWR approval, not the bypassing process that we discussed earlier.

Mr Maynard—Not the agency minister’s approval but the DEWR assessment?

Senator WONG—Correct.

Mr Maynard—Perhaps I might belabour that point. We do not approve or disapprove agreements; we merely provide commentary as to whether it is consistent with the policy parameters.

Senator WONG—Okay. Are we waiting for that?

Mr Maynard—Yes, Senator. It will be with you shortly. Perhaps we might go on if you have other questions while those numbers are being sought.

Senator WONG—Can I ask about the agreement in relation to the National Maritime Museum. Tell me how long it is since that agreement was first submitted to DEWR.

Mr Maynard—Senator, there have been multiple forms of the National Maritime Museum agreement presented for assessment to DEWR, the most recent of which was on Friday of last week.

Senator WONG—When was the first version in this round presented to DEWR?

Ms Chaudhury—The National Maritime Museum final agreement was given to us on 2 May, with supporting material provided on 10 May. Our assessment letter was sent to them on 22 May.

Senator WONG—Had there been previous versions provided to you?

Ms Chaudhury—In preliminary form.

Senator WONG—When were they first provided?

Ms Chaudhury—The National Maritime Museum commenced their agreement-making process last year. During that time they gave us numerous drafts.

Senator WONG—Can you give me an approximate timeframe around the first set of drafts? Can I just be clear: your evidence is that these were drafts?

Ms Chaudhury—I am sorry?

Senator WONG—Your evidence is that these were preliminary.

Ms Chaudhury—Yes.

Senator WONG—When were they first provided?

Ms Chaudhury—The very first draft went back last year around September or October. I will just check the dates, Senator.

Senator WONG—I am not going to ask a third set of questions, Mr Maynard, while I am waiting for two others because I will not remember.

Mr Maynard—I am sorry, Senator; we do not seem to have the information readily available, but we can provide you with the information on notice.

Senator WONG—You cannot give that to me tomorrow?

Dr Boxall—No, on notice.

Senator WONG—I think Dr Boxall is indicating that he does not want you to give it to me tomorrow.

Dr Boxall—No, we have taken that on notice. We do not have that information.

Mr Maynard—Senator, you sought advice on the number of union collective agreements that had been assessed as being consistent with the policy parameters.

Senator WONG—Yes.

Mr Maynard—Was that in this calendar year?

Senator WONG—I was going back after that to the financial year, but can you tell me this calendar year? Let us start with 2007.

Mr Maynard—Senator, it is just going to involve going through a range of papers. It will take a little while, if you can bear with us.

Senator WONG—So I think your evidence—and I am paraphrasing you, Mr Maynard—is that it is an iterative process. Would that be right? It goes backwards and forwards between the agency and DEWR if there is an issue.

Mr Maynard—The answer is yes, but it does not always have to as some agencies bring us all the information that is required with their draft agreement and the process is very simple and straightforward.

Senator WONG—There are 24 staff in this section. Has that number of staff been consistent over the past couple of years or has there been an alteration in the number of staff in the area?

Mr Maynard—It has been consistent at that level.

Senator WONG—Has DEWR altered the application of policy parameters since the new parameters and supporting guidance were issued in April 2006?

Mr Maynard—I am sorry, Senator; I have ringing in my ears. I did not hear you. My apologies. My hearing is what my hearing is.

Senator WONG—You have not got ringing in your ears; it is the bells. Has DEWR altered its application of the policy parameters since the new parameters and supporting guidance were issued in April?

Mr Maynard—No, Senator, we have not.

Senator WONG—Have you given any advice to agencies that agreements that had been previously assessed as being compliant with the criteria in May to June 2006 would now no longer pass?

Mr Maynard—In May to June 2006?

Senator WONG—The DEWR assessment.

Mr Maynard—Senator, one of the elements within the policy parameters is ongoing workplace relations reform. Therefore, we would expect all agencies to continue to have workplace relations reform.

Senator WONG—What does that mean?

Mr Maynard—That means that we would expect that they would iteratively move to better quality agreements in line with the government policy of simple principle place agreements.

Senator WONG—Okay. I am asking whether DEWR has indicated to agencies that agreements similar to those which have been previously assessed by DEWR in May and June 2006 as being consistent with the policy parameters would subsequently no longer be assessed as being consistent.

Mr Maynard—Not to my knowledge, Senator.

Senator WONG—Does DEWR take a consistent approach in respect of dispute settlement provisions?

Mr Maynard—Yes, Senator.

Senator WONG—How do you ensure that that occurs?

Ms Chaudhury—In relation to quality assurance, when we receive an agreement from an agency we have someone assessing the agreement and a second person assesses the agreement also. Once the agreement has been assessed by two different people, it is cleared through a team leader at the AO2 level and then cleared through me.

Senator WONG—Has DEWR advised any agencies that, for example, the agreements similar to the DOTARS collective agreement would now no longer be assessed as compliant with the guidelines for the policy parameters?

Ms Chaudhury—I do not recall.

Senator WONG—What about the DAFF?

Ms Chaudhury—I think there is an agency negotiating an agreement that is fairly similar to the DAFF agreement, but their issues are quite different. It may have been in that context.

Senator WONG—Their issues are quite different; what does that mean?

Ms Chaudhury—In relation to how it is applied to DAFF versus how it is applied to this agency.

Senator WONG—Okay. We are talking about DEWR's assessment of compliance and non-compliance of policy parameters. Can you explain to me what the differences are between those two agreements which render one compliant and one not in your assessment?

Mr Maynard—The timing of the assessment would make a difference—whether it was before the Work Choices amendments or after the Work Choices amendments. By way of example, it would mean that the legislative requirements that now apply to all agreements would be part of our assessment.

Senator WONG—Can you explain that in more detail? What are the aspects of the Work Choices legislation that have altered or affected your assessment against the policy parameters I am talking about?

Mr Maynard—That was by way of an example.

Senator WONG—But you raised an issue, Mr Maynard.

Mr Maynard—That is correct, yes, and therefore the issues associated with prohibited content, the issues associated with right of entry, the issues associated with any elements of the amendments—the dispute resolution, lodgement processes and so on—would all be elements that we would take into account as part of our assessment.

Senator WONG—What is the difference in terms of dispute resolution that you are focusing on? What is the issue in respect of dispute resolution that would affect the assessment of compliance with the policy parameters?

Ms Chaudhury—Senator, without looking at the detail of the dispute resolution clauses, it is difficult to respond to that.

Senator WONG—I appreciate that, but Mr Maynard has raised an issue about the effect of the Work Choices legislation and the impact that that has on your assessment of the policy parameters and the compliance with them. I am asking: what are the issues to which you have regard in respect to dispute resolution procedures as a result of the workplace relations changes when assessing compliance or otherwise of the policy parameters?

Mr Maynard—The simplest answer I can give to that, Senator, is to ensure that the dispute settlement procedure that is in place following the Work Choices amendments complies with the requirement to have a staged dispute settlement procedure, that matters are not automatically referred to an arbitration procedure, and that they do follow the stepped processes prescribed, by way of example, in the model DSP clause contained in the Work Choices amendments.

Senator WONG—Ms Chaudhury, you said in relation to the DAFF and this other unnamed agency that there were different issues. Are you able to at least give me an indication of what are the problematic areas in relation to the second agency?

Mr Maynard—I think the primary thing, Senator, is going to be the timing of the DAFF agreement. Having been assessed against the pre-reform processes, merely taking a cut and

paste of a pre-reform agreement and hoping that it will now meet the post-reform requirements would fail.

Senator WONG—Does DEWR keep any track of the costs for agencies of complying with the policy parameters?

Mr Maynard—No.

Senator WONG—Are you aware of any agencies that have brought in external consultants to assist them with these processes?

Dr Boxall—That is an agency's choice.

Senator WONG—I appreciate that, Dr Boxall. I asked if you were aware.

Ms Chaudhury—Some agencies do have external consultants.

Senator WONG—Do you deal with them, Ms Chaudhury, or does your section deal with them?

Ms Chaudhury—No, we deal with the agency.

Senator WONG—Can you explain to me, Mr Maynard, what you mean by simple principles based agreements?

Mr Maynard—The meaning of that is ensuring that an agreement is not full of operational process issues such as how to fill in a flex sheet or how to process a leave application. Those are matters which are appropriately dealt with at the organisation's internal operational policy levels. We would be looking to agreements to ensure that they deal with all matters relating to people's entitlements, but when it comes to operational policy the government has taken the position that its preference is that those matters be dealt with outside of the agreement.

Senator WONG—So all matters relating to people's entitlements—

Mr Maynard—Remain within the agreement.

Senator WONG—Does DEWR have the view that an allowance should be in an agreement rather than in a policy?

Mr Maynard—Where a person is entitled to an allowance, the entitlement would seem appropriate to have within an agreement. We are talking in a fairly hypothetical sense here, in a general sense.

Senator WONG—I am just trying to get a sense of whether it would be DEWR's position that it would be appropriate for an allowance to be taken out of an agreement and placed into a policy under your simple principles based agreements policy promo, or whether that is something you would have an objection to.

Mr Maynard—The allowances and entitlements would stay within the agreement.

Senator WONG—Allowances and entitlements should stay within the agreement. So in relation to—

Dr Boxall—It is a question of judgement. The government's policy parameters are quite clear. They prefer principles based agreements and the details to be in management policy or

other guidance issues, and it is a question of judgement about whether an agreement is overly prescriptive and hence not principles based or whether it is principles based.

Senator WONG—In that judgement, is it appropriate in any circumstance for conditions and entitlements to be placed in policy rather than in an agreement?

Dr Boxall—The testimony from the office is that if it is an allowance, an entitlement, then it would be quite sensible to have it within an agreement. But there are issues that go to process and things like that which would be not in the agreement.

Senator WONG—Has there been any reluctance from agencies to take matters out of agreements and put them into policy?

Dr Boxall—Different agencies have different views depending on where they are coming from. Some agencies would prefer to have more prescriptive material in agreements than others. DEWR has to make a judgement about whether the agreement is consistent with the government's policy parameters.

Senator WONG—So DEWR has not advocated the removal of allowances from any agreements?

Dr Boxall—We are not dogmatic about it. We assess each agreement on a case-by-case basis and make a judgement about whether, in our view, it is consistent with the government's policy parameter or not.

Senator WONG—Well, in your non-dogmatic assessment, has DEWR suggested or recommended the removal of any allowances from agreements?

Dr Boxall—Well, we would not recommend a blanket removal of allowances. It might be that when staff are dealing with a particular agency they might raise with the agency things like, for example, 'Couldn't this be outside the agreement?' And then there could be a discussion about it.

Senator WONG—That is a hypothetical answer. I am asking if DEWR's advice to an agency, since the introduction of these policy parameters, has included a request to remove an allowance from an agreement and place it in a policy.

Dr Boxall—We cannot answer that question because it is done on a case-by-case basis. We can go through the files and consult and interrogate the staff as to whether they have ever done that, but we do not have that sort of information readily available because we do it on a case-by-case basis.

Senator WONG—Okay. I will give you the opportunity to clarify this, Dr Boxall or Mr Maynard. There seem to be two threads of evidence here. One is that it is on a case-by-case basis. The other is that as a general principle allowances would be in agreements. I am interested in knowing which is DEWR's position.

Dr Boxall—There is one thread of evidence here. There is one position of the department, and that is that the government's policy is that it has a preference for principles based agreements with details and supplementary details outside the agreement, and DEWR applies that on a case-by-case basis. That is the consistent position.

Senator WONG—So as a matter of principle there is no issue in DEWR's view with an allowance being placed in policy rather than in an agreement?

Dr Boxall—It depends on the agreement; it depends on the case.

Senator WONG—So it is possible; it might be appropriate?

Dr Boxall—Of course, because it is on a case-by-case basis.

Senator WONG—Do the policy parameters require new employees to sign AWAs?

Dr Boxall—No, Senator.

Senator WONG—Is such a policy being communicated by DEWR to other agencies?

Dr Boxall—No.

Senator WONG—Do any agencies now have a policy which requires all new employees to sign AWAs?

Dr Boxall—No, you cannot have a policy like that. It would be tantamount to coercion. Existing employees in any organisation cannot be coerced into signing an AWA.

Senator WONG—'New employees,' I said.

Dr Boxall—I did not hear you say new employees.

Senator WONG—Sorry, I will start again. Do the policy parameters indicate that agencies should require new employees to sign an AWA?

Dr Boxall—No.

Senator WONG—Do any agencies, to DEWR's knowledge, have a policy that requires new employees to sign AWAs?

Dr Boxall—Yes.

Senator WONG—Which agencies are those?

Dr Boxall—DEWR.

Senator WONG—What does DEWR do to promote this 'no AWA, no start' policy to other agencies?

Dr Boxall—That is DEWR's policy; the way we do our own agreements. DEWR does not advocate that to other agencies because it is not government policy. It is not part of the policy parameters. If it was to be advocated to other agencies, it would be part of the policy parameters and it is not.

Senator WONG—Ms Chaudhury, do you still need some time on my previous question?

Ms Chaudhury—On the Maritime Museum issue?

Senator WONG—And the number of—

Ms Chaudhury—I can give you the Maritime Museum—

Mr Pratt—I understand, Senator, that we are going to have to take both of those questions on notice.

Dr Boxall—We do not have the information with us.

Senator WONG—Well, that is not correct, Dr Boxall. The evidence from Mr Maynard was that he had the information but he had to chase it up.

Dr Boxall—No, Mr Maynard—

Senator WONG—And now you are altering your position.

Dr Boxall—No, we are not altering our position.

Senator WONG—Now you are altering your position and saying that you will have to take it on notice. Will I have to wait—how many days was it before I got the answers that I put on notice in November?

Dr Boxall—That is a comment on our minister and I reject that comment.

Senator WONG—No, it is true on the facts. We had questions being answered from the November estimates—

Senator Abetz—It depends. If we get another 1,151 questions put on notice then there will be a considerable delay, whereas if you use them sparingly you will get very expeditious answers.

Dr Boxall—We have not altered our position.

Senator WONG—You have.

Dr Boxall—We have not.

Senator WONG—You have. The *Hansard* will show it clearly—

Dr Boxall—No. Mr Maynard and Ms Chaudhury—

Senator WONG—and everybody in this room—

Dr Boxall—Mr Maynard and Ms Chaudhury thought they had the information—

Senator WONG—Everybody in this room knows it.

Senator Abetz—Can he finish?

Dr Boxall—Mr Maynard and Ms Chaudhury thought they had the information available on the number of union collective agreements that had been assessed by DEWR as being consistent with the policy proposals. They do not have it with them so they have to take it on notice.

Senator WONG—If I ask them the question as to whether or not they have it, what will you do, Dr Boxall—tell them not to answer?

Dr Boxall—No, I will not tell them to do anything. They do not testify as individuals here. They testify on behalf of the department. The department does not have that information with us. If you want us to bring the information, if you give us notice before Senate estimates, we will then bring it.

Senator WONG—All right. I am asking for the information for tomorrow. You are on tomorrow.

Dr Boxall—We are taking that question and the Maritime Museum question on notice.

CHAIR—I think if the question is taken on notice that is a fair indication it probably will not be provided tomorrow. If the officers do not have the information with them, they simply cannot provide it, Senator.

Senator WONG—No, that is fine, but we are all clear in this room what evidence was given before Dr Boxall's intervention about the capacity of the officers at the table—

Senator Abetz—Oh, you might be clear!

Senator WONG—to answer the question.

CHAIR—In that case we will move on. Thank you very much for taking those questions on notice. Do you have further questions?

Senator WONG—Yes, I do. As a result of the Work Choices legislation, Mr Maynard, I assume that AIRC dispute settlement procedures are contrary to the policy parameters?

Mr Maynard—No, Senator.

Senator WONG—So if an agency wanted to include AIRC arbitration as part of a dispute settlement in their agreement, that would not be inconsistent with policy parameters?

Mr Maynard—Subject to the satisfaction of the staged dispute settlement procedures.

Senator WONG—Has DEWR ever asked an agency to remove its capacity to go to the AIRC to settle a dispute from an agreement?

Mr Maynard—Not to my knowledge, Senator.

Senator WONG—So is the information you were going to give me tomorrow, Mr Maynard—which was how many agencies have gone through the minister approval process after an adverse assessment from DEWR—still going to be available?

Mr Maynard—We will endeavour to get the information. In the event that it is not available we have taken it on notice.

Senator WONG—Good save. I turn to the 11 May 2006 APS advice No. 08 of 2006 which relates to dispute settlement under WorkChoices.

Mr Maynard—We are endeavouring to get a copy of that. What is your question in relation to that advice?

Senator WONG—I think you have answered that question. When I asked you whether or not DEWR had sought that an agency remove details of powers available to the Industrial Relations Commission to settle a dispute from an agreement, you indicated no; is that right?

Mr Maynard—We have not removed that right for agencies to do that.

Senator WONG—You have not given that advice to agencies?

Mr Maynard—Our WR advice makes clear that there is no automatic referral, but agencies may choose to include it in their dispute settlement procedure.

Senator WONG—I am confirming your evidence. As I understand it, DEWR has not given advice to agencies to remove dispute settlement clauses, including a reference to the AIRC?

Mr Maynard—My advice to you is that the dispute settlement procedures, as required under the WorkChoices amendments to the Workplace Relations Act, is the advice that we give to agencies. If an agency were to seek to include a clause that said that there was a one-step process which automatically referred all matters to the AIRC as soon as any individual was upset about any dispute, then that would be something that we would find to be inconsistent.

Senator WONG—Can I just confirm this. Essentially you are saying that you have to have a staged process, but the mere fact that at some point in the process there is a referral to the AIRC is consistent with the policy parameters and with the APS advice?

Dr Boxall—That is correct.

Senator WONG—Thank you. So you are taking the union collective agreements on notice now?

Mr Maynard—Correct.

Senator WONG—Perhaps we could have Ms James back. Ms James, I have a copy of the bill. Can you direct me to the definition of the fairness test?

Ms James—If you would like me to, perhaps I could step you through some of the key concepts.

Senator WONG—What a wonderful idea. Please go on.

Ms James—A good place to start is section 346E. This is effectively the gateway provision—the provision that establishes where the test applies. As per the Prime Minister's statement of 4 May, it talks about the relevance of an agreement being lodged on or after 7 May 2007.

Senator WONG—And being covered by an award or other industrial instrument?

Ms James—Yes. In the case of an AWA it talks about the salary requirements. I should point out that the \$75,000 salary is a defined term in 346B. It is defined as meaning gross basic salary and does not include a number of listed things.

Senator WONG—The \$75,000 does not include penalty rates, casual loadings, incentive payments et cetera?

Ms James—That is correct. Sorry, it has just been pointed out to me that it does include loadings other than casual loadings.

Senator WONG—So these are accumulative requirements in 346A?

Ms James—That is right. 346F applies effectively the same requirements in relation to variations to workplace agreements where the variations are lodged on or after 7 May 2007.

Senator WONG—So this is only in relation to variations to an AWA?

Ms James—346E is in relation to a new agreement.

Senator WONG—That is right. So that is new agreements and 346F is variations to existing AWAs?

Ms James—Yes, 346F deals with a variation to an agreement which was already in existence prior to 7 May.

Senator WONG—But would only be triggered if someone actually sought a variation?

Ms James—That is right.

Senator WONG—It is not a retrospective operation?

Ms James—In fact, they would have made a variation. The parties would have to agree to a variation and lodge that variation before the fairness test would be applied to that variation. 346G sets out a number of provisions that enable the calculation of the salary where a person is not full time, including in relation to employees who are paid a piece rate of pay.

I suggest we jump forward a little bit to a couple of key provisions, 346K and 346L, that deal with designated awards. So the fairness test applies where someone is covered by an award and has protected award conditions in that award. In addition, the fairness test will apply where an employer is actually not covered by an award but in an industry or occupation that would usually be covered by an award. The mechanism used to give them protected award conditions is this designated award process. 346L is the primary provision.

Senator WONG—I have seen it.

Ms James—The one before it allows the designation to occur prior to lodgement. Employers may well wish to get a designated award prior to actually lodging an agreement so they are aware of the protected award conditions that it will be tested against.

Senator WONG—The designation occurs by the Workplace Authority.

Ms James—The designation is determined by the Workplace Authority director. The requirements are set out in sub (2) and sub (3). The designated award must be an award which regulates the work of the relevant employees, must be an appropriate award and must not be an enterprise award.

Senator WONG—And 346M sets out the circumstances which the fairness test is—

Ms James—It does. Before the fairness test itself is actually applied the Workplace Authority director must give notice to the parties as to whether or not the test will be applied. That is important—because the parties have lodged their agreement and it has commenced—so the parties are aware whether or not this fairness test is being applied to them and whether or not they are subject to the test. That is set out in 346J. 346M sets out the fairness test itself.

First I should say that the core concept for the whole fairness test is fair compensation in lieu of any protected award conditions that have been excluded or modified in the agreement. That is the core concept and it is set out in subsection (1). That is the first thing the Workplace Authority director will look to. That effectively involves an evaluation of the value of the compensation. In fact, subsection (2) is the provision that sets out monetary and non-monetary compensation that can be provided. Non-monetary compensation is a defined term at the end—

Senator WONG—Subsection (7).

Ms James—Subsection (7).

Senator WONG—Can I ask you some questions about that?

Ms James—Perhaps it might help if I take you through the test before we get to that. In addition to these factors, the Workplace Authority director may have regard to a number of other things. The Workplace Authority director must first have regard to this monetary/non-monetary compensation criteria. Then they may turn to the personal circumstances of the employee or the employees, particularly family responsibilities.

Senator WONG—Okay. Can I just clarify that subsection (2) is mandatory and subsections (3), (4), (5) and (6) are discretionary?

Ms James—They are discretionary and they are to be considered in the totality. In relation to personal circumstances of the employee, the explanatory memorandum gives some good examples of cases where employees may wish to, for example, leave at 3 pm instead of 6 pm to pick up their children from school and then work a Saturday instead, which would normally attract penalty rates. This is a provision under which they could agree with their employer to leave at 3 pm every day and to do that work on the Saturday without getting penalty rates, because it is important to them to balance their family responsibilities. Subsection (3) effectively deals with personal circumstances of the employee. Subsections (4) and (5) together deal with exceptional circumstances. The barriers or requirements for subsection (4), which are mandatory before you can have regard to the matters set out there, are that the circumstances must be exceptional and the director must be satisfied it is not contrary to the public interest to consider—to have regard to—the industry, location or economic circumstances of the employer.

Senator WONG—Yes, I have got that.

Ms James—And the employment circumstances of the employee or employees. Subsection (5) sets out an example where the industry location or economic circumstances is relevant because it is part of a reasonable strategy to deal with a short-term crisis—

Senator WONG—Ms James, I can read that section. That is fine. Then subsection (6).

Ms James—I just point out that that is very similar to the public interest test for the no disadvantage test.

Senator WONG—Yes.

Ms James—And subsection (6) makes it clear that the director may inform himself or herself in any way necessary, bearing in mind that the director must be satisfied that fair compensation has been provided. It is important that it is clear that the director may pursue lines of inquiry to enable him or her to become satisfied.

Senator WONG—Okay. Did you want to keep going, or can I ask questions?

Senator Abetz—I suggest we move to questions. This is an interesting tutorial, in a way, but unless there are specific questions, I think—

Senator WONG—I am happy to ask questions. I was giving the officer the courtesy of allowing her to finish her explanation.

Senator Abetz—Let us do that.

Senator WONG—To what extent is subsection (5) different from the relevant provision in the previous NDT?

Ms James—Subsection (5) is a higher threshold than the previous no disadvantage test. Under the no disadvantage test, it was possible for an agreement to be approved where it was not contrary to the public interest to do so in spite of effectively failing the no disadvantage test. Under this test, not only must it not be against the public interest but you must also have exceptional circumstances before this provision can be relied upon. The provision then lists some specific things that you can have regard to.

Senator WONG—Okay. But tell me about subsection (5) in that context. It is not contrary to the public interest to have regard to those other matters. To what extent does that mirror the NDT, or to what extent does it alter?

Ms James—Subsection (5) is just an example and, subject to the different contexts, the drafting is almost identical to the previous provision, which I think was section 170LT(4).

Senator WONG—So subsection (6) gives the Workplace Authority discretionary powers to inform themselves. Mr Pratt may be able to answer this, or I suppose I would have to ask Mr McIlwain, who has left. Does the act provide any additional powers to the Workplace Authority director to investigate matters relevant to the assessment of the fairness test?

Ms James—The director does not have compulsive powers, if that is what you mean.

Senator WONG—Yes.

Ms James—However, the director will simply not be approving an agreement or finding that it passes the fairness test if the director is not satisfied that fair compensation has been provided. So if in the first instance there is not sufficient information to allow the director to become satisfied the director can, under this provision, ask for more information. If the employer does not provide it then the agreement will be taken to fail the test.

Senator WONG—Okay. So I do understand from that that you are saying that it is not a problem because they just will not approve it.

Ms James—They must not. They must be satisfied—to satisfy the requirements of the legislation.

Senator WONG—But there are no compulsive powers?

Ms James—There are no compulsive powers, nor were there under the no disadvantage test.

Senator WONG—Can you explain to me in terms of the definition of ‘non-monetary compensation’ how the Workplace Authority will go about assigning a value to something like being able to pick the children up from or drop them off at child care?

Senator Abetz—I think that will be determined on a case-by-case basis on the—

Senator WONG—It is a relevant issue.

Senator Abetz—No, on the individual’s particular circumstances—

Senator WONG—I am not asking what value; I am asking how they would go about it.

Ms James—Senator, when it comes to the personal circumstances of the employee, that is in subsection (3).

Senator WONG—Yes.

Ms James—That is after we have assigned—the monetary value is dealt with in subsection (2).

Senator WONG—Right. But I am looking at subsection (7), which is the definition of non-monetary compensation, and it says, essentially, that you can look at non-monetary compensation that confers a benefit or advantage to an employer which is of significant value to the employee. I am asking how they do that.

Mr Kovacic—One of the things that an employer lodges when they lodge their agreement with the Workplace Authority is a declaration. The intention is that this declaration form will have capacity for an employer to actually include information as to what a particular provision might mean to them in terms of the importance that they attach to it.

Senator WONG—So they assign the value?

Mr Kovacic—They can actually include information as to how significant or how important a particular flexibility, for want of a better description, is to them. For instance—

Senator WONG—This is an employer or an employee?

Mr Kovacic—An employee.

Senator WONG—Thank you. I misheard you. I was confused.

Mr Kovacic—It is the capacity for the employee to say what the value to them is.

Senator WONG—All right. But, to take your example, if they say, ‘This is good for me,’ or ‘This is not good for me,’ or whatever, how is the value assigned?

Ms James—The non-monetary compensation definition links into subsection (2). It does not link into subsection (3). The term is only used in subsection (2).

Senator WONG—Yes, but you have to have regard to the non-monetary compensation for working out whether or not you pass the fairness test, and I am asking how you assign a value.

Ms James—In the case of something that can have a non-monetary value, it has to be as per the definition—something that has a money value equivalent.

Senator WONG—That is what I am saying. How do you get the money value equivalent?

Ms James—There are two things about this. One is that it is a matter that the Workplace Authority will primarily deal with, but, secondly, it is not a new matter. I do not know personally right now how they did it under the no disadvantage test, but under the no disadvantage test any number of non-cash benefits could be taken into consideration, such as a car parking space, for example. That is something that is capable of having a value.

Senator WONG—Yes, that is capable of having a value assigned. You could do that. But, for example, as I said, hours of work—

Mr Kovacic—That really comes into subsection—

Senator Abetz—Chair, can I just intervene here? This bill is going to be the subject of a very detailed analysis by this committee.

CHAIR—Yes. This discussion will not go on for much longer because, as you have correctly pointed out, we are having an inquiry into it.

Senator WONG—I was not aware of that, Chair.

CHAIR—The Senate has decided that.

Senator WONG—I do not believe that the Senate has actually decided that. The government may have decided that.

Senator MARSHALL—No, we did.

CHAIR—We did.

Senator WONG—On the bill that we have not seen? Senator Marshall agreed to that, although I would not have agreed to it given it is a bill we have not seen.

Senator Abetz—It has been raised in our committee.

Senator WONG—I remember now, but I am actually not a member of this committee as I recall.

Senator Abetz—But you can come along as a participating member I am sure.

Senator WONG—Because I have nothing else to do, Minister; that is right.

Senator Abetz—I am sure they would welcome your input.

Senator MARSHALL—I have a question that sort of goes to the legislation but it really goes to the role that the officers will play in it. It is something we can do in the committee inquiry, but I need to ask the next witnesses too. Is there an appeal process if circumstances change and what role the new director of— what is it called?

Mr Pratt—The Workplace Authority director.

Senator MARSHALL—So what role will the Workplace Authority director or the old Office of the Employment Advocate have in that? For example, if people trade away penalty rates and a monetary value is put on that, the circumstances may be that there is very little overtime ever worked in that enterprise. But two years down the track, through a restructure, there is in fact lots of overtime worked so therefore the value has not been properly compensated. Is there an appeal process in the legislation? If there is, what role will officers play in determining that?

Ms James—The fairness test is applied as at the point in time of lodgement, and that is exactly the same as the no disadvantage test. The no disadvantage test considered the agreement at the time of lodgement and did not reconsider it over its life. So there will be no further consideration unless the agreement is varied and the fairness test will be applied at that point.

CHAIR—If we are going to have presumably the same discussion during the bill inquiry, there is probably no urgent necessity to be going over it now and—

Senator WONG—I was moving on.

CHAIR—You will be asking the same questions, Senator Wong. We will consider that dealt with. So where else in outcome 2 would you like to ask questions?

Senator WONG—I have not got anything further.

CHAIR—All right. If there are no further questions on outcome 2, thank you very much everybody. After a break, we will be calling the Workplace Ombudsman, formerly OWS.

Proceedings suspended from 8.50 pm to 9.03 pm

Workplace Ombudsman (Office of Workplace Services)

CHAIR—The committee will resume and I welcome Mr Wilson, the Workplace Ombudsman, and staff. I believe Senator Marshall has some questions.

Senator MARSHALL—Thank you. Are you already the Workplace Ombudsman?

Mr Wilson—Senator, I am not. Obviously we need to wait for the legislation to pass and then for appointments to be made from there.

Senator MARSHALL—Are you automatically appointed to that position?

Mr Wilson—One can never presume automatic things of that nature.

Senator MARSHALL—Okay. But you are not cleaning out your office though, are you?

Mr Wilson—Not as yet.

Senator MARSHALL—It has been a big day in terms of announcements now being presented into parliament. I will go to questions about your involvement in the development of these changes a little bit later, but I am wondering if we could start off with you outlining to the committee the changes of functions of the OWS as a result of the Prime Minister's announcements and the proposed legislation that was introduced into the House earlier today.

Mr Wilson—I will try to answer that question in a couple of ways. Obviously at the top of the tree I suppose is a change in name and status of the Office of Workplace Services. The expectation is that the legislation will create the office of the Workplace Ombudsman and that the office will be headed by a statutory officer to be called the Workplace Ombudsman. Beyond those issues, in terms of the announcement itself, we see I suppose three or possibly four areas of work which will come to our staff as a result of the Prime Minister's announcement. We obviously expect that there will be a requirement for the office to deal with the fairness test in the sense that, once the parties have been assessed by the Workplace Authority, and the agreement does not comply with the fairness test and the parties have then not been able to bring the agreement into conformity with that test, then obviously the situation is that the workplace agreement cannot be brought into effect and the obligation then turns to the Workplace Ombudsman to ensure that the underlying instrument is complied with by the employer. So that is the first body of work I suppose which stems from—

Senator MARSHALL—Mr Wilson, with the chair's indulgence, do you mind if I ask supplementary type questions as we go through the broader question? If you would rather I do not, that is okay. I would have asked: what is the status of the test and its development? Or would you rather I ask those at the end?

Mr Wilson—I suppose that is up to you. I can take that latter question right now if you wish, and obviously that is a very important one. Clearly, we cannot presume the outcome of the parliamentary debates. All we have to go on at the moment is the bill itself and I am very mindful that the bill will be the subject, as the government has disclosed, of a Senate inquiry. So, in terms of detail, it probably would be appropriate to leave the mechanics of the operation of the bill to that inquiry.

Senator MARSHALL—Yes, but I suspect in anticipation that the bill will be passed substantially the way it is. Is it your responsibility to now develop the test?

Mr Wilson—No, it is not. The Workplace Ombudsman's role would be, I guess, to work with the parties to the agreement when the fairness test has been failed. Obviously for that to occur the legislation needs to be passed, the agreements need to fail the test and there then needs to be the interchange between the Workplace Authority and the parties as prescribed in the bill.

Senator MARSHALL—So, if you are not going to develop the test but will simply apply it, who is developing it?

Mr Wilson—Correct. I think that is the best characterisation for it—that the role of the Workplace Ombudsman would be to apply the test rather than deal with the consequences after the agreements have not been able to meet the fairness test.

Senator MARSHALL—Okay. Continue then on the proposed changes.

Mr Wilson—All right. Of the other matters which were disclosed, the Prime Minister's announcement on 4 May was, first of all, disclosing the intention to provide additional protection for young workers and to make sure that young workers had their rights unambiguously protected. The office expects that there will be some increased work in that respect. The other feature of the Prime Minister's announcement was disclosing an intent to provide some new protections in respect of duress in the course of making an agreement and also transmission of businesses.

Senator MARSHALL—What about your role? You talked about a change in status and becoming a statutory office. Apart from those obvious things, what actually will be the change to your role, incorporating those extra duties that you talked about as an overall thing, but in terms of your position itself?

Mr Wilson—I suppose we need to wait for the bill to pass, but quite clearly at the moment we would be assessing the Prime Minister's announcement as indicating that there would be an increased workload for the office in the role of investigation and compliance and, in particular, in those three areas of dealing with the fairness test when agreements have failed the fairness test, ensuring that there is additional protection for young workers and ensuring that the new provisions, as such they may be, relating to duress and transmission of business are dealt with.

Senator MARSHALL—Can you tell me when your office was first advised of any proposal to change your functions along the lines announced by the Prime Minister in the legislation introduced today?

Mr Wilson—Senator, I believe I was told informally that there may be some changes on or around 1 May.

Senator MARSHALL—And where did that information come from?

Mr Wilson—That came from the minister's office.

Senator MARSHALL—The minister for workplace relations?

Mr Wilson—Correct.

Senator MARSHALL—And the circumstances of that was written advice or verbal advice?

Mr Wilson—No, it was verbal advice, Senator.

Senator MARSHALL—Did they call you by your first name, too?

Mr Wilson—That is my recollection, yes.

Senator MARSHALL—Good.

Senator Abetz—So a good harmonious workplace that one enjoys.

Mr Wilson—That is right.

Senator MARSHALL—When were you advised that the actual decision had been taken, as opposed from the first advice? Was it at the same time?

Mr Wilson—Senator, I cannot be quite accurate as to the time, but I believe it was on 4 May, which was the day of the announcement itself.

Senator MARSHALL—Can you outline for us the discussions or the role that your office actually provided in the formulation of the final decision?

Senator Abetz—I think we are starting to traverse into policy there, aren't we, Senator Marshall?

CHAIR—Yes.

Senator Abetz—I did not quite catch all of it.

Senator MARSHALL—Can I ask whether your office provided any input into the decision to make the changes?

Mr Wilson—I certainly would not claim credit for input into the decisions, but what I suppose I can say is that there was a request for advice about the work of the Office of Workplace Services and some of the functions we perform and some of the powers we exercise, and advice was provided by me as a consequence of that request.

Senator MARSHALL—And that was between the minister's office and—

Mr Wilson—And myself, yes.

Senator MARSHALL—Thanks. What input have you had into the development of the fairness test?

Mr Wilson—I have been consulted, I think, at the very latter stages of the bill. I do not believe that I had input as such into the development of the fairness test.

Senator MARSHALL—Who is actually going to develop the test itself?

Mr Wilson—My recollection of the bill is that the test is articulated fairly well in the bill. My understanding of how the bill would operate is that the test itself is applied legally and procedurally by the workplace and that there would be certain functions which then flow to the Workplace Ombudsman but they are, I suppose, after the fairness test has been applied.

Senator MARSHALL—I am not sure whether you can tell me whether the bill actually reflects the input of your advice?

Mr Wilson—No, I cannot.

CHAIR—I suspect that is not possible, Senator Marshall.

Senator Abetz—Or he could tell you, but he will not tell you.

Senator MARSHALL—I understand a list of functions for your new office—and there is a *A stronger safety net for working Australians* document, which states:

The Office of Workplace Services will be renamed the Workplace Ombudsman. The Workplace Ombudsman will take on a greater role in ensuring that employers comply with their legal obligations. For instance, the Workplace Ombudsman will conduct regular random audits to ensure employers are meeting their obligations to young people.

Can you tell me what is the greater role in ensuring employers comply with their legal obligations than your current functions?

Senator Abetz—Can I just intervene here. The very premise of your question suggested, I thought—by implication but I think it was direct—that Mr Wilson was already in the new role. If Mr Wilson gets that role et cetera, it has to be approved by the Governor-General. So there are a lot of presumptions in your question, which could leave Mr Wilson and others embarrassed and in a great difficulty. Instead of making it so personal as in ‘you’, if you were to inquire as to the role of the ombudsman as opposed to a current position, that might be able to be dealt with.

CHAIR—That would still be in the realm of the hypothetical, I suspect—

Senator Abetz—It would.

CHAIR—given that no-one knows what amendments may be proposed and passed—

Senator Abetz—or be considered by the committee.

CHAIR—and at what final stage the bill may be. I suspect that is not a possible question.

Senator MARSHALL—I was happy, for once, with the minister’s suggestion, really.

Senator Abetz—I am just going soft in my old age, but I think we ought to accept what the chair is suggesting to us.

Senator MARSHALL—Let us talk about the office generally. There have been some discussions, you are aware of the Prime Minister’s announcement and you have been consulted about the legislation. So can you tell me what different role the office of the Workplace Ombudsman is likely to have and the current role that you fill in terms of protecting young people?

Mr Wilson—In terms of protecting young people, my understanding of the policy intention of the government is that the office provides greater assistance to young people at, I suppose, all stages of their employment experience. The office already provides some services to specifically target young people in the nature of both investigations into particular circumstances as well as targeted compliance campaigns. We expect that there will be a modest increase in the kind of compliance campaigns that we run into the future. I think I would need to qualify that by saying that obviously we need to see the final legislation. We also have yet, I suppose, to fully assimilate the nature of the changes that are outlined in the bill itself.

Senator MARSHALL—Has any assessment of the OWS functions been conducted to determine whether its role in ensuring employer compliance with their legal obligations should or even could be enhanced?

Mr Wilson—No, there has not, Senator.

Senator MARSHALL—Since its inception, has the OWS conducted audits of employers in relation to whether those employers are meeting their obligations with respect to young people?

Mr Wilson—Yes, they have.

Senator MARSHALL—Are you able to provide copies of that audit?

Senator Abetz—That would have to be taken on notice as a minimum, I would have thought. I assume the audit was not intended for public release.

Mr Wilson—A pilot program was conducted in South Australia in respect of young people. That was conducted over the summer period. I am not aware that there has been a final report but we can check on that. However, we have taken that pilot to a later stage which is to initiate auditing on a wider scale across the country in respect of young people. That campaign is still underway. I do not have the metrics of it with me but Mr Bongi may.

Senator MARSHALL—Are you likely to get a new role? Is there a deputy ombudsman's position?

Mr Bongi—One lives in hope, Senator. We are conducting a national campaign building on our experience in South Australia. We are targeting the workplace conditions of young workers across Australia aged 15 to 24 years. On 1 May we sent letters to nearly 3,600 employers throughout metropolitan and regional Australia informing those employers about the campaign. These employers employ young workers. We are about to inform a sample selection of 360 employers that they have been selected for audit. We will request their records which we will then audit.

Senator MARSHALL—Is your campaign called 'Young workers have rights'?

Mr Bongi—It is called 'Young workers'. I am not sure whether it is 'Young workers have rights'.

Senator MARSHALL—Did that campaign start on 26 April 2007?

Mr Bongi—I think it started on 1 May. There was a press release on 26 April.

Senator MARSHALL—So since 1 May you have had a targeted compliance campaign in relation to young workers?

Mr Bongi—That is correct.

Senator MARSHALL—How far does that go? Is it across the country?

Mr Bongi—That is across the country.

Senator MARSHALL—In regional areas as well as in metropolitan areas?

Mr Bongi—Absolutely, yes.

Senator MARSHALL—Do you already have a fact sheet available which relates to the rights and obligations of young workers?

Senator Abetz—What do you mean by ‘already’? Do you mean in relation to the legislation?

Senator MARSHALL—There is one there now.

Mr Bongi—There is a fact sheet.

Senator Abetz—In relation to existing legislation.

Senator MARSHALL—There was nothing sinister in my question.

Senator Abetz—No, it was just the word ‘already’ which suggested that it may be pre-empting something.

Mr Wilson—I have a copy of the fact sheet here and some other material. If you wish, I can table that.

Senator MARSHALL—Thank you. There is currently a focused campaign in relation to young workers?

Mr Wilson—That is correct.

Senator MARSHALL—When will you change your name to the Workplace Ombudsman?

CHAIR—That will depend on the outcome of the legislation.

Senator Abetz—It is going to be up to the legislation.

Senator MARSHALL—What is the office going to be called? It is the Workplace Ombudsman. I was not talking about you particularly. Is the name change a requirement of the legislation?

Mr Wilson—There are two functions within the bill. One is to create the statutory position of a workplace ombudsman and the other is to create the Office of the Workplace Ombudsman.

Senator MARSHALL—So it is both.

Senator McEWEN—There is both sides. There is soon to be the Workplace Ombudsman but it is subject to the legislation being passed.

Senator MARSHALL—You are being more careful with me.

CHAIR—Obviously, if the legislation was not passed it would not happen, would it? To say that it is ‘soon to be’ is expecting that it will happen.

Senator McEWEN—I think it is pre-empting a decision of parliament, clearly?

Senator MARSHALL—We can have that expectation in our discussions today, can we not?

CHAIR—Next question.

Mr Wilson—Maybe I can elaborate a little about that.

CHAIR—Please do.

Mr Wilson—One of the issues which we are very concerned about, and which you are obviously aware of, is an advertising campaign directing people to a telephone number in respect of both the Workplace Authority and the Workplace Ombudsman. We are keen to make sure that people understand that there is a connection between the Office of Workplace Services and the possible soon to be Workplace Ombudsman.

Senator MARSHALL—Has your office conducted any market research in relation to community perceptions of your brand name or functions?

Mr Wilson—No, we have not.

Senator MARSHALL—Are you aware of any polling or market research that has been conducted in relation to community perceptions of your brand name or functions?

Mr Wilson—No, we are not.

Senator Abetz—They might remember certain comments by your former leader.

Senator MARSHALL—Who might?

Senator Abetz—You might.

CHAIR—Do not be provoked. Just go on with the questions.

Senator Abetz—The ‘snivelling little liars’ comment.

CHAIR—We will not go into that, if you do not mind, Minister. I would like Senator Marshall to proceed with the questions.

Senator MARSHALL—I want to make sure I can ask these questions. They might go a bit close to the policy issue. What else will change as a result of the branding change apart from the title and your position?

Senator Abetz—That is a huge question which is really best left to the committee’s inquiry into the legislation. If Mr Wilson does not cover absolutely everything he may well be accused of not having covered the field et cetera. I think it is a very wide question.

CHAIR—I think it is unwise to go into the broad and more technical detail of the bill here. We will leave it until the inquiry.

Senator MARSHALL—The question was about outlining the changes to the branding of the Office of Workplace Services to the Workplace Ombudsman as announced. We have already asked questions about that. I am just asking whether there is any more information in that respect.

Senator Abetz—Any more information which begs the question that somebody could be answering for an hour in relation to all the possible changes.

Senator MARSHALL—Are you suggesting I cannot ask questions because they may be too broad or people might have to take too long to answer them? Is that now the test that you are applying to estimates?

Senator Abetz—No, what I am indicating to you is that this is going to be the matter of a separate inquiry as determined by the Senate and—

Senator MARSHALL—I do not recall the terms of reference discussing the branding.

CHAIR—The terms of reference are the bill. As I said, I think it is unwise to go into too much detailed discussion of this at present.

Senator Abetz—The other thing is, if somebody asks a very broad question, like Senator Marshall did, it is appropriate to ask them to either confine their question or pass to the next question.

Senator MARSHALL—When were you first advised of a proposal to change the name of the office and the branding of the office?

Mr Wilson—As I have indicated in an earlier answer, I think that was on or around 1 May.

Senator MARSHALL—Again, was that by the minister's office?

Mr Wilson—Yes, it was.

Senator MARSHALL—Have there been any discussions about the branding with anyone other than the minister's office?

Senator Abetz—What do you mean by that question—have they spoken about it over a cup of coffee in the office or down at the pub with—

Senator MARSHALL—At Aussie's.

Senator Abetz—Let us get some focus on to the questions.

Senator MARSHALL—If a meeting took place at Aussie's which I need to know about, you can certainly tell me about that, Mr Wilson. But my question stands. If you have difficulty answering it, you can tell me.

Mr Wilson—As part of the additional estimates process there was a funding allocation made to the Office of Workplace Services for a public awareness campaign relating to OWS and the Office of the Employment Advocate. There was work associated with that proposal. It would be incorrect of me to say that it was directly related to branding, but at the same time it would be I suppose incorrect of me to say that there was no part of it which related to branding. But then I need to emphasise that that project did not go very far and by early May had finished.

Senator MARSHALL—And who were those discussions held with?

Mr Wilson—With regard to the public awareness campaign which had been proposed, first of all the funding was granted through the additional estimates process and then the project was given to the OWS to manage. We worked very closely in conjunction with both the Office of the Employment Advocate and also the Department of Employment and Workplace

Relations. We did not get so far as conducting research or preparing advertising material, but certainly in the context of developing a development research proposal I believe part of the brief and expectation was that they would advise us about the community's understanding of and awareness of our organisation.

Senator MARSHALL—So who was conducting that research proposal to give you that advice?

Mr Wilson—The work that we undertook on the matter was that during March and early April we defined a project brief for developmental research and then we conducted a closed tender and appointed a consultant, but the consultant did not get so far as to conduct research as a result of that brief.

Senator MARSHALL—Again, who were these discussions being held with?

Mr Wilson—The parties that I mentioned before—the Office of Workplace Services, the Office of the Employment Advocate and DEWR.

Senator MARSHALL—Do you have any idea at this stage how long it will take to rebrand your documentation, your website et cetera?

Mr Wilson—No, we have not turned our mind to that yet.

Senator MARSHALL—Has your office done any work on costing the office of the Workplace Ombudsman?

Mr Wilson—As part of the bill that was tabled in the lower house this evening there was a financial impact statement which discloses a necessity for various appropriation and the amounts which have been indicated against the Workplace Ombudsman are the costings which we have conducted.

Senator MARSHALL—So how much are they? Unfortunately we have been here.

Mr Wilson—Sure.

Senator Abetz—\$64.1 million over four years. Is that it?

Mr Wilson—That is correct; \$64.1 million over four years.

Senator MARSHALL—What does that mean in additional funding?

Mr Wilson—An additional \$64.1 million.

Senator MARSHALL—So an additional \$64.1 million to your current budget, which is what?

Mr Wilson—If I can ask Ms Valentine to answer that.

Ms Valentine—I have not got a total across the four years for the current budget. It will just take me a few seconds to get that.

Senator MARSHALL—Sure.

Mr Wilson—While Ms Valentine is collecting her thoughts, I should just indicate that in connection with that \$64.1 million there is also a very minor transfer of functions from DEWR to the forthcoming Workplace Ombudsman which is in respect of what is called the framework compliance branch. There is a small number of people—in the order of about five

or so—who have been reassigned to the OWS and the funding which relates to them is in the course of being determined but obviously will be provided to us. That is in addition to that amount that we indicated previously.

Senator MARSHALL—And what function do they carry out?

Mr Wilson—These are people who are appointed as workplace inspectors. They have been working as part of the function called framework compliance, and that examines, as I understand it, allegations of breaches about the Workplace Relations Act in matters such as rights of entry, disputes or payments of disputation and things of that nature. Actually, Mr Bongi has just reminded me that there are actually seven categories of work which the people have worked in and they are the court and commission orders, industrial action, rights of entry, transmission of business, equal remuneration, freedom of association and negotiation of the agreement-making process.

Senator MARSHALL—Is the intention that they will be kept on as a discrete group or absorbed into your larger function?

Mr Wilson—I do not think we have made that determination to finality, but certainly our inclination would be that they would be specialist investigators within the wider group. To make some sense of that, we already have a number of people around the country who work on what we call complex case matters. It could be expected that people who have recently transferred would join in working with the other complex case inspectors as well.

Senator MARSHALL—I think you told me that the \$64.1 million reflected your discussions about the monetary needs of the new organisation. Was that right?

Mr Wilson—That is correct, yes.

Senator MARSHALL—So on that basis, can you tell me what sort of staffing increase there is going to be across what functions?

Mr Wilson—Obviously at the moment it is very hard to know the amount of work which is coming to us, but we have worked up a model of work which indicates to us that the kind of work which we expect to be coming and the kind of funding which has ultimately been agreed would allow us to appoint an extra 79 staff, 78 of whom would be in field related roles. We expect that of the 78 probably 64 would be workplace inspectors, four would be legal staff and 10 would be allocated to a client management contact centre.

Senator MARSHALL—And what about the extra one?

Mr Wilson—That would be a person I believe for our communications team.

Senator MARSHALL—What sort of spread do you expect across state and regional for that?

Mr Wilson—Senator, that is yet to be determined but certainly our expectation would be that the people would be spread according to need throughout most of the metropolitan areas. We have not done a full analysis. It may be that some of them are appointed to regional areas, but I imagine that most of them would be based within the metropolitan centres.

Senator MARSHALL—Thank you. Ms Valentine.

Ms Valentine—Yes, I have it, Senator Marshall. The current funding across the four years from 2007-08 is \$190.14 million. Adding to that the \$64.1 million gives you a total of \$254.24 million over four years.

Senator MARSHALL—All right. Starting from when?

Ms Valentine—2007-08.

Senator MARSHALL—I know. I am coming back to them. It is all right. I want to ask you some questions about EAP—not many. Has your office ever been called in to investigate the content of EAP seminars?

Mr Wilson—Not that I am aware of.

Senator MARSHALL—Are there any current or former EAP providers who have been referred to you for investigation?

Mr Wilson—I would need to take that one on notice. I do not know of any, but that does not mean there are not any.

Senator MARSHALL—If you could, thank you.

Mr Wilson—Can I just maybe clarify the question? You are asking whether we have investigated any of the providers themselves; is that right?

Senator MARSHALL—Yes, while they are providers.

Mr Wilson—Sure.

CHAIR—Is that all on that particular issue?

Senator MARSHALL—Yes, that is all I have on EAP.

CHAIR—Senator Barnett has a couple of questions.

Senator BARNETT—I just wanted to ask you about your funds recouped from employers in action that you have taken. You have had some success in the past. I was wondering if you could provide an update in terms of the total amount of funds recouped.

Senator Abetz—I think that is unfair to refer to it as ‘some success’. I think they have had some substantial success.

Senator BARNETT—I may have underestimated the level of success, but I am sure that Mr Wilson can clarify that.

Mr Bonggi—If I may take that just briefly, this financial year we have recovered some \$10.2 million up to the end of April and since the office first started on 27 March last year we have recovered \$11.4 million for workers and we have returned that money to workers.

Senator BARNETT—So what has happened to that money?

Mr Bonggi—It has gone back to the workers.

Senator BARNETT—Do you know how many workers or employees? Can you estimate how many have received those moneys?

Mr Bonggi—7,400 employees.

Senator BARNETT—Sorry, 7,000—

Mr Bongi—7,400 employees, or thereabouts.

Senator Abetz—Has somebody done the maths on that? What is the average? Do not bother if you need—

Mr Wilson—I know the average. The average, for what it is worth, is about \$1,500, but I think we need to stress that there is really no such thing as an average.

Senator Abetz—Of course not.

Mr Wilson—It varies from very small to substantial enforcement.

Senator Abetz—\$1,500 per worker is a sizeable sum.

Senator BARNETT—So those efforts are continuing and you would expect that those figures would remain similar in terms of monthly recouping for employees?

Mr Bongi—I think over time they have been steadily increasing.

Senator BARNETT—It has been steadily increasing? Is there any reason for that, or can you advise the committee why that would be?

Mr Bongi—Our numbers of staff when we first started were small. Obviously, we had to get the office up. Our critical mass was achieved around October-November last year and, obviously, as our people get more and more experienced we get better at doing the job.

Senator BARNETT—But have you received more complaints as a result of which there have been more investigations?

Mr Bongi—I think our rate of claims coming in has also been increasing. So far this financial year, up again to the end of April, we have received 12,112 claims.

Senator BARNETT—12,112 claims.

Senator Abetz—So people might suggest that the public has become acquainted with this new and important mechanism in protecting workers' rights, and they are availing themselves of it, and the success is permeating throughout the community.

Senator BARNETT—Sounds like a fair assessment.

CHAIR—Senator Birmingham has some questions.

Senator BIRMINGHAM—I have read numerous media reports over the last few days that WorkDirections Australia Pty Ltd, a subsidiary of Your Employment Solutions, is currently under investigation by the Workplace Ombudsman, or the Office of Workplace Services. I do not obviously wish to go into the specifics of that case but, of course, it does raise a number of questions that I would like to clarify regarding common law agreements and award conditions if I could, please. Firstly, where a company buys another corporate entity, is it the case that that company assumes liabilities for employee entitlements?

Mr Johns—Often in these circumstances it would very much depend on what the transaction documents between the purchaser and the vendor indicate, and sometimes it will be the case that the purchaser assumes liabilities and sometimes they do not.

Senator BIRMINGHAM—Where a liability is incurred, does that extend to both? I guess the nature of that liability is prepurchase as well as post purchase then if the liability has been incurred?

Mr Johns—I do not understand the question.

Senator BIRMINGHAM—If there were dates to the period prior to the purchase, then I guess the nature of the liability itself would relate to the period prior to the company being purchased?

Mr Johns—Yes, if the purchaser of the company decided that it was going to assume the leave liabilities of the vendor, it would ordinarily go back to the commencement date of the employee's employment. There is usually a recognition of continuity of service in those circumstances.

Senator BIRMINGHAM—Does a new employer who has purchased a business have any legal obligation to ensure that employment conditions in that business meet the award conditions?

Mr Johns—All employers should ensure that their terms and conditions of employment meet award conditions. It is a legal obligation.

Senator BIRMINGHAM—Indeed. A new owner should as well. Does the determination of the Australian Fair Pay Commission, when made at all, change a person's classification under an award?

Mr Johns—It would not ordinarily.

Senator BIRMINGHAM—Thank you. Can an employer and an employee whose employment is covered by an award negotiate to remove protected conditions and allowances that are available under that award?

Mr Johns—Yes, they can enter into an Australian workplace agreement.

Senator BIRMINGHAM—And can two parties negotiate a common law agreement and, say, trade away conditions such as overtime, penalty rates, leave loading, penalty rates on public holidays or meal allowances?

Mr Johns—It is not an uncommon commercial practice for some employers to do that. There is a principle under the case called *Ecob and Poletti* where there can be some offsetting of award entitlements. It is not a practice that would be recommended.

Senator BIRMINGHAM—Do they still offer compensation in return?

Mr Johns—In those offsetting agreements, yes, there would be compensation in return.

Senator BIRMINGHAM—Okay. What obligation exists on an employer to ensure that an employee is receiving the various penalty rates and allowances to which they are entitled under their award?

Mr Johns—The Workplace Relations Act requires it.

Senator BIRMINGHAM—What penalties exist if anywhere an employer does not provide or compensate for the minimum entitlements under that award?

Mr Johns—If the employer was not paying the employee in accordance with their obligations under the Workplace Relations Act, then there are penalties provided for within the Workplace Relations Act and corporations can face penalties for individual breaches of up to \$33,000.

Senator BIRMINGHAM—Per breach?

Mr Johns—Per breach.

Senator BIRMINGHAM—Can an employer rely on the defence that they were acting on legal advice?

Mr Johns—No.

Senator BIRMINGHAM—Indeed. Thank you very much, Mr Johns.

CHAIR—Back to you, Senator Marshall.

Senator MARSHALL—The 12,101 claims—sorry, repayments—over how many employers was that?

Mr Bongzi—Sorry, that was 12,112 returns.

Senator MARSHALL—Yes, 12,101; sorry, not claims—

Senator Abetz—Not 101; it is 112. There are another 11 for you.

Senator MARSHALL—I left 11 out, all right.

Mr Bongzi—That number were claims received from claimants—workers who were complaining about a matter.

Senator MARSHALL—Sorry, I have those figures wrong. There were 7,400 people who had—how would we describe it—make-up pay, back pay or compensation.

Senator Abetz—Arrears.

Senator MARSHALL—Arrears, yes. Over how many employers?

Mr Bongzi—We do not have that figure readily available and that is because more than one employee may lodge a claim against the one employer.

Senator MARSHALL—What I am trying to get a picture of is this: you get a complaint so you do an investigation, or sometimes do you do investigations without a complaint? Is it always done as a result of a complaint?

Mr Bongzi—Sometimes we are made aware of workplaces and we may do an investigation based on information provided to us. We do not have a claim in those circumstances.

Senator MARSHALL—I am trying to get a feel for and so have an understanding of what is happening here. Out of the investigations that you make, what sort of percentage of them result in arrears being paid? Is it half, 90 per cent or 100 per cent?

Mr Bongzi—This will not provide a full answer, but it may provide some information that may help. In the same period when we recovered for 7,400 people, we finalised about 10,000 cases. About three-quarters of the claims that we investigate result in some recovery for the workers, plus or minus a certain number.

Senator MARSHALL—That gives me a feel for it.

Mr Bongi—That is pretty rough, I must qualify.

Senator MARSHALL—In terms of prosecutions, the evidence we took last time was that in the first instance, after investigating the claim, you give the employer the opportunity to make the correction. On how many instances did you have to proceed to prosecution to achieve a remedy?

Mr Johns—We have concluded 16 litigations to achieve a remedy. Out of those 16 litigations, 15 have resulted in underpayments being awarded in favour of the employees and penalties being awarded against the employer. We presently have 26 prosecutions on foot.

Senator Abetz—Does that mean you have lost one?

Mr Johns—We did. It was not an underpayment matter that we lost.

Senator MARSHALL—I assumed they were all underpayment matters. What are the categories of the prosecutions? My question was really about that scope of arrears payments.

Mr Johns—Of the 15 where we had success when we prosecuted the matters, they are all underpayment matters.

Senator MARSHALL—You had better stick to what you are good at, then.

Mr Johns—Yes. Of the 26 that are presently before the court, the vast majority of them are underpayment matters. Seven of them are duress matters.

Mr Wilson—Senator, maybe I can give you some greater insights into the process that we operate according to. In the course of a year, we will look at a couple of hundred matters through what we call our case conferencing system, which is effectively those matters that require some greater look either because they are complex cases or because there is some real issue of noncompliance that is more than a simple mistake. In the course of a year we may look at a couple of hundred or more. Obviously some of those drop out along the way, either because the evidence is not there or because of some other issue. The employer may be completely correct. Presently there are about 99 matters which either are in court or are being considered at some stage leading up to court.

The process that we operate is that, the investigation having been completed, the inspector makes a recommendation that there should be some further action taken. It is then considered through our legal processes to make sure that, in fact, the evidence is there. Then obviously it is moved forward through to the court. The numbers that Mr Johns referred to, obviously, are just the very tip of the triangle. But at any given time there is a much larger number being considered through the compliance and litigation process.

Senator Abetz—We previously heard that, because of the evidence police give as a result of information received, certain investigations took place. In relation to the information received, how much was received through the helpline or the hotline—that is, how many individuals rang the helpline?

Mr Wilson—That is a little bit difficult to answer.

Senator MARSHALL—Is this the minister's question time? What is going on here? Are you practising for after next year, Minister?

Senator Abetz—I see the arrogance is already setting in to the opposition. That is a very bad hallmark.

CHAIR—Order! The minister has asked a question, Mr Wilson.

Senator Abetz—You ought to know me. I ask probing questions that are of general interest, to me at least.

Mr Wilson—At the front of the process that I just described, there is obviously the process during which the worker and others go through the view about whether or not they should approach us. The first step that many people take is to approach the Workplace Relations infoline and, depending on the issues that may be discussed between them and the operator, the operator will often provide a claims kit to the person who is calling. In the period since 27 March 2006, we have distributed more than 26,000 claims kits. Obviously a proportion of those will not come back to us in the 14,000 or so matters which Mr Bongi referred to. That gives you some sort of insight.

Senator Abetz—That is still a high figure.

Senator MARSHALL—So of those 12,112 complaints that you have now, will that result in 12,112 investigations?

Mr Bongi—We investigate every matter that comes to us. The answer is, yes, they will all be investigated.

Senator MARSHALL—And are they all separate complaints?

Mr Bongi—They are all separate complaints.

Senator MARSHALL—Explain to me how you are going to do that.

Mr Wilson—We are doing that right now. We have staff in our 26 offices. They have a caseload that is allocated to them. The process which we run through in the first instance is to provide the employees with some information about their own circumstances. We then move through a process of looking in some detail at what they put back to us. Depending on the level of the information and whether or not the claim is still on foot, we may move to the next phase of the investigation, which is to issue what we call a notice to produce on the employer which demands certain documents from them, usually of the nature of time and wages and employment contract issues. You would appreciate, obviously, that not all of the 12,000 are absolutely forensic investigations requiring statements from all sides, but nonetheless in all of them there is contact from an inspector to both the employer and the employee.

Senator MARSHALL—I think you have said this: how many investigations were there that resulted in the 7,400 arrears payments? I am just trying to get a picture of the workload. It is an extraordinarily high level of investigations and I think you indicated before that it is not dropping off; it is increasing. How does that compare to your existing workload and existing investigations?

Mr Bongi—To answer the first part of your question, since 27 March we finalised just over 10,000 claims and we recovered 7,400 or so.

Senator MARSHALL—But surely some of the complaints resulted in multiple arrears out of the one complaint. Surely they are not all individuals.

Mr Bongi—They are all individuals.

Senator MARSHALL—Everyone is an individual?

Mr Bongi—Every claim is an individual.

Senator MARSHALL—But some claims must have been for a workplace where a workforce of five, 50 or 100 people have been underpaid, surely?

Mr Bongi—No, they do not equate to every employer—

Senator MARSHALL—Well, you cannot claim every individual arrears as an investigation, can you?

Mr Bongi—We look at the records of each individual person. We have to look at their time and wages records. We have to do the calculations for each of the persons.

Senator MARSHALL—If that is the measurement you use, that is okay. I just had a different picture. When you say there are 12,112 complaints, you told me they were all individual complaints. I guess in your definition they may well be, but there are multiple people in individual workplaces, are there?

Mr Bongi—In some workplaces there might only be the one claimant but for another workforce there may be four claimants, if that assists.

Senator MARSHALL—Okay. If you get an individual complaint in a workplace but only one person has complained, do you look at time and wages records across the workplace, or would you deal with only the person who has complained?

Mr Bongi—We look at that record and, depending on what we find in relation to that one record, we may then make a decision to look more broadly or to look just at one record. If it is a systemic—systemic is probably not the right word, but if there are indications that the problem is more widespread then we can look more widely—

Senator MARSHALL—It is a matter of the way things are being calculated.

Mr Bongi—That is correct.

Senator MARSHALL—You would suspect it is being calculated that way across the board, would you not?

Mr Bongi—That is right.

Senator MARSHALL—So you would in those circumstances, then, look at everybody in the workplace.

Senator Abetz—Potentially.

Mr Bongi—We have looked in some organisations at thousands of employees.

Senator MARSHALL—Okay. Of the roughly 10,000 investigations that you have done until now, because you count every individual outcome as an investigation, that is not included in the 12,000 complaints. This is an additional 12,000, is it?

Mr Bongi—Could I just clarify one piece of information. From 1 July last year to 30 April this year we have received 12,000 claims. Of those, we have finalised some 9,000 claims.

Senator MARSHALL—I see.

Mr Bonggi—However, for the period from 27 March to the end of April—27 March 2006 is when the office was created—we have received just over 14,000 claims and we have finalised 10,000.

Senator MARSHALL—Sorry, I got the impression from your evidence earlier, and I am sure it is my fault, that there were 12,112 investigations waiting to be done.

Mr Bonggi—No.

Senator MARSHALL—Well, that is clarified.

Mr Bonggi—That is how many were received.

Senator MARSHALL—I do have some questions about one case that has been around for a while now—in fact, I think it may be over—the acquisition by Godfrey Hirst of Feltex Carpets. Where is that investigation now? I think we have spoken about this at previous estimates. Can you just update us on that?

Mr Loizides—The investigatory phase into Feltex has been concluded.

Senator MARSHALL—I am sorry?

Mr Loizides—We have concluded the investigatory phase of that investigation. We have collected an incredible amount of evidence. We are in the process of finalising that evidence to make a definitive conclusion or outcome.

Senator MARSHALL—When is that likely to happen? So your investigation is complete?

Mr Loizides—Correct.

Senator MARSHALL—But the investigation in one sense is not completed; it has not been finalised yet?

Mr Loizides—Correct, in the sense that all the evidence has been collated. We are seeking some advice in regard to that evidence. That is the last step of the process.

Mr Wilson—Senator, my recollection on the matter—and I need to say that I do not have a brief on the matter—is that what Mr Loizides said is correct. We concluded that some months ago and we wrote to the employer or their representatives. There is a liquidator or an administrator somewhere in there. We also wrote to the TCFUA. I could be wrong on both of those things, but that is certainly my recollection.

Senator MARSHALL—So you think it is completed and finalised?

Mr Wilson—Certainly I know it is complete, but what I just indicated is my recollection. We will check that when the *Hansard* comes through, and if there is any change then obviously we will let you know.

Senator MARSHALL—All right. So what happened?

Mr Wilson—That escapes me at this moment. From recollection, the matter involved allegations of, I believe, duress in the course of a transmission of business. I believe that our inspectors found that those allegations were not sustained.

Senator MARSHALL—It is as simple as that. Is the whole investigation now over? Is it a closed book?

Mr Loizides—The matters in regard to the duress and the freedom of association have been investigated to finality. There is no further action that the Office of Workplace Services is anticipating in regard to that. We have communicated with the union in regards to some further evidence and we are just seeking, as I said earlier, some advice in regard to one of the agreements to finalise the whole investigation.

Senator MARSHALL—Have all the parties now been notified that there will not be proceedings commencing?

Mr Loizides—Not to my knowledge—not all parties in regard to that final determination. As I said, we are still seeking some advice in regard to a greenfields matter. Once that is done, we will have concluded that investigation.

Senator MARSHALL—The other case that I would like an update on is the Tristar case. Can someone tell me where that is at?

Mr Johns—The matter has been set down for a hearing in the Federal Court. It will commence on 16 July for five days and then for a further three days from 20 August.

Senator MARSHALL—Did the Office of Workplace Services discuss the commencement of proceedings with the minister's office?

Mr Wilson—I believe that we informed them before we took the proceedings, but that was courtesy information to the minister's office.

Senator MARSHALL—So that would have been the only communication—just notification?

Mr Wilson—I believe so.

Senator MARSHALL—So it has actually been set down. I suppose I should not ask about any details, then, should I?

Senator Abetz—It would be very wise if you did not.

Senator MARSHALL—All right. I just wanted to ask if you could give me an update on your ACTU restaurant investigation campaign. Has that been completed now or is that still underway?

Senator Abetz—The ACT.

Senator MARSHALL—The ACT—the Australian Capital Territory. You were doing a whole campaign.

Mr Loizides—The auditing campaign has been completed—that is, the number of restaurants that we wish to audit. However, the outcomes of that auditing process have not been concluded at this time. We still have some cases that we are considering for litigation as an outcome of that audit. We have recovered over half a million dollars now for 730 employees. As part of the auditing phase we have audited 181 employers and issued 160 breach notices. The underpayments are important. We did uncover a range of underpayments from \$14 up to \$71,000.

Senator MARSHALL—How many individual audits were done?

Mr Loizides—We received records from 181 employers.

Senator MARSHALL—You received from them?

Mr Loizides—Correct.

Senator MARSHALL—How many did you do?

Mr Loizides—They were the records that we audited.

Senator MARSHALL—Can you explain to me how the audit works. Did you write to them and ask them to provide you with information?

Mr Loizides—We contacted approximately 440 restaurants with regard to the conduct of the audit. During that auditing phase we selected 181. We found that they were in breach in relation to pay slips, leave records, wage allowances and penalties et cetera.

Senator MARSHALL—How many breach notices were issued?

Mr Loizides—116.

Senator MARSHALL—The 440, is that all the restaurants in Canberra?

Mr Loizides—I cannot honestly say.

Senator MARSHALL—Was it the intention to do the whole lot?

Senator Abetz—It sounds like a big number to me.

Senator MARSHALL—You have not got around to the 440 of them have you, Minister?

Senator Abetz—No, I am very tame with my eating.

Mr Wilson—We may have misled you. We contacted 300 establishments out of what we believe is a total of 440 and then we audited 181 of those.

Senator MARSHALL—Is this a campaign that is going to be extended nationally?

Mr Bonggi—The campaign has been extended nationally. It started on 24 November last year. As a consequence of that national campaign we have contacted 2,391 employers and have completed 156 audits so far.

Senator MARSHALL—How were the employers selected?

Mr Bonggi—Selected for audit?

Senator MARSHALL—Yes.

Mr Bonggi—Randomly.

Senator MARSHALL—And across—

Mr Bonggi—Across regions—metropolitan et cetera—types of restaurants—

Senator MARSHALL—What is the result of your audits so far?

Mr Bonggi—Out of the national audit we have recovered \$170,000. I do not have here any further details on that.

Senator MARSHALL—Do you know how many breaches there were?

Mr Bonggi—I do not have that information here.

Senator MARSHALL—If you could find out, I would appreciate that.

Mr Loizides—Can I clarify a mistake I made earlier?

Senator MARSHALL—Of course—in fact, I insist that you do.

Mr Loizides—We received records from 181 employers and we actually only breached 116 of those employers with regard to those provisions.

Senator MARSHALL—I think Mr Wilson actually corrected that on your behalf anyway. That is all okay.

Senator McEWEN—Can I just ask you to expand on how many of those breaches were in relation to employees employed under 457 visa arrangements?

Mr Wilson—I am not aware that we have got that information directly here.

Senator Abetz—Would you know whether they were 457 visa holders?

Mr Wilson—Yes, we would know whether they were 457 visa holders, but we do not have that information directly here.

Senator McEWEN—With regard to your national campaign, would you know if the employers that you have so far targeted for audit are users of 457 visa holders? Would you be able to tell us that as well?

Mr Wilson—Again, we do not have that information with us but we would have to find out. I must admit though in relation to the wider national audit it may be a very large amount of work. There are 2,391 employers involved in that.

Senator McEWEN—Okay. Is one of the criteria used to choose employers whether or not they are using 457 visa holders?

Mr Wilson—I am not aware that that was the case.

Mr Bongi—No, that was not one of the criteria.

Senator McEWEN—Of the successful prosecutions of breaches in the national campaign, can you tell me how many of those were employees employed under 457 visa arrangements?

Mr Wilson—Not directly this evening. We would need to check.

Senator McEWEN—Okay. I would appreciate that.

Senator MARSHALL—Work Choices legislation provided a 12-month exemption from prosecution of employers for failing to meet the record-keeping requirements of the legislation. That exemption should have now passed. Can you tell me how many complaints your office has received about improper record keeping by employers?

Mr Wilson—I am not aware that we have got that information directly, but we would concur with your understanding. We would need to check on that.

Senator MARSHALL—All right. Do you know if you have got any investigations underway regarding record-keeping requirements?

Mr Loizides—Yes, we do.

Senator MARSHALL—How many?

Mr Loizides—I cannot answer that question specifically. They vary from minor cases to very broad cases with multiple employees.

Senator MARSHALL—Are we talking about a handful or dozens or hundreds?

Mr Loizides—I cannot answer that, I am sorry.

Mr Wilson—Maybe I can add to the answer. In our standard auditing program one of the things which we do look at is that employers in fact have the proper time and wages records, and we were doing that both prior to the expiry of the moratorium in March of this year and also since. So certainly that is something which we look at. Mr Loizides mentioned that there are a number of investigations where failure to keep time and wages records is part of a wider sort of issue which may be looked at. We do not have information directly here this evening about exactly how many of the complex cases or the case conferencing matters which we are considering for litigation in terms of which of those actually deal with time and wages records, but we could possibly check and let you know.

Senator MARSHALL—If you could. Have there been any fines applied for employers for incorrect record keeping that you are aware of?

Mr Wilson—As penalty infringement notices?

Senator MARSHALL—Yes.

Mr Loizides—No. There have been no infringement notices issued.

Senator MARSHALL—Have there been any prosecutions initiated?

Mr Johns—No.

Senator MARSHALL—I understand you are receiving some funding for 457 visas. Can you tell me how much funding has been allocated to the OWS for this purpose?

Mr Wilson—The 2007-08 portfolio budget statements allocate additional funding of \$11.1 million over four years for investigations in relation to subclass 457 visa workers. Those investigations will include investigations for breaches under the Workplace Relations Act and, subject to the passage of legislation yet to be introduced by the Minister for Immigration and Citizenship, possibly investigation of breaches of the minimum salary level.

Senator MARSHALL—Is the intention then that the AWS and its successor will be responsible for compliance, investigations and prosecutions?

Mr Wilson—You mentioned three things: investigation, compliance and prosecution. In respect of the first two of those matters, the answer is that there will be an expectation that we do that work in respect of constitutional corporations—those which are already within our jurisdiction. The position, I understand, is that we would not be responsible for the litigation of the breaches, or the penalty application, I suppose, in respect to the minimum salary level. Maybe I could ask Ms Pullen to add to that.

Ms Pullen—The MSL would be, as it currently is, a feature of the Migration jurisdiction. The OWS would be responsible only for investigating MSL. Compliance decisions and litigation would remain the responsibility of DIAC.

Senator MARSHALL—Okay. Are you going to have any targeted compliance campaigns?

Ms Pullen—For 457?

Senator MARSHALL—Yes.

Ms Pullen—No, that will be the responsibility of DIAC.

Senator MARSHALL—Will there be some liaison with OWS in relation to those compliance campaigns?

Ms Pullen—There is likely to be some liaison, but the responsibility for the design of any targeted campaign in order to be able to identify subclass 457 noncompliance and nominees, which is often the purpose of a targeted campaign, would be the responsibility of DIAC.

Senator MARSHALL—I am just wondering how that fits in with your compliance and investigation role.

Ms Pullen—It comes because of the separation of jurisdiction. The MSL is a matter under the Migration Act and so all government decisions in relation to compliance activity for the MSL—the minimum salary level—under the Migration Act will rest with DIAC. OWS will only conduct investigations.

Senator MARSHALL—Okay.

Mr Wilson—Perhaps if I can clarify as well that our core jurisdiction is investigation of the Workplace Relations Act. We would continue to carry that obligation in respect to all workplaces that we see and in respect of all workers.

Ms Pullen—That is correct, and I should have clarified. All matters relating to the Workplace Relations Act, including 457 visa workers who complain to us directly, we will investigate and undertake any compliance decisions or litigation decisions in relation to the Workplace Relations Act matters ourselves.

Senator MARSHALL—What about compliance requirements in regard to 542 visas—the training visas?

Ms Pullen—There is no discussion with DIAC in relation to any other subclass of visa at this point other than 457.

Senator MARSHALL—So at this stage you do not have a role with 452?

Ms Pullen—Except insofar as they relate to the Workplace Relations Act on the basis that we accept and investigate all complaints as they relate to the Workplace Relations Act.

Senator MARSHALL—All right. I have not been able to identify any additional funding for compliance activities associated with the Independent Contractors Act. Is there any funding being provided for compliance?

Mr Wilson—There is. From recollection it is in one of the earlier additional estimates statements.

Ms Valentine—It is in the 2006-07 budget process.

Senator MARSHALL—Could you just identify the page of that?

Ms Valentine—Certainly; page 271.

Senator MARSHALL—So how much is it?

Ms Valentine—It was 1.5 in 2006-07, 1.5 in 2007-08, 1.5 in 2008-09 and 1.6 in 2009-10.

Senator MARSHALL—Mr Wilson, can you describe to me how you are going to perform your compliance function for independent contractors?

Mr Wilson—The process which we will go through, I suppose, is fairly similar to the work which we undertake in respect of other matters. Having received the allegation that there has been a breach, we would investigate it. I do not have the Workplace Relations Act directly in front of me, but you may recall that there are some provisions relating to the investigation of sham contracting arrangements around, I think, section 900 or thereabouts of the Workplace Relations Act. They are the things which we test. Some of the ways that we have gone about looking at our capacity with that is that one of the decisions we took over the course of last year was to employ a number of complex case investigators. They are certainly not solely related to these independent contractors matters, but that would be part of their duties, along with everything else.

Senator MARSHALL—So are you going to have people whose specific function is to investigate and do compliance in this area?

Mr Wilson—Not people who would be only employed to do that function and nothing else. We would see it as being, I suppose, part of the obligation of any of our workplace inspectors and, in fact, that is one of our competencies—that we have now more than 200 inspectors in 26 locations. Obviously, we are not to know where a complaint may arise.

Senator MARSHALL—So all the inspectors would have a compliance role in terms of the Independent Contractors Act. Is that what you are telling me?

Mr Wilson—In some minimal way. Obviously, depending on the circumstance it may be unreasonable to ask a particular inspector to take the matter very far, but we would then supplant their skills, or their capability, with a more senior and more experienced investigator.

Senator MARSHALL—Do you plan to conduct any targeted compliance campaigns regarding independent contractors?

Mr Wilson—We have not considered that so far.

Senator MARSHALL—What about an education campaign?

Mr Wilson—Similarly, we have not considered that. I believe also from recollection that that may have been the responsibility of the department.

Senator Abetz—And, if you did, that would be added to the \$2 billion, no doubt.

Mr Wilson—Sorry?

Senator Abetz—It is interesting that the Labor Party continually asks about education campaigns and then they add it all up to the \$2 billion and then flog that to the electorate but they do not tell us which ones they would not run.

Senator MARSHALL—So how much are you spending on this education campaign, Mr Wilson?

Mr Wilson—As I said, we do not have a campaign as such.

Senator Abetz—So I cannot add it on to that.

Senator MARSHALL—Thank you for that intervention again.

Senator Abetz—That is okay. Any time.

Senator MARSHALL—Have you developed a test to determine if a worker is an independent contractor or an employee?

Mr Johns—We have some guidelines which are issued to inspectors to assist them in their work. There is no definitive definition of an independent contractor. The act itself refers to the common law test.

Senator MARSHALL—Who developed the guidelines?

Mr Johns—That was before my time.

Senator MARSHALL—What does ‘before my time’ mean? How long have you been with us, Mr Johns? I see you do not even have a typed name tag. You might have just started.

CHAIR—I think that is because it was spelt wrongly.

Mr Johns—Yes, it was spelt incorrectly.

CHAIR—And another one was made up.

Mr Johns—I have been in my present role as chief counsel for 11 weeks.

Senator MARSHALL—Do you know how long the guidelines have been used?

Mr Johns—I do not.

Mr Bonggi—Those guidelines are part of our inspector’s manual. I cannot recall when they were put together. I think, from memory, it was probably around September of last year, and what I do not know is whether that particular section relied on a previous version of the manual or not. Certainly from around about that time we have had that guideline. There is a series of questions based on what has come out from court cases and it provides some guidance to inspectors when faced with the situation.

Senator MARSHALL—Are you able to table those guidelines?

Mr Bonggi—We should be able to.

Senator MARSHALL—That will save you going through all the detail. I would appreciate that. I am done.

Mr Wilson—Maybe in respect of that last question about independent contractors I could table a fact sheet which is publicly available. That is in addition to what Mr Bonggi has offered which relates to independent contractors.

CHAIR—Yes, that would be very useful, thank you. The committee has agreed to table that.

Senator McEWEN—Forgive me if we have already asked these questions, but I was not here for a bit. The Office of Workplace Services was allocated \$12 million for compliance and educational activities in regional areas; is that right?

Mr Wilson—It was. I believe that was the additional estimates in February. That is correct.

Senator McEWEN—What compliance activities are planned under that funding?

Mr Wilson—If I recollect our evidence on the previous occasion, we were asked a question in a similar vein. This is purely from recollection, but my understanding is that I answered that on that occasion by saying that this was, in effect, supplanting the budget which had already been allocated in order that we could roll out the kind of network which we had been committed to at that point.

Senator McEWEN—Are their particular regional areas that are targeted?

Mr Wilson—We may need to double-check that figure.

Ms Valentine—During the 2006-07 additional estimates process OWS was allocated \$33.8 million over four years to reinforce the regional network of the Office of Workplace Services.

Mr Wilson—Senator, I take you to the evidence that we gave on 15 February 2007 at page 106. There is a question from Senator Marshall about an additional appropriation of \$17 million-odd which we took to be the regional areas activities.

Senator McEWEN—Is that \$17 million part of the \$33 million? The \$33 million over four years commenced when—1 July 2007 or 1 July 2006?

Ms Valentine—In 2006-07—the additional estimates process 2006-07, which was in February 2007. In addition to that was \$17.3 million in the form of an equity injection for property fitout which was also provided in the 2006-07 additional estimates process.

Senator McEWEN—So \$17.3 million was for the fitout of offices?

Ms Valentine—That is correct.

Senator McEWEN—In addition to the \$33 million which is for the program—

Ms Valentine—Yes, for the operational costs.

Senator McEWEN—And in this coming financial year \$12 million is allocated for compliance and educational activities. So that is operational costs; is that right?

Ms Valentine—I am not quite sure, Senator, where the \$12 million—

Senator McEWEN—Neither am I, but it is here.

Senator Abetz—If you have it, the department will have it.

Senator McEWEN—Yes.

Ms Valentine—I am not quite sure what the \$12 million is that you are referring to. Is there a page reference?

Senator McEWEN—No, unfortunately I have not got that. Mr Wilson, you were saying that you had responded to similar questions in February when Senator Marshall asked those questions. Perhaps you could give me an update on where we are with the compliance activities.

Senator Abetz—We will give Senator McEwen a reference for her question.

Mr Wilson—Maybe I will answer it this way: when the office was formed, one of the commitments made by the government was that there would be 26 offices throughout Australia, including the regional centres, and that we would have more than 200 inspectors. The various movements that have been made to the portfolio budget statements in the additional estimates since then have been largely in response to that objective, and we now have established those offices and we have established that level of inspectors. We are now at the critical mass that we undertook to get to and we achieved that just before Christmas.

The other appropriations that have come through have been in relation to the public awareness campaign or to the independent contractors—which we have talked about—or to the 457 visa workers or those that are now disclosed within the financial impact statement associated with the stronger safety net bill.

Senator McEWEN—Within those different areas of activity that you just outlined, are there any that you would call educational activities as opposed to compliance? What you just told me about was mainly compliance activities.

Mr Wilson—Sure. We mix our educational activities in with everything else but we do not run strict educational campaigns in the sense of seminars and things of that nature. What we do is to make sure that in the course of working with a particular workplace we have them understand exactly what compliance might be, so there is a bundle of activities in that respect that we say is an education role. There is then a bundle of other tasks that are done through our communications function which are ensuring that a wider batch of people understand what compliance might be. That ranges from the sort of fact sheets that we have tabled this evening through to participation in things such as youth weeks and various trade shows around the country, speaking at seminars and so on.

Senator McEWEN—As part of that educational campaign, when your officers come across organisations that are not constitutional corporations, what information do you give them about compliance? Do you refer them to state authorities and state legislation?

Mr Wilson—Yes, most certainly we do that. We have a fairly good relationship, I think, at the operational level with our state counterparts where there is information flowing backwards and forwards, and we will obviously refer clients to the state organisations if they are not part of the federal system. We also periodically have matters referred to us by the state organisations because they are not able to investigate because they are a constitutional corporation. It is also the case that we have what we call the stragglers. There might be a constitutional corporation with some sort of pre Work Choices liability as well as a post Work Choices liability. We work closely with the state departments to try to deal with those matters. The encouragement, I suppose, that I have given all of our inspectors is to make sure that we put the client first—more appropriately, the client is not mucked around and they do not have to go to two different departments.

Senator McEWEN—So if you got a worker, for instance, who worked for a community service organisation and came to you saying, ‘I think I’ve been underpaid,’ and clearly the community service organisation is a non-constitutional corporation, would you take on their issue or do you refer them to the state jurisdiction?

Mr Wilson—At the risk of getting into a debate, I am not sure that it is absolutely clear that they are or are not part of our jurisdiction, as you would well know. What we do is try to assist them with the information that is needed for them to resolve their claim. With some community groups or some local government organisations it would be quite clear that they are party to the federal system and we would assist them. In other instances it would be not clear or equally clear that they responded to the state system, in which case we would point them in that direction.

Senator McEWEN—I know you probably do not keep statistics on it, but do you have any sense of how many of the queries you get from people are from organisations whose status is either a non-constitutional corporation or they are unclear of the status of their employer organisations?

Mr Wilson—I do not think we keep data to that sort of level, unfortunately. When we receive matters there are a bundle of matters which we refer to as ‘not sustained’, and that is a whole range of things associated with the fact that there is not a jurisdiction for us. It may be as simple as there is not even an employment relationship or it may be the sorts of things which you are referring to in that it is part of the state system. I suppose there are other variables in it as well—I cannot think of them right now—but I do not think we have sufficient data to be able to say that there is this number of people who have approached us but they are in fact under the state system.

Senator McEWEN—I guess I am just trying to get a sense of whether it is a burgeoning issue. Given that the profile of your organisation, or the Office of Workplace Services or Workplace Ombudsman or whatever it is, is expanding and you are going out into the regional areas and you have 200 inspectors in 26 offices and 600 more staff, you are going to get more business. So is the issue of whether or not an organisation is a constitutional corporation going to become a bigger factor?

Mr Wilson—I understand that question, Senator.

Senator McEWEN—Will we have litigation coming out of our ears on this issue?

Mr Wilson—I am not certain that we have had many, I suppose, contests in the course of investigating. I do not think we have had many people say to us, ‘You have no jurisdiction to even come here.’ I could be corrected on that.

Mr Loizides—And in fact we do deal with non-constitutional corporations in Victoria, for example. There are matters where, for example, they may fall under our jurisdiction being a constitutional corporation. However, matters such as long service leave we would refer back. It is actually both jurisdictions working together to try to assist in the recovery of those arrears for that particular person.

Senator McEWEN—All right. Thank you.

Senator MARSHALL—Do you keep records of complaints by age?

Mr Bongi—Yes, we do, if you mean the age of the claimant.

Senator MARSHALL—Yes, sorry.

Mr Bongi—Our data does not go right back. It is a field that has been kept relatively recently.

Senator MARSHALL—So would you be able to tell me how many complaints are made by people under 21 and people under 18?

Mr Bongi—I am not sure whether we break it up by categories, but I can certainly have a look at that. If it is by a youth flag, it might be 24 and under.

Senator MARSHALL—All right. Can you find out what your data will be able to tell us? If you can break it up by each age year that would be terrific, but if it is in groups let me know. If you could break up the number of complaints attached to each of those age groups, I would appreciate that.

Mr Bongi—Sorry, Senator, what was that last part?

Senator MARSHALL—Could you indicate how many claims for each of those age groups you have received, back to when you have collected the data?

Mr Bongi—Sure.

Senator MARSHALL—Since the establishment of OWS, can you break down on a yearly basis how many underpayment recoveries have been made on behalf of child workers under 18 years, junior workers under 21 years and young workers under 25?

Mr Bongi—We just do not have the information to answer that question.

Senator MARSHALL—Would you be able to break it down into any other age brackets?

Mr Bongi—Not that I am aware of, but we can have a look at it. But I am not hopeful on that point.

Senator MARSHALL—Do you know how many young workers and different groups of young workers actually make up the 7,400, I think it was, successful places?

Mr Bongi—We can have a look at that.

Senator Abetz—By ‘young’ do you mean under 50?

Mr Bongi—That excludes me, Senator!

Senator MARSHALL—I was invited to a lunch for young parliamentarians just recently, Minister, and I did not see you there.

Senator Abetz—Funny that! I was not invited, so people must have made a certain conclusion.

Senator BARNETT—How did you get there?

Senator MARSHALL—I do not how I got my invite. I don’t think they could find anyone under 40.

Senator BARNETT—It made you feel good, didn’t it?

Senator MARSHALL—It did. I just want to talk about some referrals. We took a lot of evidence this morning from the OEA about referrals to your department of AWAs. Can you tell me how many AWAs have been referred from the OEA to the OWS?

Mr Wilson—Since March of last year the Office of the Employment Advocate has referred 1,711 Australian workplace agreements.

Senator MARSHALL—What is the reason for those referrals?

Mr Wilson—The referrals came about because of a decision, I believe, by the OEA to commence sampling periodically of the lodged AWAs and to consider an important question, which was whether or not the agreement, as seen by the OEA, facilitated compliance with the Australian Fair Pay and Conditions Standard. I understand that the referrals commenced—I do not have the precise date—in mid-2006 and that they continued through until October 2006.

Senator MARSHALL—So it is because there is a question on whether the agreements comply with the Fair Pay and Conditions Standard?

Mr Wilson—That is correct. The position, I suppose, which the OEA was dealing with was that in some respects there might be a variation between the document of the AWA and the Fair Pay and Conditions Standard. In other respects, it may simply be that the AWA was not clear and it was not possible to form a view on the face of the document whether or not it actually did facilitate compliance.

Senator MARSHALL—It is only those they identify in their sampling that they refer over, is it not?

Mr Wilson—That is correct, and that sampling ceased in October.

Senator MARSHALL—That is right. So they have not been sending any since October?

Mr Wilson—That is correct.

Senator MARSHALL—Out of the sample group—and I stand to be corrected—I think just over half of the AWA sampled were referred to you.

Mr Wilson—That is what I understood Mr McIlwain to say this morning.

Senator MARSHALL—Fourteen hundred were referred.

Mr Wilson—I heard him say that there were 3,250 which they sampled and that 1,711 were referred.

Senator MARSHALL—All right. So you have done them. What has happened as a result of those referrals?

Mr Wilson—What we have done with each of those matters is to write to both the employer and the employee, drawing to their attention that the matter has been referred to the Office of Workplace Services and indicating to them what we have been told about the question. In other words, we put to them that there may be some question about whether or not their agreement is compliant with the Fair Pay and Conditions Standard and then we invite a response from both of those parties within a defined time. Having sent that letter out to all of the parties, employers and employees, we then delegated the task to each of our state offices according to where the agreement was formed. We have been working through those since.

Senator MARSHALL—Where are we at with that?

Mr Wilson—Since then we have completed 1,445. We have found that the vast majority of those referrals are compliant. That has been done through considering some supporting documentation such as an internal policy document or by seeing a written statement from one or both of the parties about what the intention of the agreement might be. Some 1,187 are in that category.

Senator MARSHALL—Just on that, say both parties write back and say, ‘We think it complies.’ Do you do any more? Is there a test that you apply in each instance?

Mr Wilson—The test is whether or not we are satisfied that that in fact demonstrates that there is compliance. An example in respect of the internal policy document is that the AWA may simply say that parental leave is to be provided to you in accordance with the ABC company policy manual. Until you see the relevant extract from that policy manual it is not possible to make a determination. Having seen the relevant extract it is possible to accept that that is compliant. The 1,187 would fit into that category.

Senator MARSHALL—The point I am making is that your office actually satisfies itself that it is compliant, you do not rely on advice back from the two parties?

Mr Wilson—I agree with both heads of that proposition. We satisfy ourselves, but we do that through the statements back from both parties.

Senator MARSHALL—They would have to provide the information on the areas that you have identified as a concern.

Mr Wilson—Yes.

Senator MARSHALL—If they just wrote back and said, ‘Well, we’re happy with it, bugger off,’ you would not—

Mr Wilson—That may not be sufficient. There are then several other categories. There are about 200 or so where it has been required that the parties provide us with some sort of compliance undertaking or we have required that the AWA be relodged in order to put beyond doubt what the intention is and to make sure that it complies with the standard. There has been a smaller category of 50 which in our opinion need not have been referred to us in the first place.

Senator MARSHALL—I am trying to remember all those categories that you have just put to me. Have there been any that have simply continued not to meet the standard and therefore been rejected? What do you do then?

Mr Wilson—Maybe if I can answer it this way. To date we have none which would cause us to say that there is a requirement to litigate. There are a number of matters which are ongoing but we are satisfied that within those ongoing ones, about 250 in total, there is nothing as such which would cause us to require a full-on investigation, if I can put it that way. It really is down to some minor matters which makes this between the parties. The kind of process that we have gone through with the other 80 per cent is appropriate to be done with this number as well.

Senator MARSHALL—So there have not been any identifiable breaches. Some of the initial stats that the OEA gave us were that a number of agreements simply just outrightly breached the fair pay standard. Are you satisfied that there has been none of them?

Mr Wilson—No, I am not saying that. What I am saying though is that, in terms of resolving where it should go, we have been satisfied that what the parties have put to us is appropriate. I will give you an example. An agreement might say that the hours of work of this person are 40 per week. On the face of it that appears to be in breach, that the standard requires 38. That could be as simple as a mistake on the part of the parties not understanding that the law has changed and they have not changed their templates, or it may be that there is an expectation on the part of the worker that they work reasonable additional hours and that expectation is manifested in saying that they work two hours extra per week. The inspectors go through a case of, I suppose, just understanding the intention of the parties. Certainly the experience of the inspectors in the field so far has been that all of the matters that have been finalised have been finalised in a productive way, which achieves compliance with the fair pay and conditions standard.

Within the 256 matters which are ongoing, my understanding is that there may be two which warrant the issue of a breach notice. In our language, that is a notice, to the employer usually, indicating that we ascertained that there is a breach and giving them the time to rectify that breach. Neither of those matters, we would say, at this point indicates sufficient gravity that you would take that into a full investigation and that you would litigate.

Senator MARSHALL—So you have not had to initiate any prosecutions in relation to this?

Mr Wilson—No. Senator, I want to clarify one of the answers I gave previously. In respect of the 1,445, I am told that there were seven which did reveal actual breaches, which were pay rates beneath the standard, but voluntary compliance was achieved in each of those matters.

Senator MARSHALL—Given that those agreements are technically in force anyway, is compensation made for the remaining period?

Mr Wilson—In respect of these seven, certainly it would be expected that they backdate the pay and keep on paying at the higher rate. There would be no question that they have to do that. To do otherwise would lead to sterner action on our part.

CHAIR—This is the last question, Senator Marshall.

Senator MARSHALL—We might have to come back because I only have two more questions and I am only going to get to ask one of them.

Senator Abetz—So decide which one, otherwise you will not get any.

Senator MARSHALL—No, that will do. Thank you, Mr Wilson and officers, and even you, Minister.

Senator Abetz—You are so kind.

CHAIR—Thank you, Minister.

Committee adjourned at 10.58 pm