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SENATE

EMPLOYMENT, WORKPLACE RELATIONS AND EDUCATION
LEGISLATION COMMITTEE

ESTIMATES

(Budget Estimates)

TUESDAY, 30 MAY 2006

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SENATE
EMPLOYMENT, WORKPLACE RELATIONS,
AND EDUCATION LEGISLATION COMMITTEE

Tuesday, 30 May 2006

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

Senators in attendance: Senators Barnett, Bernardi, George Campbell, Crossin, Eggleston, Ferris, Marshall, McEwen, Siewert, Sterle, Troeth and Wong

Committee met at 9.00 am

EMPLOYMENT AND WORKPLACE RELATIONS PORTFOLIO

Consideration resumed from 29 May 2006

In Attendance

Senator Abetz, Minister for Fisheries, Forestry and Conservation

Department of Employment, Workplace Relations

Portfolio overview and major corporate issues

Dr Peter Boxall, Secretary

Mr Graham Carters, Deputy Secretary, Workforce Participation

Ms Malisa Golightly, Deputy Secretary, Employment

Mr Finn Pratt, Deputy Secretary, Workplace Relations

Mr Jeremy O'Sullivan, General Manager, Corporate Group

Mr Brian Quade, Assistant Secretary, Parliamentary and Communications Branch, Corporate

Ms Michelle Baxter, Senior Executive Lawyer, Social Security and Administrative Law Team

Mr Simon Gotzinger, Assistant Secretary, Legal Branch, Corporate

Mr Henry Carr, Principal Government Lawyer, Corporate

Mr Dudley Grounds, Senior Executive Lawyer, Corporate Legal Team 3

Dr Aloka Sinha, Assistant Secretary, Business Services Branch, Corporate

Ms Sue Sadauskas, General Manager, State Office Network

Ms Vanessa Graham, Chief Financial Officer, Financial Management Group

Ms Lyn Valentine, Assistant Secretary, Financial Management Group

Ms Christine Leary, Chief Internal Auditor

Mr John Burstson, Chief Information Officer

Outcome 1 Employment

Mr Michael Manthorpe, Group Manager, Employment Business Services Group

Ms Robyn Kingston, Assistant Secretary, Employment Business Services Group

Ms Joan ten Brumelaar, Assistant Secretary, Centrelink and Stakeholder Management Branch

Ms Meredith Fairweather, Assistant Secretary, Employment Communications 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
Mr Anthony Parsons, Group Manager, Job Search Support Group
Ms Cathy Walters, Assistant Secretary, Employment Pathways Branch
Ms Lynne Curran, Group Manager, Specialist Services and Income Support Group
Mr Ray Jeffery, Acting Assistant Secretary, Income Support Programme Branch
Ms Jennifer Chadwick, Assistant Secretary, Vocational Rehabilitation Taskforce
Mr Ian McInnes, Assistant Secretary, Disability Employment Services
Mr Tony Waslin, Assistant Secretary, Transition and Participation Branch

Outcome 2 Workplace Relations

Ms Sandra Parker, Group Manager, Office of the Australian Safety and Compensation Council
Ms Amanda Grey, Assistant Secretary, Information Services Branch
Mr Drew Wagner, Assistant Secretary, Standards Branch
Mr Wayne Creaser, Assistant Secretary, Standards and Research Branch
Ms Flora Carapellucci, Assistant Secretary, National Strategy Branch
Mr Wayne Artuso, Acting Commissioner, Office of the Federal Safety Commissioner
Mr Michael Maynard, Group Manager, Workplace Relations Implementation Group
Mr James Smythe, Chief Counsel, Workplace Relations Legal Group
Mr Bob Bennett, Assistant Secretary, Legal Policy Branch (3)
Mr David De Silva, Assistant Secretary, Legal Policy Branch (1)
Ms Natalie James, Assistant Secretary, Legal Policy Branch (2)
Mr David Bohn, Assistant Secretary, Legal Policy Branch (1)
Mr Peter Cully, Assistant Secretary, Legal Policy Branch (4)
Mr John Kovacic, Group Manager, Workplace Relations Policy Group
Mr Ted Cole, Principal Advisor, Workplace Relations Policy Group
Mr Malcolm Greening, Assistant Secretary, Wages and Conditions Policy Branch
Mr Scott Evans, Director, International Relations Section
Ms Louise McSorley, Head of Award Review Taskforce Secretariat
Ms Dianne Merryfull, Assistant Secretary, Safety and Compensation Branch
Ms Miranda Pointon, Assistant Secretary, Strategic Policy Branch
Ms Jenet Connell, Group Manager, Workplace Relations Services Group
Mr George Brenan, Assistant Secretary, Workplace Advice and Education Branch
Mr Stewart Thomas, Assistant Secretary, Workplace Programmes Branch

Outcome 3 Workforce Participation

Mr Barry Sandison, Group Manager, Working Age Policy
Ms Sharon Rose, Assistant Secretary, Disability Policy Branch
Dr Alison Morehead, Assistant Secretary, Parent Policy Branch
Mr Bob Harvey, Group Manager, Indigenous Employment and Business Group
Ms Mary-Anne Sakkara, Assistant Secretary, CDEP Future Directions Branch
Mr Chris Foster, Acting Group Manager, Labour Market Strategies Group
Mr Bruce Whittingham, Group Manager, Research and Evaluation Group

Dr Paul Volker, Assistant Secretary, Evaluation and Programme Performance Branch

Mr Scott Matheson, Assistant Secretary, Research and Data Analysis Branch

Office of the Employment Advocate

Mr Peter McIlwain, Employment Advocate

Mr David Rushton, Senior Legal Manager

Ms Ann Skarratt, Corporate Director

Mr Geoffrey Casson, Deputy Employment Advocate, CSN

Australian Fair Pay Commission

Ms Jennifer Taylor, Director

Australian Building and Construction Commission

The Hon John Lloyd, Commissioner

Mr Nigel Hadgkiss, Deputy Commissioner

Ms Heather Hausler, Assistant Commissioner

Mr Ross Dalglish, Deputy Commissioner

Mr John Casey, Chief Financial Officer

COMCARE

Ms Barbara Bennett, Chief Executive Officer

Mr Martin Dolan, Deputy Chief Executive Officer and SRC Act Policy and Support Division

Ms Janette Davis, General Manager, OHS (CE) Act Policy and Support Division

Ms Janean Richards, General Manager, Legal Services Division

Ms Jane Romeyn, General Manager, Research and Strategy Division

Ms Penny Weir, General Manager, Corporate Division

Mr Matt Goldrick, General Manager, Claims Support and Policy Division

Mr Stewart Ellis, General Manager, Injury Management Division

Australian Industrial Registry

Mr Terry Nassios, Acting Industrial Registrar

Mr Dennis Mihelyi, Director

Indigenous Business Australia

Mr Ron Moroney, General Manager

Mr Ian Myers, Deputy General Manager

Mr Anthony Lovell, Chief Financial Officer

Ms Kim McIlveen, Senior Manager

Mr Colin Clements, Assistant General Manager

Mr Dean Herpen, Assistant General Manager

Ms Kaely Woods, Assistant General Manager

Mr Peter O'Neill, Assistant General Manager

Equal Opportunity for Women in the Workplace Agency

Ms Anna McPhee, Director

Office of Workplace Services

Mr Nicholas Wilson, Director

Mr Alfred Bonggi, Deputy Director

Ms Anya Moore, General Manager, Recruitment and Training

Ms Sherry Pullen, General Manager, Technical Support

Mr Steve Kibble, General Manager, Workplace Services

CHAIR (Senator Troeth)—Good morning, everyone. The committee will continue the examination of the Employment and Workplace Relations portfolio. Copies of yesterday's opening statement setting out the procedural arrangements of the estimates process are available from the secretariat. Today's proceedings will be suspended for breaks as indicated on the agenda. I ask witnesses to identify themselves when first called to answer a question, to assist the Hansard editors. I remind participants that oral evidence and documents in estimates proceedings are part of the public record. I welcome back Senator Eric Abetz, officers of the Department of Employment and Workplace Relations, and, in this instance, officers of the Office of the Employment Advocate.

The committee has fixed Friday, 28 July 2006 as the date for the submission by the department of written answers to questions on notice. We will commence today with a resumption of questioning of the Office of the Employment Advocate.

Senator STERLE—Mr McIlwain, I want to follow on from some questions put to you by Senator Marshall yesterday. When we talk about the AWAs, the types of agreements and the grouping of the employers—like nought to 49 or whatever it was—have you broken them up into specific industries?

Mr McIlwain—I believe that I may have some information regarding that first month of lodgments that deals with industry coverage. If you do not mind, I will just check my notes.

Senator STERLE—This is from 27 March onwards?

Mr McIlwain—That is correct. What I am able to tell you today are the top five industries, by coverage, for employees on Australian workplace agreements lodged up to 30 April 2006—Work Choices agreements—and the top five industries by coverage for employees covered by collective agreements lodged under Work Choices until 30 April 2006. Beginning with the top five industries for Australian workplace agreements employees lodged in April, the most AWAs were lodged in the ABS industry category of accommodation, cafes and restaurants; No. 2 was communication services; retail trade was No. 3; mining was No. 4; and construction was No. 5. That is coverage of industries by employee.

Senator STERLE—Do you have the numbers of the employees?

Mr McIlwain—No, I do not have that information, I am afraid. Turning to collective agreement lodgments, the top five industries by employee coverage were, for April 2006: No. 1, the retail trade; No. 2, manufacturing; No. 3, construction; No. 4, health and community services; and No. 5, government administration and defence.

Senator STERLE—Thanks, Mr McIlwain. On that, is there any state in particular that is outscoring the others?

Mr McIlwain—Actually, in the month of April, looking at both AWAs and collective agreements, the state with the coverage of most employees by agreements was Victoria, followed by Western Australia, followed by Queensland, followed by South Australia, followed by New South Wales. A category of 'multiple states'—that is, collective agreements covering more than one state—was next.

Senator STERLE—That would be the ACT, the Northern Territory—

Mr McIlwain—No. It could be any of the states or territories. It is a separate category where the collective workplace agreement covers employees in more than one state and where the employer has not disaggregated—

Senator STERLE—Okay.

Mr McIlwain—but simply indicated that the agreement covers employees in, for example, South Australia, Queensland and New South Wales. Then it is the ACT, then the Northern Territory and, lastly, Tasmania. That is total employees under both AWAs and collective agreements.

Senator STERLE—Thank you. What if the company was registered in New Zealand? I noticed yesterday that you said that the collective agreements were based on the state where the employees lived.

Mr McIlwain—That is correct. Our position is: presuming that the foreign corporation acted as an employer here in Australia, they would be able to make a workplace agreement under the act. Mr Rushton is just checking the legislation to confirm that.

Senator STERLE—While Mr Rushton is doing that, could he also check whether you keep a record of foreign based companies that are registering workplace agreements in Australia?

Mr McIlwain—Our system automatically records the address of the employer. So, if the employer included an address that was outside Australia, that would be recorded.

Senator STERLE—Okay.

Mr Rushton—Senator, I can just confirm that to be a constitutional corporation you can be a foreign corporation that does business within Australia.

Senator STERLE—Sorry, I missed that.

Mr Rushton—A foreign corporation—that is, a corporation incorporated outside Australia—that does business within Australia can be a constitutional corporation and can accordingly make agreements.

Senator STERLE—Just for record-keeping purposes, if the Australian address was just a post-office box or something—I am not saying that it has happened; I just imagine—would you have records to show how many overseas companies that were putting in AWAs were clearly international corporations or entities?

Mr McIlwain—No. We rely on the advice provided to us by the employer. It would require the employer to in some way indicate to us that they were incorporated, as per your example, in New Zealand. I should say, thinking back over the last nine years of agreement making, typically a foreign corporation would have an Australian address for the purposes of conducting business in this country. It seems to me most likely that the address nominated for the purposes of the lodgment of a workplace agreement would be the Australian address used by that entity.

Senator STERLE—What if there were examples of New Zealand labour hire companies who were just getting a post office box address here for the purposes of circumnavigating certain taxation requirements in Australia?

Senator Abetz—Circumventing.

Senator STERLE—Circumventing. Thank you, Minister. What did I say?

Senator Abetz—I thought you said circumnavigating.

Senator STERLE—I was thinking about being on the boat on the weekend.

Senator Abetz—We know what you mean now. Thank you.

Senator STERLE—It is my boat talk.

Mr McIlwain—We require lodgers of workplace agreements to provide an ABN. My layperson's understanding of the taxation regime suggests to me that the scenario that you propose would not be possible when we require an ABN for an employer to lodge a workplace agreement.

Senator STERLE—For future reference—will the department look at listing or having access to information for companies that are offshore or based offshore?

Mr McIlwain—I cannot say to that that we will categorically. But, as you have raised this issue, I will give it some consideration and think about whether there is a need for it and whether we have the resources to maintain such a register.

Senator STERLE—Thanks. I will go back to a few points made yesterday. I picked up on Senator Marshall's questioning about the hours of work as the standard in the agreements. I want to clarify something for my own mind. There was a lot of talk around casuals, part-time temps or whatever. How do we define when registering an AWA that employees are not full-time?

Mr McIlwain—The employer provides that information as part of the lodgment.

Senator STERLE—Is it actual head numbers?

Mr McIlwain—In regard to AWAs?

Senator STERLE—In regard to AWAs.

Mr McIlwain—In regard to AWAs we ask what is the employees' employment status and say, 'Mark one box with an X', and the choice is full-time, part-time or casual.

Senator STERLE—Thank you. That cleared that up for me. One other thing, while we are talking about a few points from yesterday, we talked about the new casual loading standard. I think Mr Rushton supported your comment that it is now 20 per cent.

Mr McIlwain—That is correct.

Senator STERLE—I already know the answer, but, so I am very clear, if there was a standard before to pay more than 20 per cent, companies do not have to honour that any more if they have a registered AWA that mentions 20 per cent.

Mr McIlwain—For the purposes of making a workplace agreement, the standard applies, and the casual loading provided in the standard is 20 per cent.

Senator STERLE—I fully understand. Just so it is very clear for *Hansard* purposes—some existing employees could be on 25 per cent loading but the new employees could very well be on 20 per cent loading.

Mr McIlwain—The standard is 20 per cent.

Senator STERLE—That is good. It is not good, but it is clear.

Mr McIlwain—If they are on a workplace agreement, of course, it is a different matter if they still have award coverage in the circumstances that you propose.

Senator STERLE—I want to go to the no disadvantage clause that we were talking about yesterday. Just so I am very clear—how long have you been with the agency?

Mr McIlwain—I was an employee of the OEA from August 1997 until August 2004. I am not currently an employee of the agency; I am a statutory appointee and have been so since 1 August 2004. My term of appointment is five years.

Senator STERLE—I picked up yesterday—it was late, but I heard it very clearly—that you said there were 140,000 employees. Is that correct?

Mr McIlwain—Of the OEA? No.

Senator STERLE—How many were there?

Mr McIlwain—Our head count as at the end of March was, I believe—

Senator Abetz—Unemployment would be down to four per cent if that were the case!

Senator STERLE—As I said, it was late and I just wanted to clear it up.

Mr McIlwain—We would be bigger than the APS, were that the case. The head count as at 31 March was 237.

Senator STERLE—I note that you categorically stated to this committee—and these are my words, so please correct me if I am wrong—that every single workplace agreement that came before the Office of the Employment Advocate had the no disadvantage clause tested.

Mr McIlwain—There was a no disadvantage test that applied to every AWA approved.

Senator STERLE—Tell me how you would do that. What was the process?

Mr McIlwain—To conduct the no disadvantage test we used a tool that had been developed over nine years called the NDT calculator—the no disadvantage test calculator. That was a spreadsheet tool. I believe it was an Excel spreadsheet. It allowed conditions in the form of values to be entered in a double ledger arrangement, with the AWA on one side and the conditions of the relevant award on the other side. It operated as a double-entry ledger and produced a result that was either neutral, positive or negative. The neutral and positive results were strong evidence that the agreement met the no disadvantage test, but other factors might be taken into account. A negative result was evidence that the agreement, at first assessment, did not meet the no disadvantage test and would require further investigation, often leading to a requirement by me for the employer to provide an undertaking to increase the overall benefit of that agreement in one form or another. There was a specific provision in the legislation that allowed me to approve an AWA where an undertaking, so described, was provided by the employer. As I said last night, in the last 12 months or so, approximately 14 per cent of AWAs required an undertaking of that kind before they could be approved.

The no disadvantage test calculator was a tool. It was not used in an automatic way but it provided very useful information to the delegate as to the overall monetary value of the

conditions provided by the AWA, allowing a consistent approach to the comparison that had to take place under the legislation with the relevant award and relevant laws. So, in short, that is how an NDT was conducted. NDTs were conducted by 140 delegates in the OEA in all regional offices and in our national office. Where an NDT had been conducted for an agreement that was in substantially the same terms or identical, previously the NDT could be applied to the agreement that was in identical or substantially the same terms. Our system recorded the NDT used for every AWA that passed through the OEA for filing and approval.

Senator STERLE—You said conditions. Did I also pick up that you said you did a monetary calculation as well?

Mr McIlwain—The NDT calculator gave a monetary value to most conditions where a monetary value could be assigned. However, that is why it was not the be all and end all of the NDT process, because other factors of a non-monetary kind might influence the decision maker in deciding whether, in global terms, there was an advantage or a disadvantage or an equivalent outcome in comparison with the award.

Senator STERLE—Mr McIlwain, what would you say if I said that was rubbish? What would you say if I said that I rang the Office of the Employment Advocate countless times and had debates about the monetary outcome of AWAs where they did not match and did not meet the no disadvantage clause?

Mr McIlwain—I would say that you are entitled to your opinion and that, in these matters, reasonable minds might differ.

Senator Abetz—That is very kind.

Senator STERLE—You have been sitting next to the minister for a while. What if I said that the Office of the Employment Advocate let down thousands of workers—and I can categorically prove this? Would you disagree with me? Do not worry about weasel words, Mr McIlwain. Just be straightforward.

Mr McIlwain—I would disagree with you, because the Office of the Employment Advocate, over the nine and half years of its existence, has taken seriously its statutory responsibilities and has discharged those in a careful, thorough and methodical way.

Senator STERLE—I appreciate your attempt to answer my queries and my questions, and I realise that it does not matter nowadays because the test case is gone. I just want to be on the record clearly from first-hand experience that a lot of workers believe that the no disadvantage test would way up the cents and the dollars. Unfortunately, it was proved different. Mr McIlwain, thank you for your time. I appreciate your efforts to answer my questions.

Senator MARSHALL—Mr McIlwain, I would like to take you to prohibited content in agreements. Yesterday we talked about the process of checking for prohibited content. I think you confirmed that you have not done any checking as yet on any agreements.

Mr McIlwain—We have not checked lodged agreements, no.

Senator MARSHALL—You did talk about one of your other roles being to give advice in terms of prohibited content. Can you explain how that process occurs in your office?

Mr McIlwain—It is a function undertaken under section 357 subsection (2) of the act, which is a contravention of the prohibited content provisions. It says:

Subsection (1) does not apply if:

- (a) before the agreement (or variation) was lodged, the Employment Advocate advised the employer that the agreement (or the agreement as varied) did not contain prohibited content; and
- (b) that advice was in the form specified in regulations made for the purposes of this subsection.

We receive from parties to workplace agreements requests for advice on the terms of their proposed workplace agreements, both individual and collective, and we provide advice under section 357 subsection (2) of the act. Prohibited content is dealt with in regulation 2.8.9 in that the form of our advice is covered in that regulation.

Senator MARSHALL—What form does the advice take?

Mr McIlwain—It reads:

For paragraph 357 (2) (b) of the Act, advice given by the Employment Advocate to an employer that a workplace agreement (or a workplace agreement as varied) does not contain prohibited content must:

- (a) be in writing; and
- (b) be signed by the Employment Advocate; and
- (c) state the date, or dates, on which the advice was provided; and
- (d) identify the content of the agreement that was considered by the Employment Advocate; and
- (e) if the Employment Advocate concludes that the content is prohibited—include an explanation, with appropriate detail, of the Employment Advocate’s reasons; and
- (f) if the Employment Advocate is unable to conclude whether the content is prohibited or not—include an explanation of the Employment Advocate’s reasons.

Senator MARSHALL—Is your advice final? Is there an appeals process or are you the final arbiter of this?

Mr Rushton—There is no appeal process. It is advice, as opposed to a decision, in any event.

Senator MARSHALL—Explain to me, in the context of you providing advice under the legislation and the regulations, how that is technically different to a decision.

Mr Rushton—The act refers to advice being given.

Senator MARSHALL—But the advice is a decision, isn’t it? If it is not, then who decides? If you just provide advice, who decides?

Mr McIlwain—The legislation describes it as advice and it sets out a mechanism by which a party to an agreement can, at a later stage, rely on that advice as an immunity against action under subsection 357(1). So it is an advice. If you wish, it is the advice that the Employment Advocate or his delegate decides to give.

Senator MARSHALL—I understand how that may work if people are asking ‘Does this clause pass the threshold, in your view, of being prohibited content?’ If you say it is okay, they can put in their agreement. What about the reverse—if they ask you for advice and your advice is, ‘No; this would be prohibited’? They can still put it in their agreement, can they?

Mr Rushton—It is a matter for the parties. Obviously the act, as the Employment Advocate referred to, in section 357 provides that an employer is not to lodge an agreement containing prohibited content. The scheme of the act is that, if the employer has an advice from the Employment Advocate that the agreement does not contain prohibited content, that acts as a defence to any action against the employer for that content.

Senator MARSHALL—But we are talking about the reverse. If your advice is that a particular clause is prohibited content, but it is only advice, what stops people including it in their agreement, and how is a decision made on whether it is prohibited or not?

Mr Rushton—If the Employment Advocate were to give an advice that a matter contained prohibited content, the employer, if they included that content in their agreement, would not then have a defence to an action brought for a contravention of the act for including prohibited content in an agreement, if the clause is ultimately found to be prohibited content. The bringing of action for contraventions of the act, compliance with the act, would be a matter for the Office of Workplace Services.

Senator MARSHALL—But tell me where the decision is finally made on what is prohibited content and what is not, if you simply provide advice?

Mr Rushton—There are perhaps two answers to that. One is: if there is an action brought for contravention, then a court ultimately decides a matter. The second is the function that Mr McIlwain was referring to yesterday, which is the process of the Employment Advocate reviewing agreements after they are in fact lodged to check whether they contain prohibited content.

Senator MARSHALL—And you can remove that?

Mr Rushton—Then, if we consider that there is prohibited content there, the Employment Advocate must remove the content—

Senator MARSHALL—So you make the decision.

Mr Rushton—and again then the matter is—

Senator MARSHALL—I am having trouble finding out where the decision is made. You talk about advice, you say the act talks about advice and all you are giving is advice. But how do you then remove what you have decided to be prohibited content?

Mr Rushton—It may be—

Senator MARSHALL—You do make a decision.

Mr Rushton—In terms of providing that advice, these are draft proposed agreements that may or may not be lodged or may or may not be made. It is only when the agreement is lodged. It is the second stage where the Employment Advocate is required to make a decision on whether it contains prohibited content and to remove that prohibited content.

Senator MARSHALL—I do not want to labour the point but I am still not quite satisfied. If you provide advice against an employer or an employee who wants to put a clause in their agreement, and your advice is that it is prohibited content, that is simply advice. They may proceed and lodge that agreement with that clause because it is their view it is not prohibited—contrary to your advice. Your advice is that it is and you remove it.

Mr Rushton—No. Then there is the process that Mr McIlwain went through yesterday where we would write to the parties and put our view. They may well put submissions to us and we then make a decision about that.

Senator MARSHALL—Let us assume that you have done that. The parties to the agreement still believe that it is okay. Your view is that it is still prohibited content. What happens then? Do you remove it?

Mr Rushton—Then we must remove it in that case.

Senator MARSHALL—So you do make a decision.

Mr Rushton—At that stage, yes.

Senator MARSHALL—So it is within your remit to decide what is prohibited content and what is not.

Mr McIlwain—Indeed, in the circumstances that Mr Rushton has outlined, it is absolutely so.

Senator MARSHALL—I just wanted to clarify that, Mr McIlwain, because I thought you were being very careful with your words and saying that the act says you ought to provide advice and only advice. I wanted to clearly understand.

Mr Rushton—It is just that it is a two-stage process dealing with both sides.

Mr McIlwain—And dealt with in different sections of the act.

Senator MARSHALL—Yes, so you can make a decision on what is prohibited content. Workplace Services can also do that?

Mr McIlwain—Not in regard to removing from a workplace agreement prohibited content. That function or power rests only with me. However, in circumstances where I removed prohibited content and varied an agreement, it would be incumbent upon me because prima facie there would be evidence that there had been a contravention of the prohibited content provisions of the legislation to draw that to the attention of the Office of Workplace Services and that is what I would do.

Senator MARSHALL—We also clarified that you will not—I think we clarified this twice yesterday but in the context of this discussion—check every agreement for prohibited content.

Mr McIlwain—We are still determining our methodology but it is unlikely because of the volume of workplace agreements that we would check every agreement.

Senator MARSHALL—But with the agreements you do check, if you check them and allow them to proceed it is fair to assume that the clauses contained in those agreements will not be prohibited content and that can be relied upon, can't it?

Mr McIlwain—For clarity, may I make a distinction. We will not be checking every lodged workplace agreement for prohibited content—at least I think that unlikely because of the volume of agreements. However, we will provide advice on prospective workplace agreements and prohibited content when asked by the parties. And we will do that in every case.

Senator MARSHALL—Do the parties know whether you have checked their agreement or not? Or will they know?

Mr Rushton—Can I just add something to what Mr McIlwain has just said. In terms of the sampling process, there is another aspect to that. Any person can apply to us to have prohibited content removed—this is after an agreement is lodged—and if there is an application made then we would have to deal with that application. I just wanted to clarify that.

Senator MARSHALL—Of the agreements you check, will the parties be advised that you have checked them?

Mr McIlwain—Only if I believed the agreement to contain prohibited content. If a lodged agreement were checked and found not to contain prohibited content there would be no point advising the parties, because no action could possibly ensue with regard to prohibited content.

Senator MARSHALL—The parties could rely on the fact that it had been checked that all the clauses are therefore not prohibited for content. You could rely on those clauses in the future, couldn't you?

Mr McIlwain—The purpose of the advice function on prospective agreements is indeed that the parties, when advised that the agreement does not contain prohibited content, may rely upon that advice, as Mr Ruston has said, as a defence against action for a contravention of section 357(1).

Senator MARSHALL—I understand that your senior legal manager provided advice to Newlands Coal on 19 April and your advice indicated that leave to attend trade union training is prohibited. Does the OEA still stand by that?

Mr McIlwain—Yes.

Senator MARSHALL—Do you accept that section 2.8.5(1)(c) would include a general prohibition on leave being agreed to in an agreement between an employer and employee where that leave was for the purpose of attending occupational health and safety training organised by a trade union?

Mr McIlwain—Clearly, regulation 2.8.5(1)(c) identifies as prohibited content training or leave to attend training, however described, provided by a trade union.

Senator MARSHALL—So the clause indicates that occupational health and safety training organised by a trade union would be prohibited.

Mr McIlwain—Training, however described, provided by a trade union is prohibited content.

Senator MARSHALL—So training described as occupational health and safety training provided by a trade union would be prohibited.

Mr McIlwain—Training, however described, is prohibited content.

Senator MARSHALL—So you disagree with what I have said: in the specific case of occupational health and safety training organised by a trade union, that is prohibited?

Mr McIlwain—Training, however described, is prohibited content.

Senator MARSHALL—So you agree with what I have said.

Mr McIlwain—I cannot add to my evidence.

Senator MARSHALL—So you do not disagree with what I said.

Mr McIlwain—I cannot add to my evidence.

Senator MARSHALL—But you can answer my question, can't you?

Mr McIlwain—I cannot add to the evidence that I have given.

Senator Abetz—He has.

Senator MARSHALL—I do not think he has. My question is specifically about occupational health and safety training organised by a trade union. Would that be prohibited?

Senator Abetz—We know that in the past that has been abused. That is why a descriptor of occupational health and safety—

Senator WONG—Say that to the Beaconsfield miners.

Senator Abetz—of itself does not necessarily indicate that it will cover occupational health and safety. That is why there is the description in the regulation and that is what Mr McIlwain has quoted to you. You can dress it up in all sorts of language, but the language of regulations speaks for itself.

Senator MARSHALL—Thank you, Minister, but that does not help me at all. I am asking about a specific type of training organised by a trade union.

Senator Abetz—You have been told—

Senator MARSHALL—I think what Mr McIlwain is saying is that he is agreeing with me and I want to be very clear. Let me ask again: is occupational health and safety training that is organised by a trade union prohibited content?

Senator Abetz—Chair, we have had this question about three or four times.

Senator MARSHALL—I am waiting for an answer.

Senator Abetz—He has received an answer that—

Senator MARSHALL—I have not got an answer three or four times.

Senator Abetz—No matter how it is described, it is—what is the terminology: 'not allowable'?—

Mr McIlwain—Prohibited.

Senator Abetz—prohibited content. Therefore we could call it 'doing the work of angels' or all sorts of wonderful things but, at the end of the day, the regulation is very clear.

Senator MARSHALL—Mr McIlwain?

Senator Abetz—The answer stands, and we ought to be moving on.

Senator GEORGE CAMPBELL—He asked the question—

Senator Abetz—Four times!

Senator GEORGE CAMPBELL—to Mr McIlwain, Minister, not to you.

CHAIR—Senator Marshall has asked a question. If Mr McIlwain can give an answer, I would like him to do so and then we will move on.

Mr McIlwain—Senator, leave to attend training provided by a trade union, however described, is prohibited content as per the regulations. I think it is unsafe for me to speculate on hypothetical provisions in isolation. I have answered your question in regard to a specific proposed agreement where advice on prohibited content was sought. That is the Newlands Coal agreement that you asked me about a moment ago. I do not believe it is proper for me to answer a question about a hypothetical provision outside any specific proposed agreement. All I can do is tell you again what the regulation provides for.

Senator WONG—Perhaps we can turn it around, Chair.

CHAIR—I think Mr McIlwain has answered this question—without any disrespect to you, Mr McIlwain—to the absolute best of his ability. I am happy to leave it at that.

Senator MARSHALL—A simple yes or no would have been easier.

CHAIR—I think we will move on.

Senator WONG—Can I do it this way. Your understanding of the regulation therefore, just so I understand clearly your answer, is that it is irrelevant: whatever purpose or title is associated with the training, it is prohibited content.

Mr McIlwain—Correct.

Senator MARSHALL—What about meetings organised by trade unions that were specifically to provide information about occupational health and safety? Would they be prohibited under 2.8.5(1)(d)?

Mr McIlwain—Again I feel it is unsafe to answer general hypotheticals concerning provisions that are not contained within a specific prospective agreement. However, as we can all see, regulation 2.8.5(1)(d) says:

(d) employees bound by the agreement receiving paid leave to attend meetings (however described)—

Again, in reference to Senator Wong's question, the purpose of which is not relevant to the provision—

conducted by or made up of trade union members ...

That is prohibited content.

Senator MARSHALL—So a trade union could not organise a meeting to discuss an occupational health and safety issue.

Mr McIlwain—That is a different issue. What I have said is about paid leave to attend meetings, however described. It is worth noting that the prohibited content refers to what may not be included in a workplace agreement. It is not a general prohibition.

Senator MARSHALL—Let me put this to you. If an occupational health and safety representative or one of the other forms of representatives in the various state legislation was also a trade union delegate, would they be prohibited from holding a five-minute meeting

under this legislation, if the purpose was to advise on an occupational health and safety situation?

Mr McIlwain—Again I think it is unsafe that I speculate on hypotheticals.

Senator MARSHALL—How do you provide advice? When people talk to you about advice on what they may or may not want to put in agreements, do you say, ‘I can’t give you that advice because I won’t speculate on hypotheticals?’ What is the purpose of giving advice?

Mr McIlwain—I do say that.

Senator MARSHALL—That must be useful advice!

Mr McIlwain—The advice that I give them is actual examples of what has been concluded to be prohibited content. I find that speculation in the hypothetical is risky. One needs to look at the entire agreement before one can safely conclude whether it contains prohibited content or not.

Senator Abetz—So it would be fair to say that, if someone were to ring up and make a general inquiry, you would guide them in this situation to regulation 2.8.5 and read out the relevant section.

Mr McIlwain—Indeed, and I would refer them to our prohibited content fact sheet on our web site and refer them, if they were an employee, to the employee information statement relevant to the agreement type they have been offered. If they were an employer or the representative of an employer, I would refer them to one of the six employers guides to making a workplace agreement, which again deals at some length with prohibited content as described in the regulations.

Senator MARSHALL—I thought you said earlier that all your advice was in writing and that is what you were required to do. So there are two levels of advice, are there?

Mr McIlwain—I have a general advice and assistance role, which obviously includes providing advice and assistance to employers, employees and their representatives on making agreements under the reformed legislation. Separately, I have a specific advice role in regard to prohibited content under section 357(2) of the act. That is the function and the role that we discussed earlier this morning. However, it is not obviated by the general advice and assistance role I have in regard to advising employers, employees and their representatives about agreement making.

Senator MARSHALL—I did ask you earlier to describe the advice process, and you only talked about the advice in writing. I am pleased that we have come back to this. How many people within the OEA are authorised to provide advice about prohibited content?

Mr McIlwain—In regard to advice provided under section 357(2) of the act, eight people, including me, have the power either through the legislation or through my delegation.

Senator MARSHALL—That clause you talked about is in regard to the written advice.

Mr McIlwain—That is correct.

Senator MARSHALL—Are they all lawyers?

Mr McIlwain—Excluding me, yes.

Senator MARSHALL—How many people are authorised to provide advice over the phone?

Mr McIlwain—We have 85 staff in our call centre. Not all the staff work all the time on call centre roles. They have a range of tasks to perform but, in total, at the moment, 85 may answer calls from employers, employees or the representatives in our call centre. Additionally, at any one time there are 20 full-time equivalent staff on the phones.

Senator MARSHALL—And they are all able to give verbal advice on prohibited content?

Mr McIlwain—They are trained to give advice on all aspects of agreement making under Work Choices. Additionally, we have 17 legal staff who can also provide that advice generally, not under a formal request under section 357; they can also provide general advice. Additionally, we have 115 client services staff located all around the country, in our regional offices, who are also trained to provide advice and assistance on all aspects of agreement making, including prohibited content, but who are not delegated to provide advice in response to requests under section 357(2) of the act. There are but eight people, including me, with that power.

Senator MARSHALL—Do you have more than one lawyer check the advice provided under section 357(2)?

Mr McIlwain—Yes.

Senator MARSHALL—Just describe that process for me. One of the eight, including you, makes the initial decision and then what happens?

Mr McIlwain—No—makes the final decision. The preparatory work is undertaken by a more junior lawyer or by some of our lodgment management staff, and that preparatory work, with some initial recommendations, is then provided to a senior lawyer who has the delegation to sign off on the advice.

Senator MARSHALL—How many agreements have been lodged with your office for advice under section 357 in respect of prohibited content?

Mr McIlwain—The number of applications lodged with our office since the commencement of Work Choices under section 357(2) is 447 applications. Those applications in some cases cover multiple proposed agreements.

Senator MARSHALL—And how many responses have been given?

Mr McIlwain—So far, 140 applications have been responded to, covering 192 separate proposed agreements.

Senator MARSHALL—So there is still a lot of outstanding advice. What is the turnaround time for providing that advice?

Mr McIlwain—Currently the turnaround time will be 30 working days. The OEA's intention is to bring that down to 28 calendar days.

Senator MARSHALL—How many have been outstanding for more than 30 working days?

Mr McIlwain—I do not have the information.

Senator MARSHALL—Can you give us a breakdown of how many agreements are more than 30 days—that is, your turnaround time at the moment?

Mr McIlwain—I do not have that with me. I can provide that on notice.

Senator MARSHALL—If you could take that on notice, that would be useful. Are you able to tell me how many requests for general advice you have received on prohibited content?

Mr McIlwain—Up until 7 May, from the commencement of Work Choices, our call centre had received 13,951 inquiries.

Senator MARSHALL—On prohibited content?

Mr McIlwain—No.

Senator MARSHALL—Can you tell us how many requests for advice on prohibited content there were?

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

Senator MARSHALL—You do not have it with you or you do not have it at all?

Mr McIlwain—I believe that we would not have that information for the period up to 7 May. The process of recording the nature of inquiries has been developed and implemented subsequent to that. I do not believe that we would safely be able to disaggregate prohibited content advice and assistance inquiries from the 13,951. We will be able to do that in future months, from now on.

Senator MARSHALL—Thank you. I want to ask you about paid maternity leave in agreements. Are you able to provide figures for paid maternity leave for all agreements across the different agreement types?

Mr McIlwain—No.

Senator MARSHALL—Is this one of the things we are collecting data on?

Mr McIlwain—It is not currently being collected but, as I said last night, we are refining and further developing our analysis framework, and it may be one of the characteristics that we code for in the future.

Senator MARSHALL—So it is not an existing code?

Mr McIlwain—No. Or it may be that we will leave that to the workplace agreements database team in its coding for the report on agreement making. That team, as I mentioned last night, will code a greatly larger sample of Australian workplace agreements—we are in discussions with the team now, but we believe it will be in the order of 10,000 per annum—as well as every collective agreement lodged, as that team has done for the last several years.

Senator MARSHALL—They are only collecting data from collective agreements, though, at the moment?

Mr McIlwain—Later this year, they will be given access to a sample of 10,000 AWAs for the purposes of coding. I believe that their coding framework is very extensive. It is the

framework that has been developed over the last several years for the report on agreement making. It may be that, to avoid duplication of effort, we will leave the coding of paid maternity leave, and indeed some other characteristics of AWAs, to the workplace agreements database team in DEWR.

Senator MARSHALL—Yes. But that is later this year. They are not coding any AWAs presently, are they?

Mr McIlwain—No.

Senator MARSHALL—All right. Then are you able to tell me how the department can assert that paid maternity leave has been successfully negotiated in agreements generally? How can they make that claim when they would not have access to AWAs at all?

Mr McIlwain—I do not know the context of that comment, Senator.

Senator MARSHALL—That claim could not be made in terms of AWAs because they would not have that information, would they?

Senator Abetz—They may have some knowledge about particular ones which therefore may entitle them to say that the—

Senator MARSHALL—If they do, Mr McIlwain might tell me, because I have been very clear, I think, in my questions, and I think he has been very clear in the answers: they do not have that information in respect of AWAs. Is that still right?

Mr McIlwain—Senator, we have provided, as I mentioned last night, information on examples of family-friendly provisions, including paid maternity leave, in AWAs and shared that with the department. It may be on the basis of that; I simply do not know.

Senator MARSHALL—But they are simple examples of clauses. Are you able to tell us how many agreements have those clauses?

Mr McIlwain—No.

Senator MARSHALL—Because you do not test for that.

Mr McIlwain—No, they are not coded for that purpose.

Senator MARSHALL—No, so you would not.

Mr McIlwain—These are examples of the kinds of family-friendly provisions that are being found in Australian workplace agreements, in union collective agreements and in employee collective agreements.

Senator MARSHALL—Yes. But you do not collect any information in respect of the number of AWAs with those clauses?

Mr McIlwain—The OEA does not code for paid maternity leave at this point in time.

Senator MARSHALL—Can you explain to me what advice you are providing to employers about the coverage of the Work Choices act? How is the OEA advising employers about what is a constitutional corporation?

Mr Rushton—Senator, there is a fact sheet on who can make AWAs which refers to that issue.

Senator MARSHALL—Just assume that I am ringing up asking you for advice, Mr Rushton; give me the answer: what is a constitutional corporation?

Mr Rushton—It is going to depend on facts and circumstances, and it sometimes can be a difficult question.

Senator Abetz—But the advice is on the net and available in written form.

Mr Rushton—Yes, it is.

Senator MARSHALL—Are you aware of any cases where non-constitutional corporations have been attempting to lodge agreements under the Work Choices act?

Mr McIlwain—We need to make the point that in Victoria and in the territories an employer does not have to be a constitutional corporation to lodge an Australian workplace agreement or any of the five forms of collective agreements.

Senator MARSHALL—Outside of the territories and Victoria, are you aware of any cases where non-constitutional corporations have attempted to lodge agreements?

Mr McIlwain—I cannot say categorically that there have not been instances of employers who are not constitutional corporations purporting to lodge workplace agreements, but we provide abundant information on the eligibility of employers to make workplace agreements.

Senator MARSHALL—What stops a non-constitutional corporation lodging an agreement with you? Do you check?

Mr McIlwain—We believe it is an issue of enforceability, not of prohibition. If a non-constitutional corporation outside Victoria, the ACT or the Northern Territory ignores the OEA's advice about the eligibility to make an enforceable agreement under Work Choices and lodges such an agreement purporting to have that eligibility, that agreement is not enforceable.

Senator MARSHALL—When you analyse agreements and come across one that is not a constitutional corporation and not eligible, what do you do? Do you do anything?

Mr McIlwain—We have not yet determined our approach with regard to an employer of the kind you mention, a non-constitutional corporation ineligible to lodge an Australian workplace agreement purporting to lodge a workplace agreement of any kind. We will give that some consideration.

Senator MARSHALL—I am not sure whether you answered my first question: are you aware of any cases where non-constitutional corporations have lodged or attempted to lodge an agreement?

Mr McIlwain—I am certainly aware over the last nine years of instances of that.

Senator MARSHALL—Any since the Work Choices came into force.

Senator Abetz—So we can be completely clear, that is quarantining Victoria and the two territories.

Senator MARSHALL—Yes. Are you aware of any since 27 March?

Mr McIlwain—I am not aware of any lodgments where it has been proven that the lodger was not a constitutional corporation.

Senator MARSHALL—I understand that you are relocating your existing offices in all state capitals and Darwin. What is the estimated cost of these relocations, including the renovations and fit outs for the new offices?

Mr McIlwain—We will see if we have those figures. The project is being managed by the Department of Employment and Workplace Relations for us as part of the portfolio. In fact, because it is being managed by DEWR as part of a general overarching project on accommodation requirements for the portfolio, I believe it would be safer and more appropriate to ask DEWR for that information. I do not have the detail, I am afraid.

Senator MARSHALL—I will ask you, but if you could take that on notice and provide it to the committee that is fine.

Mr McIlwain—Certainly.

Senator MARSHALL—You answered for me question on notice No. W788-06, and I thank you for that answer. I would like to ask you the same question to get updated figures. If you could provide them in the same format that you used to answer that question, I would appreciate that.

Senator Abetz—So it is just on notice?

Senator MARSHALL—Yes, on notice. That is a breakdown of ages and AWAs.

Mr McIlwain—Certainly, Senator.

Senator MARSHALL—Thank you. That is all I have.

Senator McEWEN—I have a couple of questions. Mr McIlwain, when a collective agreement—whether it is a union, employee or greenfields collective agreement—is lodged with the OEA, is it given a reference number?

Mr McIlwain—Yes.

Senator McEWEN—It is?

Senator Abetz—It is a unique identifying number, I think we were told yesterday.

Senator McEWEN—Will collective agreements be available, as they are now, for searching by the general public on DEWR's WageLine?

Mr McIlwain—It is my understanding that DEWR plan to continue to publish collective workplace agreements on WageNet, as they have for several years. The OEA has been asked to, in the future, seek the express consent of the lodger to publish the agreement, and we are going to do that. Where that consent is given, DEWR will then publish the agreement. I understand that it may be some months before Work Choices collective agreements appear on WageNet, because of the need to publish agreements that have been approved under the old legislation by the commission and get them on. The commission—like the OEA, I understand—is working through agreements that were lodged prior to 27 March but have not yet been certified. But, once that set of agreements is on, I understand that DEWR's intention is to begin publishing Work Choices collective agreements.

Senator McEWEN—Okay. Because there are none on there at the moment.

Mr McIlwain—No.

Senator McEWEN—To access copies of an agreement either online or via the telephone service, will you need to be able to quote the reference number? We understand some people have rung the office and been told they cannot have the information unless they have the reference number.

Mr McIlwain—What we try to do, of course, is make sure that the information—particularly with regard to, obviously, AWAs—is handled carefully and that the confidentiality of AWA parties—

Senator McEWEN—I understand, but this question is about collective agreements.

Mr McIlwain—With regard to collective agreements, given DEWR's belief that we ought to now seek the express consent of the lodger to publish the agreement, we would still be asking the caller to identify themselves as a party to that collective agreement pending receipt of the express consent of the lodger to publish the agreement more widely.

Senator McEWEN—So, assuming you get the consent of the parties to publish the agreement, will it be posted on the website or available for telephone searching by any interested party?

Mr McIlwain—If we have the consent of the parties, of the lodger, I cannot see any reason why, that being obtained, we could not make it available to a caller to our call centre. But we do not yet have the consent. We need to set up on our form and on our online lodgment system a box for somebody to tick or untick to provide that consent. In the meantime we need to write to all the lodgers of collective agreements, seeking their consent.

Senator McEWEN—So, with all the ones that have been in since March, you have got to write to them now and say—

Mr McIlwain—We are about to write to them to ask for their consent to publish those agreements. When it is obtained, those agreements can be publicly available, but the advice that DEWR has provided to us is that it would be prudent to seek that express consent. So that is what we are doing.

Senator McEWEN—Why didn't you think to ask that question when the implementation of the new regime came into place? As we all know, people are very interested to have a look at what is in collective agreements.

Mr McIlwain—When the online system and the forms were finalised—actually in December, because of the lead times—the issue had not arisen. It arose subsequent to that, on the basis, I understand, of some legal advice that DEWR received. We believe it is sensible to have regard to that advice. Until we can change the forms and change the system, we will have to rely on a letter to the lodgers, which is about to go out.

Senator McEWEN—What occasioned you seeking legal advice about whether or not to publish?

Mr McIlwain—We did not seek the legal advice.

Senator McEWEN—An interested party was seeking legal advice about whether—

Mr McIlwain—We sought no legal advice. We understand, though, that DEWR had legal advice on this and they properly provided that advice to us. Being in receipt of that advice,

there was no other appropriate course of action available to us but to consider it. We are taking a cautious approach, which is what the advice suggests, and we are attempting to get the consent of lodgers by sending them a letter. As soon as we can change the IT system for online lodgment—70 per cent of collective agreements are lodged online—we will change it. But in the meantime we will have to send this letter post facto seeking the consent of the lodger. It is about to go out.

Senator McEWEN—Thank you.

Senator Abetz—Are there any more questions? No. Before Senator Marshall goes, in particular, I think all can be revealed on the postcode issue and AWAs.

Mr McIlwain—I have some information on the postcode and electorate issue. The advice I have is that for several years we have provided both postcode and electorate information to DEWR and more recently have provided it direct, on a quarterly basis, to the minister. The advice I have further is that we have access to the kind of software product I described last night. It is an Excel spreadsheet that assigns postcodes to federal electorates.

I do not yet have the source of that product. We are attempting to obtain that but it has not come through this morning, I am afraid. I will provide that information on notice. It is an Excel spreadsheet where you tip in the postcodes and somehow or other the spreadsheet assigns postcodes per electorate. I do not believe it is something that we have developed ourselves. I will confirm that. I believe it is a product that we have obtained from somewhere.

Senator MARSHALL—Let us be clear: you still do not provide the street names.

Mr McIlwain—No.

CHAIR—I think we established that last night.

Senator MARSHALL—It is interesting that Mr McIlwain is now saying that the electorate information is provided and is done on the basis of postcodes, or whatever formula a computer uses to divvy that up. If postcodes overlap that is interesting in itself.

Senator Abetz—Chances are, statistically, they would do it. But if half the postcode lives in one electorate and half in the other, they just make assumptions, I would imagine.

Senator MARSHALL—Yes. If you could provide the information about that program that would be useful.

Senator Abetz—There is no conspiracy, you will be pleased to know.

Senator MARSHALL—Now that you have mentioned that word, Minister, I will go looking further. The original question was: can you provide that for all electorates?

Mr McIlwain—We can, yes.

Senator MARSHALL—And you will?

Mr McIlwain—Yes.

Senator MARSHALL—Thank you.

CHAIR—Thank you very much. We will now move on to cross-portfolio questions and outcome 2.

[10.21 am]

CHAIR—The committee will resume its official business. I believe Senator Wong has cross-portfolio questions.

Dr Boxall—Madam Chair, I do not know whether you would like to do this now, but Ms Golightly has an answer to the question to do with the research company direction.

CHAIR—Yes, we will take that now.

Ms Golightly—Chair, we said we would table the script that we were using before and after.

CHAIR—Yes, that is correct.

Ms Golightly—So I have that here.

Senator Abetz—Can I have a quick look before it gets tabled?

CHAIR—Yes. Senator Wong, perhaps you could proceed with questions.

Senator WONG—Can I start, Dr Boxall, with a couple of issues around questions on notice again. There are three questions on notice which have been outstanding since in fact the supplementary estimates last year. They are three from Senator Marshall: Nos 612, 613 and 615. And there are, I think, seven outstanding—because you provided two or three yesterday when I raised it—from the additional estimates. I wonder if we can go through and work out when we are likely to receive answers to, first, Senator Marshall's questions and then the others.

Dr Boxall—Yes, we are aware that there are three answers outstanding that the minister is yet to table with respect to the estimates before last. We are also aware that there are seven that are yet to be tabled from the last estimates. The answer is that, as you know, the department provides advice to the minister as quickly as practicable, and the minister decides on the timing of the tabling of the answers.

Senator WONG—So, in relation to questions on notice Nos 612, 613 and 615, can you advise when those answers were provided to the minister's office?

Senator Abetz—As I understand it, all the departmental advice in relation to the answers to the questions just referred to have been supplied to the minister's office by the department. What the delay in the minister's office is, I do not know, but I can take that on notice.

Senator WONG—The question was: when were the answers to the three questions from November provided to the minister's office?

Mr O'Sullivan—Senator, I have to—

Senator WONG—Mr O'Sullivan, you are not going to put the same advice that we argued about yesterday—which the Clerk has indicated he has a different view on—are you, that there is a blanket rule against a timing question?

Mr O'Sullivan—I am not aware that the Clerk has given contradictory advice to the advice I gave. I saw the advice of the Deputy Clerk of the Senate—

Senator WONG—Which the Clerk confirmed.

Mr O'Sullivan—but it was not inconsistent with the advice I provided.

Senator WONG—Are you asserting there is a blanket rule that questions on timing of provision of advice are contrary to the Public Service Act?

Mr O'Sullivan—No, I am not saying it, and I said that yesterday.

Senator WONG—What are you saying?

Mr O'Sullivan—There is not a blanket rule.

Senator WONG—What are you saying in relation to this question?

Mr O'Sullivan—I think, on matters of serious advice between the department and the minister's office, section 13(6) basically provides that an appropriate level of confidence applies to those dealings. Parliament has chosen to use the word 'dealings'. It is a tenet of statutory interpretation that, when parliament uses broad terms such as that, they are to be construed in their broadest sense. In my view, advice on how to answer a question on notice taken at these hearings is a matter on which the minister is entitled to a degree of confidence, not just on the subject matter of the advice but on when the advice is given.

Senator WONG—I will read again what the Clerk said—and I have to say this is the only committee in which I ask questions at estimates where this is put as a response—

Mr O'Sullivan—Well, Senator—

Senator WONG—I had not finished. The Clerk said, in reference to 13(6):

... it is well established that a statutory provision of this nature does not limit a committee's right to seek information.

... ..

Questions about the timing of advice have frequently been asked and answered. If the officer has an apprehension that answering this question may somehow disclose the deliberations of Cabinet—

or, in this case, the advice provided in relation to questions—

then the officer should be reminded of the requirement for any claims of public interest immunity to be made by a minister so that the committee may explore the grounds on which the claim is based.

So, if you are claiming that there is some immunity because the disclosure of the timing on which an answer was provided is somehow going to disclose the nature of that answer, then you can please indicate to the committee the basis of that.

Mr O'Sullivan—Firstly, I am not claiming public interest immunity. If such a claim were going to be made, it would be made by the minister. What I am doing is: a question has been asked as to the timing of advice provided by the department to the minister's office; I have objected to answering that question on the basis that to do so may breach section 13(6) of the Public Service Act.

Senator WONG—This is what I am saying. You are arguing that that is a blanket provision.

Mr O'Sullivan—Well, no. I am saying—

Senator WONG—That means, if your interpretation is correct, that all the times it has been asked and answered previously, they have breached the act—

Senator Abetz—When you say you may, it is quite clear it is not blanket.

Senator WONG—and what you are suggesting is a position where this committee can never ask when something went to cabinet or when something went to the minister's office.

Mr O'Sullivan—That is not the position I am putting. I said: in this instance, in my view, it may be a breach of section 13(6). Perhaps I if I give it some context. If one of the other senators—

Senator WONG—How long have you been in this position, Mr O'Sullivan?

Mr O'Sullivan—Can I finish my answer?

CHAIR—Senator Wong, would you allow the officer—

Senator WONG—Well, how long has he been here?

CHAIR—Would you allow the officer—

Senator WONG—This is a new development in estimates.

Senator Abetz—Wait a minute.

Senator WONG—It is contrary to previous positions of the committee.

CHAIR—Order, Minister! Order, Senator! Senator, would you allow Mr O'Sullivan to make a response to your comments, please, as he was about to do.

Mr O'Sullivan—I provide this advice to give some context to the committee. Senator Wong, if, for example, the chair asked a question as to when or if you had sought advice from the department, I would object to answering that question—

Senator WONG—I am not allowed to.

Mr O'Sullivan—because the Public Service regs—

Senator WONG—It has to go through the minister's office.

Mr O'Sullivan—Well, you could even send in an FOI request, Senator. If that were the case and people asked, 'What was the subject of the FOI request?' or even if you had made one or when you had made one, I would have to object to answering that question on the basis that that would also breach, technically, my obligations under the Public Service Act, my common-law obligations as an employee. What I would be saying is that it would be odd, if not perverse, if the minister were not entitled to at least the same level of confidentiality as you are. In this instance, I have not given a blanket answer to suggest that that will never be the case; I have just answered this question as to the timing of when the department provided advice in relation to certain questions by saying that it is a matter on which the minister, under section 13(6) of the Public Service Act, is entitled to that degree of confidence.

Senator WONG—How long have you been in this position?

Mr O'Sullivan—The position of General Manager, Corporate?

Senator WONG—Yes.

Mr O'Sullivan—One year.

Senator WONG—And this is the first estimates where you are providing this advice?

Mr O'Sullivan—It is the first estimates, I think, where I have been asked the question by a senator, yes. It is not the first time I have provided this advice.

Senator WONG—You say that on this occasion you think 13(6) is breached, and I put to you this: every time we have asked a timing advice question, whether it is about when advice was provided to the minister's office, when an answer was provided to the minister's office or when something went to cabinet, even if it is the department that is disclosed when something went to cabinet, you have indicated that 13(6) precludes it.

Mr O'Sullivan—No, that is not what I have indicated. In fact, I think—

Senator WONG—On the three occasions that this issue has arisen, that is precisely what you have indicated to the committee.

Mr O'Sullivan—I will bring some clarity to this. I think every question needs to be taken on its merits as to whether a public servant is in breach of their obligations of confidence, which parliament has laid out in the Public Service Act. If it were not such an important issue, I would think that it is probably not inappropriate to provide that advice.

Senator Wong—Again, I refer you back to the Clerk's advice and precedent. You might want to familiarise yourself with the privileges committee resolutions, previous resolutions of the Senate and the Clerk's advice on this specific issue and a range of other issues before you come and give the same response every time this committee requests indications about timing, because those questions have been routinely asked and answered. If the government wants to go down this path, at some stage the boot might be on the other foot. I am asking again—are you declining to answer?—when were answers to 612, 613 and 615 provided to the minister's office, given that they were asked last year? When were the answers to 675, 705, 712, 713, 717, 727 and 734 provided to the minister's office?

Senator Abetz—Chair, we have already had an answer to that.

Senator WONG—I am asking it again. What is the answer?

CHAIR—I will allow Mr O'Sullivan to give his answer, and then we will move on.

Senator Abetz—There must be some limit as to how often you can ask the same question.

Mr O'Sullivan—I am objecting to answering that question. I have stated the basis for that objection.

Senator WONG—You are not the officer who provided the answer, so how can you object. If someone wants to object, Dr Boxall should be saying that he declines to answer the question.

Senator Abetz—Why?

Senator WONG—He is a legal advisor; he is not the person who provides the answer to the minister's office.

Dr Boxall—Mr O'Sullivan is a senior member of the department and he is answering the questions on this particular topic on behalf of the minister.

Senator WONG—On behalf of the minister? Have you been asked to provide that advice to the minister's office, too, Mr O'Sullivan?

Mr O'Sullivan—I cannot comment on that.

Senator WONG—No, I am sure you cannot.

CHAIR—The committee will suspend to consider the matter of answering the questions.

Proceedings suspended from 10.33 am to 10.57 am

Senator Abetz—I thank the committee for the opportunity to check up what has happened with the three questions from the November estimates and the seven questions from the February estimates, the answers to which are still outstanding. The issue is that certain information has been provided and there is further discussion taking place between the minister's office and the department prior to the finalisation of the answers. Without seeking to prolong the debate but in defence of Mr O'Sullivan, I refer the committee's attention to the answer to Senator Marshall's question W764-06. It may not have been provided on 16 February, but it was from the 16 February estimates in which the formula provided by Mr O'Sullivan was put in written form to the committee. That formula has been used before but, at this stage, we do not need to go into that any further. The situation is that there are still discussions and further information being sought in ensuring that the answers provided are correct.

CHAIR—Thank you, Minister.

Senator WONG—We will go back to the Clerk, and I will be clear that our advice is that Mr O'Sullivan's position is incorrect and inconsistent with the precedent and inconsistent with the practice of estimates committees. That statutory provision that he is relying on cannot limit the information that parliament may seek through the estimates process, but we will have to disagree on that issue.

Senator Abetz—That was also a difficulty for a particular officer. The question was: when was the advice given? If it is bouncing backwards and forwards, the advice is not complete. That is why it was appropriate for a public servant to have answered and responded in the way that he did.

CHAIR—Therefore, Minister, in your view, the advice is ongoing and a date cannot be defined as to giving them advice?

Senator Abetz—That is right.

Senator WONG—I probably would not have an argument with you about that in that case but, as I recall, that was not the basis on which this or previous questions of a similar nature were declined to be answered.

Senator Abetz—It is how one frames the question—

Senator WONG—I do not think so.

Senator Abetz—We do not need to go there.

Senator WONG—When was the advice provided that he should say: '13(6) precludes me from answering essentially'? 'We do not want to answer because it would indicate the nature of the advice and breach the confidentiality 13(6) imposes,' is not a response that says, 'We cannot tell you that because the advice is ongoing.' They are quite different answers. I am happy to move on, Minister.

Senator Abetz—I think that would be a good idea.

Senator WONG—Dr Boxall, I want to ask you about DEWR's policy on sick leave. Is it the case that an email was issued by the Business and Policy Development Branch on 4 April which stated that, in future, new AWAs will require that a medical certificate be produced for all sick leave absences of one day or more?

Mr O'Sullivan—Can you please repeat the question?

Senator WONG—I did not realise that the legal adviser was going to answer all these questions.

Mr O'Sullivan—I am answering in my capacity as general manager of Corporate.

Senator Abetz—I just say for clarification as well that, as I understand it questions on notice, when they go through the department, finally go through Corporate to the minister's office. That is why Mr O'Sullivan was the appropriate person to indicate whether or not certain things were being sent to the minister's office.

CHAIR—Good.

Senator WONG—Is it the case that on 4 April, an email was sent from the Business and Policy Development Branch of DEWR indicating that, in future, all new AWAs will require that a medical certificate be produced for all sick leave absences of one day or more?

Mr O'Sullivan—I understand that was the case. As a result of that, once that was brought to my attention, I immediately issued a notice on the intranet basically advising that that was not the case and that the department's sick leave policy remained the same. For some reason, it was also generated externally, and the department issued a media statement clarifying the position.

Senator WONG—Is it the case that the email was entitled 'Sick leave under new arrangement—AWAs'?

Mr O'Sullivan—I do not have the email in front of me.

Senator WONG—What is the role of the Business and Policy Development Branch?

Dr Boxall—It is a branch in outcome 3 in the Indigenous Employment and Business Group.

Senator WONG—So it has responsibility for Indigenous employment?

Dr Boxall—No, it is a branch within the Indigenous Employment and Business Group. It is one branch in there. There are three branches.

Senator WONG—What does it have responsibility for?

Dr Boxall—We will just look up the organisation chart. It is responsible for business and policy development in Indigenous matters.

Senator WONG—Mr O'Sullivan, when you became aware of this email and aware, as you say, that this was incorrect—

Mr O'Sullivan—I was always aware that it was incorrect.

Senator WONG—did you undertake some sort of investigation into how the email came about?

Mr O’Sullivan—I think ‘investigation’ is putting it too highly. I asked questions. It was clearly an innocent mistake. Could I extrapolate on my answer, because it might help? We did issue a statement straightaway, which I could read from. At the end of the day—

Senator WONG—We have read your press statement and we are aware of the statement on the intranet.

Mr O’Sullivan—It stated unequivocally what the true position is.

Senator WONG—I do not think I was suggesting to you it was not the true position, but thank you for clarifying that. It is the case, isn’t it, that as you say it is not the current position, and in fact if a medical certificate were to be required to be produced for all sick leave absences of a day or more that would be a policy shift within DEWR, would it not?

Mr O’Sullivan—It would, if we changed the position.

Senator WONG—I am not going to ask you who the person was; I do not think that is appropriate. But are you able to tell us the level? Are we talking someone with a managerial role?

Dr Boxall—SES band 1.

Senator WONG—A person with SES band 1 obviously has authority to decline or authorise sick leave—is that right?

Dr Boxall—Many managers in DEWR have authority to decline or authorise sick leave, including SES band 1.

Senator WONG—Are you able to enlighten the committee as to how it was that a person at an SES level could come to a view that DEWR had changed its sick leave provisions in this way?

Dr Boxall—We are not able to enlighten because we do not know.

Senator WONG—I understood Mr O’Sullivan to indicate that it was an innocent mistake, so he must have some knowledge of how that came about.

Dr Boxall—We do not know why the person made the innocent mistake and we did not bother pursuing it.

Senator WONG—Do you know, Mr O’Sullivan?

Mr O’Sullivan—No, I do not.

Senator WONG—So you are not aware of how such a person—SES is a reasonably senior level—might have gained an understanding that in fact the government was now requiring this?

Mr O’Sullivan—I am just not in a position to speculate.

Senator WONG—Did you speak to the person?

Mr O’Sullivan—Yes, I did. I think that the main issue is that—and Dr Boxall has read out the responsibilities of that area—that area is not responsible for HR policy. That comes within my responsibility.

Senator WONG—I was not asserting that, and that was not my question. The main issue is the issue that the question is being asked about—that is, when you spoke to the person, did you come to an understanding of how it was that they made an innocent mistake?

Mr O’Sullivan—No, I did not.

Senator WONG—So you do not know where they got that advice or how they came to that view?

Mr O’Sullivan—No, and I am not prepared to speculate on it.

Senator WONG—I am not asking you to speculate. You communicated with a manager at an SES level who was advising employees, presumably, of a change of entitlement which was incorrect, and I understand that is the case. You did not inquire as to how they might have come to the view that this was correct?

Mr O’Sullivan—To be honest, my main objective at that time was to correct the record and, having corrected the record, we moved on. In an organisation of 3½ thousand, occasionally an errant email will occur. As soon as we found out about it, we fixed it.

Senator WONG—I will repeat my question. In your discussion with them, in terms of the questions you asked, did you come to any understanding of how the person came to the view that this was DEWR policy?

Mr O’Sullivan—No.

Senator WONG—None at all?

Mr O’Sullivan—No.

Senator WONG—You did not ask how they came to the view that this was DEWR policy?

Mr O’Sullivan—I did not labour the point. To be honest, this is a very good officer, a very high performer. I explained what the true situation was and we moved on.

Senator WONG—You have an SES level officer making an indication about a change to industrial entitlements which was incorrect. I accept that. I am interested that you did not inquire, if that is your evidence, as to how that they came to have that view.

Dr Boxall—The department has nothing further to add on this. Mr O’Sullivan has been quite clear that he had a conversation with the officer to advise that this was not the policy, and we moved on. We do not engage in vindictive witch-hunts about people in the department.

Senator WONG—Except when there is a leak.

Senator Abetz—But of course that is not an innocent mistake. There is a big value difference there. That you would consider the two to be identical I think reflects on the way the Labor Party operates.

Senator WONG—The problem with your insults is that they are always such a long bow to draw.

Senator Abetz—One is an absolute breach of the Public Service Act; one is an innocent mistake. One is an inadvertent mistake. To try to have some moral equivalence in relation to the two is just appalling.

Senator WONG—I think everyone will know from the interchange that that is not what I was saying. As always, you set up a straw person and then you knock it down. It is a very poor debating school technique.

Senator Abetz—No, you mentioned leaks, and you know they are illegal.

CHAIR—Order! I think we have extracted as much from this situation as possible and I suggest we move on.

Senator WONG—That is not up to you, Chair.

CHAIR—That is my suggestion.

Senator WONG—Thank you. I will take the suggestion on board. Mr O’Sullivan, I am not trying to engage in a vindictive witch-hunt of the officer. I have not asked you the person’s name. I am interested in how they might have come to the view that that was DEWR’s policy. It is your evidence that you simply did not inquire.

Mr O’Sullivan—That is right.

Senator WONG—So you have no idea how someone might have come to that view.

Mr O’Sullivan—No.

Senator WONG—Was there any indication from anyone in your branch of the department that sick leave was going to be changed for the purposes of AWAs?

Dr Boxall—Senator Wong, we have nothing further to add.

Senator WONG—This is a different question.

Dr Boxall—I am answering the question on behalf of the department, and we have nothing further to add as to why the officer might or might not have sent out the email. We are not interested in why the officer did it. As Mr O’Sullivan said, what we were interested in doing was correcting the record as soon as possible and moving on.

Senator WONG—Was there any consideration within DEWR of altering the sick leave policy to require that days in excess of one day would require a medical certificate?

Dr Boxall—There is ongoing consideration of all personnel policies in DEWR, so I cannot answer yes or no. The question is that we do not know why the officer did that and we are not interested in finding out.

Senator WONG—So it is possible that DEWR was considering or is considering the requirement for a medical certificate for sick leave?

Dr Boxall—It is possible that DEWR was not considering a requirement to change sick leave policy.

Senator WONG—The corollary is that it is possible that you were.

Dr Boxall—It is possible. DEWR considers changes to all personnel practices on an ongoing basis.

Senator WONG—Including sick leave?

Dr Boxall—All personnel practices, on an ongoing basis, are under review.

Senator WONG—Is sick leave a personnel practice?

Dr Boxall—That is a question that you can answer, Senator Wong.

Senator WONG—When you answer the question saying, ‘We consider all personnel practices on an ongoing basis,’ I want to know what is included in the phrase ‘personnel practice’.

Dr Boxall—Anything that goes to the terms and conditions of employment, including training, occupational health and safety, fire wardens allowance—the whole lot.

Senator WONG—Is sick leave a term or condition of employment?

Dr Boxall—Yes, it is. Of course it is.

Senator Abetz—Surely we do not need estimates to find things like that out.

Senator MARSHALL—It took quite some time to get the answers to the questions.

Senator Abetz—It is something that everybody knows. I would have thought that a former trade union official in particular would have known.

Senator MARSHALL—You would have thought that the officer could have simply answered the question up front.

Senator Abetz—It was obvious. But it is up to you how you use the time.

CHAIR—Order! We will proceed to the next set of questions.

Senator WONG—I am just waiting until the minister has finished his diatribe.

CHAIR—I think he has finished, Senator Wong. Please proceed.

Senator WONG—Just one thing: did the person have authority to send this sort of email out, Mr O’Sullivan?

Mr O’Sullivan—The person can communicate with his or her branch within the policy parameters of the department.

Senator WONG—Can you tell me: have DEWR staff undergone training to ensure they fully understand the industrial relations laws?

Mr O’Sullivan—We are quite confident that all our staff, to the extent necessary, fully understand their obligations under the Workplace Relations Act.

Senator WONG—What sort of training has there been since the commencement of the laws?

Ms Sadauskas—I have responsibility for the HR branch. With regard to training on Work Choices in particular, many of DEWR’s staff have attended seminars on the changes. All of our HR staff have undertaken training on the changes, and they assist staff when they phone in and ask questions. Also, our SES had been briefed, so managers are aware of the changes.

Senator WONG—Sorry, I missed the first part of your answer.

Ms Sadauskas—Many DEWR staff have attended seminars which have been offered to them.

Senator WONG—I presume you have a reasonably detailed record of training undertaken?

Ms Sadauskas—I do not have it with me.

Senator WONG—No, but I presume the department keeps that.

Ms Sadauskas—Are you asking about numbers of staff attending various sessions et cetera?

Senator WONG—What is the nature of your records around training?

Ms Sadauskas—I would need to get some advice.

Mr O’Sullivan—We do keep some records of training. I am making some inquiries to see whether we can assist you.

Senator Abetz—Is it necessary for follow-up questions?

Senator WONG—I can continue in this vein for a short period. I do not need all the information now. Perhaps you can let me know the nature of the data retention, and that might enable me to put some questions on notice rather than keeping you here on that point. Ms Sadauskas, let us go through this. You said that some training had been provided to the non-HR staff. Let us leave SES to one side. What sort of training has been provided outside HR and SES?

Ms Sadauskas—Are you talking about a specific area?

Senator WONG—Training on the new Work Choices legislation.

Ms Sadauskas—I do not have the information on the seminars, but seminars have been offered to our staff, yes.

Senator WONG—Do we know how many?

Ms Sadauskas—No, I do not have that information. We can find that out for you.

Senator WONG—Can you give me an indication of whether that can be obtained later? I will come back if that would be more convenient.

Ms Sadauskas—Yes, we could table that.

Senator WONG—About how long do you want me to give you?

Ms Sadauskas—About an hour.

Senator WONG—Okay; we will come back to it. Thank you. I have some questions about staffing levels and recruitment. I presume that is Mr O’Sullivan’s area. I noticed on page 56 of the PBS that there is some alteration to outcomes 1 and 3, but there is a reasonable alteration to the average staffing level in outcome 2. From the commencement of this year until 28 April, how many staff were engaged by DEWR?

Mr O’Sullivan—How many new staff commenced?

Senator WONG—Yes. I would like figures for that time frame and also for the month leading up to the 28th, so the two time frames I am interested in are from the commencement of 2006 until 28 April and, of those, who commenced after 27 March.

Mr O’Sullivan—We do not have that with us, but we should be able to find out reasonably quickly.

Senator Abetz—Is there anything following on from that? Can we take that on notice?

Senator WONG—Yes, I have further questions. Dr Boxall, I think that on previous occasions you have indicated that the AWA will be a condition of engagement for new staff?

Dr Boxall—That is correct.

Senator WONG—I presume that, after the commencement of Work Choices, which obviously alters the test against which AWAs are assessed—it alters the minimum standards—DEWR would have had to revise its various template AWAs to take into account the new legislation?

Mr O’Sullivan—Yes, but very minimal changes were required to our AWA template.

Senator WONG—Is it just one template or are there a number?

Mr O’Sullivan—We have one current template for non-SES employees and another one, which is not significantly different, for SES employees.

Ms Sadauskas—We have a slight variation for ongoing and non-ongoing staff.

Senator WONG—Of the template employed.

Ms Sadauskas—Yes.

Senator WONG—So an ongoing staff member who chooses to go from the collective agreement to an AWA has a slightly different template to a person who is a new employee.

Ms Sadauskas—There is a template for non-ongoing staff.

Senator WONG—I am sorry.

Dr Boxall—The distinction is between ongoing and non-ongoing, not between current staff and new staff.

Senator WONG—It is the nature of the employment.

Dr Boxall—Yes. It is to reflect the fact that non-ongoing staff have a fixed term.

Senator WONG—What is the difference between the template SES and the template non-SES?

Mr O’Sullivan—Essentially, it is to reflect the fact—

Senator WONG—Lots of dough.

Mr O’Sullivan—that one is employed as an SES officer under the Public Service Act and one is employed as a non-SES officer.

Senator WONG—Are there conditions that the SES officer template has that the non-SES officer template has?

Mr O’Sullivan—From memory, I would have to do a contrast and compare but—

Senator WONG—Are you able to provide us with those templates?

Mr O’Sullivan—Yes.

Dr Boxall—The only condition that I can think of is access to a motor vehicle.

Senator WONG—When did you undertake the revision of the templates to take into account the Work Choices legislation change?

Mr O’Sullivan—Once we became aware that Work Choices was coming into effect.

Senator WONG—Was that post 27 March?

Mr O’Sullivan—Sorry, I do not quite have the date—as soon as the announcement was made, obviously.

Senator WONG—Which announcement?

Mr O’Sullivan—The announcement for the commencement date of Work Choices.

Senator WONG—When the announcement for the commencement of Work Choices was made, you then commenced revision of your template.

Mr O’Sullivan—Yes, the current template.

Senator WONG—When were the new templates finalised?

Mr O’Sullivan—I would not have an exact date.

Senator WONG—Was it one week, two weeks, three weeks, four weeks?

Dr Boxall—It was about a fortnight after 27 March.

Senator WONG—What is the process for finalising? Does it have to go to that—what is it called—that committee?

Dr Boxall—The remuneration subcommittee—indeed.

Senator WONG—When did that meet to finalise?

Dr Boxall—They meet every second Monday.

Senator WONG—When did they meet to finalise the AWAs?

Mr O’Sullivan—I do not have that exact date but I will take that on notice.

Senator WONG—You are not able to give us a precise date on that at this stage.

Mr O’Sullivan—Not at this time—that is why I have taken it on notice.

Senator WONG—When the remuneration committee met, was that the final point at which finalisation occurred in terms of the department’s process? I am trying to work out when they become official template AWAs in terms of your internal processes.

Mr O’Sullivan—Just to clarify: as with any document like that, the department observes the right to make changes. In its current form, it was finalised about a fortnight after Work Choices. No significant changes have occurred since then.

Dr Boxall—It may well have been finalised at management board.

Senator WONG—That is what I am trying to clarify: which is the body that finalises them for the purposes of your internal processes?

Dr Boxall—Management board is the higher level management committee in the department. The remuneration subcommittee is the subcommittee of management board. It so happens that the membership of the remuneration subcommittee is the membership of the management board plus the chief information officer, so there is often a case where an issue can be handled in both committees. Sometimes the chief information officer will attend management board when there is an issue of particular interest.

Senator WONG—I am interested in when DEWR says your templates were finalised: whether it was—I appreciate you might want to take that on notice—

Dr Boxall—That is correct. Mr O’Sullivan will take that on notice.

Senator WONG—the date on which the remuneration subcommittee met, whether it was the date on which management board met; whatever the process is and the date on which they were finalised. I recall at the last estimates there was evidence about various call centres et cetera being established for the purposes of the Work Choices hotline and so forth. My recollection is that they were employed by a third party, not directly by government—is that right?

Mr Pratt—No. Those staff were employed by the department.

Senator WONG—Does the increase from 875 to 1,171 include any call centre staff?

Mr Pratt—Yes, it would include close to 300 call centre staff.

Senator WONG—Does the 875 figure for 2005-06 already include some call centre staff, given that they were engaged for the current financial year?

Mr Pratt—Yes.

Senator WONG—So the 875 figure would include 300?

Mr Pratt—I have just had it drawn to my attention that there is a part-year effect for the 875. Not all of the 300 are in that 875, in the sense that—

Senator WONG—You have to convert it to a—

Mr Pratt—Yes, that is right.

Senator WONG—Okay. Are you able to tell me how much of that is call centre staff?

Mr Pratt—I can do a rough calculation in my head. It would be something like 80 full-time equivalents. I will correct that on notice, if it is wildly out.

Senator WONG—Would the 1,171 also include a proportion of call centre staff?

Mr Pratt—No. The 1,171 is what we are anticipating for the full year of 2006-07, so the near 300 would count as 300.

Senator WONG—When a new employee is engaged by DEWR, are they provided with a template AWA?

Mr O’Sullivan—No. When a new employee is engaged by DEWR, we enter into an AWA negotiation, although we would make available the AWA template as a basis for those negotiations. It is on the internet. The reason I said that is that I would not want you to think it was presented as a fait accompli.

Senator WONG—You keep worrying about where I am going.

Mr O’Sullivan—I apologise.

Senator WONG—It might be better to work out where I am going and then worry about it.

Senator Abetz—For good reason, I would have thought!

Senator WONG—When is that provided in the process? Say, I rock up and I am going to be a call centre employee or something like that.

Dr Boxall—You would first have to be selected at the interview.

Senator WONG—Yes, I know.

Senator Abetz—Otherwise she would not get there, would she!

Senator WONG—I have often aspired to that profession. I might get more answers than I do here!

Senator Abetz—You are supposed to give the answers in a call centre!

Senator WONG—Maybe you should work there, Minister! Let us say that magically I get through the recruitment process and I am given the job of being a call centre employee for DEWR. What do I get? How am I informed of that? Do I get that in writing? What do I get in writing? Do I get a little pack?

Ms Sadauskas—This is a person who has actually been selected through a recruitment process?

Senator WONG—Yes, I have managed to get through the interview.

Ms Sadauskas—You would get a letter of offer with an AWA.

Senator WONG—Are there any occasions on which a letter of offer is sent without a template or the actual text of an AWA?

Ms Sadauskas—For a new employee, I assume not. It would depend on whether or not they were an employee transferring from another government agency.

Senator WONG—I am talking about new employees—non-APS employees.

Ms Sadauskas—If the consideration of the salary rate et cetera and the process Mr O’Sullivan mentioned have been concluded, they would get a letter of offer with an AWA.

Senator WONG—Is there any occasion on which an employee might commence employment without having finalised their AWA?

Ms Sadauskas—That could be the case.

Mr O’Sullivan—I can give an example of where that might have occurred. With the introduction of Work Choices, there was a window during which AWA offers that were provided to new employees, such as you, were not able to be processed before the date on which the OEA stopped, and we were unable to process them. There was a window, and so we would have had to reissue the AWA on essentially the same terms, and in that instance they would have started in the department and the AWA would have taken effect once it was lodged with the OEA, but the terms of the agreement would have been the same.

Senator WONG—How long was the window?

Mr O’Sullivan—I cannot recall. At the very minimum it would have been seven days, but that would have required technical perfection so that the offer was given to them as soon as Work Choices commenced. There is a consideration period, as you know—so a week, two weeks. They have got to have received it—so it would vary. They have to consider it, and the consideration period starts from when they actually receive the offer.

Senator WONG—And some people might have received the AWA post commencement?

Mr O’Sullivan—Yes.

Senator WONG—And what were you saying about the OEA process?

Mr O’Sullivan—What I am saying now is that there is a consideration period before an employee can sign an AWA. I think it is seven days, from memory.

Senator WONG—Was the department not aware that 27 March would be the commencement date for Work Choices?

Mr O’Sullivan—I am sure part of the department was aware of it, but obviously in HR it would have been quite inappropriate for us to get a head start.

Senator WONG—Did you start working on your template AWAs before the commencement date?

Mr O’Sullivan—We waited until we had the finalised legislation in front of us.

Senator WONG—The legislation was finalised, from my recollection, quite some time before commencement.

Mr O’Sullivan—And the regulations are part of the legislation.

Senator WONG—They were also tabled in the parliament well before the 27th. As you know, they are not capable of amendment, only disallowance.

Mr O’Sullivan—I guess what I am focusing on is, following your line of questioning, the finalisation of it. What I am saying is that we finalised it at the earliest date we could or at the earliest date on which we were required to.

Senator WONG—I just wonder why, as the department responsible for the conduct of this legislation, DEWR did not commence revising its own HR policies so it was ready for the commencement.

Mr O’Sullivan—Sorry, Senator, I just missed the beginning part of the question.

Senator WONG—I wondered why, as the department responsible for this legislation, the HR part of DEWR did not commence altering its HR documents to ready itself for the commencement of the legislation.

Mr O’Sullivan—I am sure work had started; I was focusing on the finalisation and I might have been in error on that.

Senator WONG—So you get a letter, and one of the things you get in your offer letter is that an AWA is a condition of engagement—is that correct?

Mr O’Sullivan—If you are new to the APS.

Senator WONG—Yes, if you are new to the APS. What other conditions of engagement are referred to in that first letter of offer? Are there any others?

Ms Sadauskas—The letter of offer also explains the main conditions in the AWA.

Senator WONG—Are police checks a condition of employment?

Mr O’Sullivan—That would depend on the particular job. There would not be a general rule that police checks are needed.

Dr Boxall—Citizenship.

Mr O’Sullivan—Citizenship would be another requirement.

Senator WONG—But is that in the letter?

Mr O’Sullivan—It would depend. We do not have a precedent letter that would require every employee of the department to get a police check. But, for example, if you were going to join, say, our investigations branch, we would require, as is appropriate, more intense scrutiny.

Senator WONG—What about citizenship, which Dr Boxall mentioned—is that a condition of employment?

Mr O’Sullivan—We will just have a look at the letter, Senator.

Senator WONG—Which letter are you looking at, Mr O’Sullivan?

Mr O’Sullivan—I am just trying to ascertain what a kind of general template letter would contain in it.

Senator WONG—Are you able to table one of those? That might expedite things.

Mr O’Sullivan—Those letters do vary. It might be misleading to table that.

Senator WONG—You could table a selection and cover your bases.

Mr O’Sullivan—I will take that on notice, if that is okay.

Senator WONG—Are health checks a condition of engagement?

Ms Sadauskas—I believe they are, yes.

Senator WONG—And what was the answer on citizenship?

Ms Sadauskas—Citizenship is referred to in the letter of engagement.

Senator WONG—What else is referred to in the letter as a condition of engagement? We can do it this way, Mr O’Sullivan.

Mr O’Sullivan—I cannot give you an exhaustive answer. What I tried to—

Senator WONG—You could read off the letter and tell me what the conditions of engagement are in that template.

Mr O’Sullivan—Sorry; I do not have a copy of the letter with me, but we will make inquiries and see if I can get one.

Senator WONG—Is citizenship a condition of engagement mentioned in the letter?

Mr O’Sullivan—Ms Sadauskas has answered that question.

Ms Sadauskas—Yes, it is.

Senator WONG—And health checks also?

Ms Sadauskas—I am not certain about health checks in the letter of offer. I need to take that on notice.

Senator WONG—Is the probationary period generally a condition of engagement?

Mr O’Sullivan—Yes.

Senator WONG—For non-APS employees?

Ms Sadauskas—Yes.

Senator WONG—Is that generally referred to as well?

Ms Sadauskas—Yes.

Senator WONG—What were the conditions of engagement for those employees who commenced during the period between when the Work Choices legislation came in and the new template AWAs were finalised?

Mr O’Sullivan—I think they would have been those that are provided for under the department’s certified agreement until the AWAs took effect.

Senator WONG—But, your policy is that current employees who are on the CA then have a choice to move to an AWA. If they were engaged initially under a CA, don’t they then have a choice as opposed to being required to go on an AWA?

Mr O’Sullivan—Yes.

Senator WONG—So you are saying anybody who came on in that two-year, three-year, four-year period—whatever that period is—

Mr O’Sullivan—That window.

Senator WONG—was employed on the CA and, therefore, has the right to choose whether or not to go onto an AWA.

Mr O’Sullivan—If they choose not to, they do not get the terms and conditions that are offered under the AWA.

Senator WONG—I understand that. Were employees engaged during this period advised that they were employed under the CA?

Mr O’Sullivan—I believe they were, but I am not sure. I will have to check. They would have had their AWA negotiations. They would have agreed to join the department on an AWA. If there was any requirement to withdraw that AWA because of the implementation of Work Choices, they would have been given a new AWA in essentially the same form.

Senator WONG—I do not want to know the names or the salary levels, but I would like you to take on notice a request for documentation that was provided to employees in that situation.

Mr O’Sullivan—I will take that on notice.

Senator WONG—Can you explain to me whether they were told that, as an existing employee who in fact had been engaged under the CA, they were not obligated to take an AWA?

Mr O’Sullivan—I do not know. We generally do not give legal advice to any prospective—

Senator WONG—It is not legal advice; it is your policy. As I understand your policy, it is a condition of engagement for new employees to go on AWAs. Right?

Mr O’Sullivan—Yes, that is our policy.

Senator WONG—Existing employees have a choice: they can either be on the CA, or they can choose to take—

Dr Boxall—That is the law. It is not policy.

Senator WONG—Yes, but people need to be advised of that. Mr O’Sullivan’s evidence is that a new employee who is employed in this window period who would otherwise be required to take an AWA, for that window period, is employed on the CA—

Mr O’Sullivan—By operation of law.

Senator WONG—I think you agree, therefore, that, in accordance with the law and the policies of the department, they are then entitled to choose whether to move off the CA and take the AWA. This is in a context where they have previously been advised, on your evidence, that the AWA is a condition of engagement. I want to know whether they were then advised that that is no longer the case and not a condition of engagement because they are an existing employee on the CA and they have a choice.

Mr O’Sullivan—I am taking that on notice.

Senator WONG—Do you know?

Mr O’Sullivan—No, I do not. I am taking that on notice.

Senator WONG—I do not think this question is for Mr O’Sullivan, Dr Boxall. I am interested in what the department’s knowledge is of other departments’ and other agencies’ employment practices during that period—that is, post the commencement of Work Choices but prior to alteration of template AWAs. That is Mr Pratt’s section, I presume.

Mr Pratt—We communicate with almost all of the public sector agencies on a pretty regular basis. During the period just after Work Choices started, we were in almost constant communications with them, giving them advice on what they needed to do to implement Work Choices and their agreements. We were hosting seminars for staff of different agencies. It was quite a widespread campaign and an ongoing one.

Senator WONG—It is a fairly reasonable number of tasks which need to be undertaken by departments to become Work Choices compliant.

Mr Pratt—We assisted them with technical advice on those matters.

Senator WONG—Do you have any information about the status of compliance with Work Choices of other agencies?

Mr Pratt—No. We do not keep information of that sort.

Senator WONG—Which departments or agencies did you work with post 27 March?

Mr Pratt—It would be almost all of them.

Mr Maynard—As Mr Pratt has mentioned, we have run seminars on the implications of Work Choices and agreement making. Over 125 agencies have participated in that. In addition to that, we have had individual negotiations with a broad range of agencies in each and every case where they have sought our advice on the implications of Work Choices. We have endeavoured to provide them with as accurate and complete information as possible.

Senator WONG—That advice and work is ongoing?

Mr Maynard—Yes, it is.

Senator WONG—Is the public sector currently compliant with Work Choices?

Mr Maynard—To the best of my knowledge, yes.

Senator WONG—All agencies?

Mr Maynard—I do not know the internal working details of all agencies, as you will appreciate. Under the current arrangements, responsibility is devolved to agency heads. We provide advice on the matters that are brought to our attention.

Senator WONG—Do you vet new template AWAs? Do you provide advice on them?

Mr Maynard—It is an option for agencies to seek our advice on AWA templates or individual clauses within them, and we have provided such advice.

Senator WONG—Which agencies have provided you with template AWAs for consideration?

Mr Maynard—Off the top of my head, I am not certain, but I could take that on notice.

Mr Pratt—To emphasise a point Mr Maynard made, we do not actually vet AWAs. We do not check them.

Senator WONG—I tried to change the verb to providing advice. Which agencies have you provided advice to on template AWAs?

Mr Pratt—We will need to take that on notice.

Senator WONG—How many agencies are there in the Commonwealth public sector?

Mr Maynard—If you take account of the APS agencies and the non-APS Commonwealth authorities, something of the order of 200.

Senator WONG—So, of the 200, would it be around 10, 20, 30, 40, 50 or 90 per cent?

Mr Pratt—I do not know. We will have to take that on notice.

Senator WONG—Mr Maynard must be able to give me a ballpark figure.

Mr Maynard—I am sorry, I am not personally involved in all of those discussions. Therefore, it would require me to consult with all of my staff.

Senator WONG—No-one knows?

Mr Maynard—There are a relatively manageable number of staff to be consulted with. I will endeavour to get you that answer during this session.

Senator WONG—I would appreciate that. Thank you.

Senator GEORGE CAMPBELL—Dr Boxall, at estimates with Immigration last week, there was a range of questions asked about the application of 457 visas and how they function. Can you tell us to what extent Office of Workplace Services or the department is involved in monitoring the minimum wage and conditions of imported labourers?

Mr Pratt—That is probably a question more appropriately directed to the Office of Workplace Services when they arrive.

Senator WONG—Shall we deal with it now? They are here.

Dr Boxall—They are a separate agency.

Senator WONG—Dr Boxall, I notice that you are going to employ a chief economist.

Dr Boxall—That is correct.

Senator WONG—When was the decision made to engage a chief economist?

Dr Boxall—Sometime earlier this calendar year.

Senator WONG—In 2006?

Dr Boxall—Yes.

Senator WONG—Post or pre Work Choices, or are you unable to indicate that?

Dr Boxall—I cannot indicate that, but it is irrelevant—it might be relevant to you but it was not a relevant consideration to us.

Senator WONG—I am glad you clarified that, Dr Boxall. Can you tell me why the decision was made that the department required a chief economist?

Dr Boxall—A paper was put to management board and management board took the view that we have a lot of very good economists in the department—a number of whom are probably in their 50s—but also we thought that it was important—

Senator WONG—That is not a bad thing, is it?

Dr Boxall—From my point of view it is a rather good thing.

Senator WONG—I would have thought so.

Dr Boxall—And I am an economist. But we thought that it was important that we consolidate the economic expertise in the department under a chief economist who will report to Mr Carters, the Deputy Secretary, Workforce Participation. We were also keen to get a focus within the department and to establish a position which is akin to the Chief Counsel position in the Workplace Relations Legal Group.

Senator WONG—Chief Counsel?

Dr Boxall—That is Mr Smythe.

Senator WONG—I think yesterday Mr Carters confirmed—or it might have been Mr Sandison—that DEWR had not undertaken modelling of the disincentive effect of the MTRs within the department.

Dr Boxall—Whatever Mr Sandison and Mr Carters said yesterday is bound to be correct.

Senator WONG—Will the chief economist undertake or be responsible for econometric modelling or other economic modelling? What is their responsibility going to be?

Dr Boxall—They will be in charge of all the economic work, economic research and economic modelling.

Senator WONG—Is this position required to do that sort of modelling? Presumably you have decided that you need someone like this in order to be able to do this sort of economic modelling.

Dr Boxall—No, that is not the reason. The reason was, as I explained, to provide a focus for the economic work within the department and to generally maintain the current high level of economic expertise in the department.

Senator WONG—I know that you did not do any modelling of financial disincentives of the welfare/tax divide in terms of participation outcomes, and I do not want to traverse some very lengthy questions that I think we went through last time, but just remind me—did the department actually do any in-house economic modelling on employment effects of Work Choices?

Mr Pratt—No, Senator.

Senator WONG—What labour market modelling did the department do prior to the chief economist—internally as opposed to commissioning external research?

Dr Boxall—The chief economist is yet to be appointed.

Senator WONG—So you have not done any economic modelling to date?

Dr Boxall—No, you said prior to the chief economist—I am just clarifying that the chief economist is yet to be appointed.

Senator WONG—Thank you for that insightful answer, Dr Boxall. I am aware of that.

Senator Abetz—You gave a time line for the departmental officials to respond to and it was an improper time line because no person has been appointed. So it is very helpful and the sarcasm can be done without.

Senator WONG—What economic modelling has the department done internally?

Mr Pratt—As I answered before, in relation to Work Choices—none.

Senator WONG—So presumably the statement by the Prime Minister made about Work Choices that: ‘This legislation will be good for the future of the Australian economy. It will lift employment. It will lift productivity,’ is not on the basis of any economic modelling advice that DEWR has provided?

Senator Abetz—Hundreds of other economists have indicated that it would be.

Senator WONG—I am not sure that was my question, Minister. Do you want me to repeat the question, Mr Pratt?

Mr Pratt—No, Senator. I do not have anything further to add to my answer beforehand.

Senator WONG—Which was?

Mr Pratt—We have not done any internal economic modelling about Work Choices.

Senator WONG—What about economic advice regarding the employment and productivity effects of Work Choices?

Mr Kovacic—The Prime Minister's comments are premised on several factors. One is clearly the experience under the 1996 reforms that the government previously introduced in terms of their impact on productivity, employment growth and indeed wages growth. That experience is also reinforced by the views of a number of economic think tanks, if I can describe them that way—for instance, the International Monetary Fund and the World Bank, which have consistently been of the view that labour market deregulation has a positive impact in terms of economic performance of economies. As we have advised in previous estimates committees, the department commissioned some modelling looking at some of the possible economic impacts of the Work Choices reforms. At this stage those reports have not been made public.

Senator GEORGE CAMPBELL—As I understand it, you never received the reports until after the legislation.

Mr Kovacic—No, Senator. It was received in advance of the legislation being tabled in the parliament.

Senator GEORGE CAMPBELL—I seem to recall that you told us it was not, that it had no bearing on the legislation.

Mr Kovacic—I do not recall saying that.

Senator GEORGE CAMPBELL—I will go back and check the record.

Senator WONG—When was the report to which you are referring which has not been released—not the IMF ones et cetera, which are quite accessible—completed?

Mr Kovacic—It was completed in September of last year, from memory.

Senator WONG—Can you remind me who that was undertaken by?

Mr Kovacic—Monash University—the Centre for Policy Studies.

Senator WONG—Who were the academics involved?

Mr Kovacic—I would have to check that; I cannot recall off the top of my head. I will check that and get that information provided.

Senator WONG—Thank you. And the decision has been made by the government not to release that—is that correct?

Mr Kovacic—In terms of previous answers to questions on notice, at this stage the minister has taken the view not to release that report.

Senator WONG—Apart from the public discussion to which you have referred about the general principle of labour market deregulation, is this the only piece of economic research the department has commissioned relevant to the Work Choices legislation?

Mr Kovacic—It is the only one that I am aware of. There would be previous studies, if I can put it that way, which would have dealt with aspects of the Work Choices reforms—for instance, the Harding study in terms of the employment impact of unfair dismissal laws. Again, there is also some modelling that the department previously commissioned in the

context of previous safety net reviews which went to the impact of safety net reviews on employment in particular.

Senator WONG—Can I ask why the decision was made not to engage a chief economist to bolster the economic consideration of the government's industrial relations agenda prior to the legislation being developed?

Dr Boxall—We have a number of very good economists in the department, and we had yet to consider the situation. At the beginning of the year we took stock of the economic expertise within the department and decided on a strategy of appointing a chief economist.

Senator WONG—Essentially you have not have the capacity to date within the department to do that modelling.

Dr Boxall—We have not done the modelling. That does not mean to say that we do not have the capacity.

Senator WONG—So it was a choice not to.

Dr Boxall—We did not do that modelling in the past. We actually contracted it out, as Mr Kovacic has just explained.

Senator WONG—Do you have anything to get back to me on, Mr Kovacic?

Mr Kovacic—Peter Dixon and Maureen Rimmer.

Senator WONG—Thank you. I turn now to this. Has the department been asked to provide briefings, either verbal or written, or attend any meetings of the government's employment relations backbench committee?

Mr Pratt—Not to my knowledge.

Senator WONG—Does the department have any knowledge of the backbench committee?

Mr Pratt—I am aware that it exists and that it meets. I have never appeared before it and, to my knowledge, none of my staff have appeared before it.

Senator WONG—Any request for written materials or written briefings?

Mr Pratt—Not to my knowledge.

Senator WONG—Anyone else? So, Dr Boxall, the department has nothing to add to that answer? The answer is no—is that right? 'Not to Mr Pratt's knowledge' is a different question from other departmental officials being asked.

Mr Pratt—Can I add to my answer. Just thinking about it, we would not provide briefing directly to a backbench committee in any event. We would provide briefing to the minister.

Senator WONG—It was probably poorly phrased. Have you been requested to provide briefings to the minister's office which are for the purpose of provision to the backbench committee?

Mr Pratt—My previous answer stands but, by the same token, that goes to the matter of advice to the minister.

Senator WONG—I am not asking what the content of the advice is. But I can presume you would say it is really good legislation!

Mr O’Sullivan—I think when you ask what the subject matter of the advice is, that does go to the content of the advice.

Senator WONG—We are talking about topic and advice. I simply asked about briefings to the minister—not what was in them, which is the nature of dealings with government and the reason there is confidentiality—for the purposes of provision to the backbench committee of the government.

Dr Boxall—The department’s position, as Mr Pratt outlined, unless we advise you otherwise, is that to the best of our knowledge no departmental official has been asked to attend the backbench committee and provide a briefing and we are also not aware of being asked for a brief specifically for the minister to then hand it to the backbench committee.

Senator WONG—Does the department have any administrative role in relation to the backbench committee?

Dr Boxall—No.

Senator WONG—Has the department been asked to consider any recommendations from the backbench committee?

Senator Abetz—That may be very difficult for them to ascertain because, I would imagine—

Senator WONG—To their knowledge.

Senator Abetz—The normal course would be that the backbench committee would have a suggestion which is given to the minister, and then the minister may well bounce that into the department for a brief.

Dr Boxall—Senator Wong, we have just been advised of something. Mr Pratt will add to the answer.

Mr Pratt—I have just been advised that, in relation to government amendments to the legislation, we were advised that some advice we were providing to the minister’s office would be made available to the backbench committee.

Senator WONG—This is government amendments in the Senate to the Work Choices bill?

Mr Pratt—That is right.

Senator WONG—Is that the only circumstance?

Mr Pratt—To my knowledge—to my recently acquired knowledge.

Senator WONG—Mr Smythe, you have nothing further to add on that?

Mr Smythe—No.

Senator WONG—I have finished with the topic.

Dr Boxall—May I clarify whether we have finished with cross-portfolio questions?

Senator WONG—There was one issue, Ms Golightly, in relation to the answer you provided today which was headed ‘Original script’ and ‘Revised script’. It is not really script; it is more of a set of instructions.

Ms Golightly—Yes, that is what we have given in writing to our consulting company.

Senator WONG—I just want to confirm with you that the revised script actually refers to TV advertising concepts.

Ms Golightly—That was as a result of the one complaint that we had. We thought it was clear before, but we made it very clear. In fact, I think that was the only change that we made to the script.

Senator WONG—I presume—I cannot see her here—that the issue of the PSP and some various other things from yesterday are simply taken on notice for written answers, Dr Boxall.

Dr Boxall—That is correct.

Senator WONG—How many vacancies are there currently in the department?

Mr O’Sullivan—I would have to take that on notice.

Senator WONG—You are not able to tell me that.

Mr O’Sullivan—No, I am not.

Senator WONG—I would like to know how many vacancies there currently are and how many remain vacant.

Mr O’Sullivan—I will take that on notice.

Senator Abetz—I am unclear. Is it how many vacancies there are currently and—

Senator WONG—I think that is probably it.

Senator Abetz—I was unsure what the difference was between the two categories.

Senator WONG—That is true—so, how many vacancies does the department currently have and also perhaps some indication, given the budget allocation for an increase in staff, of what the plan is for filling those additional places.

Dr Boxall—We have a number of bulk recruitment rounds, which have been very successful and have attracted huge numbers of applicants—over 1,000 most recently. We are continuously filling the vacancies for which we have received additional funding.

Senator WONG—Have you got any more bulk recruitment rounds coming up?

Dr Boxall—We are on our third bulk recruitment round now, and there will be a fourth and fifth I am sure.

Senator WONG—Mr O’Sullivan, I am looking at page 56 of the PBS, particularly for outcome 2. These are full-time equivalents, so assumedly there are actually more positions comprised in this figure. Presumably this is done on the basis of some sort of indication of how many positions there are at each level. I am sure your accounting people have done this.

Mr O’Sullivan—I will hand over to someone who is a little more knowledgeable on this subject matter.

Ms Graham—The average staffing level is calculated at the beginning of the financial year, the end of the financial year and the average across the year. So it is quite difficult to pinpoint exactly how many positions you are talking about at any point in time. But there is certainly a projection of the number of people who are expected to be in the department at the end of the financial year each time, and that is how we do the average staffing level figure.

Senator WONG—I am sure DOFA would make you tell them that sort of stuff, that this is how many we want and this is why.

Ms Graham—In terms of the costing of new policy proposals there are certainly a number of staff who are costed into those proposals. But there is also general growth in the agency. It is quite difficult to pinpoint just the people who are tied, if you like, and who were funded by a particular measure.

Dr Boxall—Also, we were appropriated money rather than positions so as long as we live within the budget we can hire as many or as few staff as we judge appropriate to deliver the outcomes.

Senator WONG—But you are in round three of your bulk recruitment so you obviously have some understanding of approximately how many officers there are at each level or for tasks. I am just trying to get a handle on where the new staff are going, what level they are at and what their tasks are.

Dr Boxall—We can take it on notice and give you a handle on where we are going with staff and what sort of level of vacancies we are filling.

Senator WONG—And what sort of levels they will be at. For example, you have 300 people employed in a call centre, so that is a different level from, say, X number of policy advisers, I suppose—I am not very good on my APS positions.

Mr Pratt—To give you an indication for outcome 2, I can let you know that we have recruited nearly 300 call centre staff—it is certainly over 280, but as of today I am not sure exactly what it is. We have recruited over 45 workplace advisory staff, over 200 staff for the Office of Workplace Services, which is now, of course, a separate agency.

Senator WONG—So 45 workplace advisers, 280 call centre and 200 Office of Workplace Services, which is now an independent statutory agency.

Mr Pratt—It is an independent agency not a statutory agency. In addition to that, and I cannot give you figures on this, there has been recruitment across outcome 2 in relation to policy staff, legal staff, implementation staff and services staff.

Senator WONG—Have you any further information on that?

Mr Pratt—Not in terms of the numbers. They are not part of the bulk recruitment process which was done for Work Choices.

Senator WONG—So you were responsible for the 200 OWS staff engagement?

Mr Pratt—Up until the time the OWS became a separate agency, yes.

Senator WONG—What are the workplace advisers?

Mr Pratt—They are staff who are located in our state offices. They do things like the seminars for employers and employees on Work Choices and workplace relations arrangements.

Senator WONG—Where are they employed in outcome 2?

Mr Pratt—They are in fact employed in our state offices.

Senator WONG—How many more call centre staff are you proposing to employ after the 280?

Mr Pratt—We have over 280 call centre staff now. That may grow a little further. We are still expanding in Western Australia, from memory, but it is not going to be—

Senator WONG—What is the target?

Mr Pratt—I think it is around 300.

Senator WONG—Were there any staff transferred from the department to OWS consequent to or around the time of its establishment as an independent agency?

Mr Pratt—Yes.

Senator WONG—How many?

Mr Pratt—From memory it was around 150 to 180.

Senator WONG—And those were people who were previously employed in that section of the department.

Mr Pratt—That is correct. In fact the figure I have in front of me of 170.

Senator WONG—And on top of that there is an additional 200 to be employed.

Mr Pratt—I understand that there may be an extra 100 to be employed but that is a matter for the Office of Workplace Services.

Senator WONG—I will certainly ask them. When did this transition occur again?

Mr Pratt—27 March.

Senator WONG—That is right. As at that time, how many additional OWE staff had you been responsible for engaging?

Mr Pratt—It would have been close to 200.

Senator WONG—That is what I am a little confused about.

Mr Pratt—Sorry. There is a recruitment of 200 for the Office of Workplace Services. At the time we started the bulk recruitment for OWS, I think we probably had in the order of 120 to 140 staff.

Senator WONG—So you started off with 120 to 140 and you recruited 200.

Mr Pratt—Recruitment for 200 OWS staff has been undertaken. Not all of them have been taken on at this stage, I believe.

Senator WONG—How many have?

Mr Pratt—I will confirm that. Can we come back on this once we have the numbers straight?

Senator WONG—Okay. When will you come back on that? We do not need to do cross-portfolios to come back to that, do we?

Mr Pratt—We are happy to do that under outcome 2.

Senator WONG—Mr O’Sullivan or Ms Sadauskas, how are we going with the training issue?

Mr O’Sullivan—I think we will probably have those answer straight after lunch.

Senator WONG—Great. Mr Pratt, did the transfer of departmental staff to OWS involve a requirement that those staff accept or enter into an AWA?

Mr Pratt—No.

Senator WONG—So that was not a compulsory requirement of transfer?

Mr Pratt—That is correct.

Senator WONG—But it was a condition of engagement for new employees?

Mr Pratt—That is correct.

Senator WONG—Were any redundancies offered?

Mr Pratt—No.

Senator WONG—None were offered?

Mr Pratt—Not in relation to the transfer of staff to the Office of Workplace Services.

Senator WONG—What about in the section of the department which previously dealt with workplace services? Were any redundancies offered there prior to the transfer?

Mr Pratt—Not in relation to that exercise.

Senator WONG—What does that mean?

Mr Pratt—It is possible that redundancies were offered to staff in the course of the financial year, but they were not in relation to the machinery-of-government change to move people into an independent agency.

Senator WONG—How many redundancies or how much attrition of staff was there in OWS prior to the Work Choices changes?

Mr Pratt—I would have to take that on notice.

Senator WONG—Okay. What I would like to know is: as at the commencement of the financial year, was there any attrition or increase in staffing levels in that section of the department prior to its establishment as an agency?

Mr Pratt—My recollection is that the OWS staffing was relatively stable across the financial year until we started the bulk recruitment for the expansion of the OWS, as announced by the government. There may have been several redundancies during that period, but they would have been very few. There would have been a handful.

Senator WONG—Who bore the costs of the transfer? Presumably there are various costs associated with such a move?

Mr Pratt—Yes. The funding for the Office of Workplace Services, as part of the department, transferred with the staff to the new agency.

Senator WONG—So any cost burden resulting from the transfer is borne by OWS or by the department?

Mr Pratt—I am not sure I understand what you mean.

Senator WONG—I understand the bundle of funding went over, as it were, but were the actual administrative costs of transferring staff—and presumably getting new stationery and all of those sorts of things—borne by OWS?

Mr Pratt—The funding which was made available for the Office of Workplace Services for its expansion was transferred over in its entirety, as well as the funding for the ongoing operation of the OWS before it became an independent agency. Any administrative costs would have been shared between the department and the Office of Workplace Services.

Senator WONG—Between those two categories of funding that you just outlined?

Mr Pratt—That is correct. In a machinery-of-government change, some of the associated workload falls on the department and some of it falls on the receiving agency, so both agencies would contribute to that.

Senator WONG—How much has the department spent on it?

Mr Pratt—I have no idea. In fact, I doubt we would be able to estimate the costs of an administrative transfer of that nature.

Senator WONG—What is the budget appropriation, again, for the transfer? That was part of Work Choices, wasn't it?

Mr Pratt—That is correct.

Senator WONG—What was the funding, again, through the Work Choices legislation for the establishment of the agency?

Mr Pratt—If you happen to have your additional estimates statements handy—

Senator WONG—No, I think my wonderful staff actually provided this information to me.

Mr Pratt—On page 16, we have a compliance measure there, halfway down the table.

Senator WONG—Yes.

Mr Pratt—That funding includes funding for the OWS, but it also covers off funding for our expansion of WageLine, the Workplace Advisory Service and so forth.

Senator WONG—What is the component attributable to OWS?

Mr Pratt—I will come back to you on that. I do not have it in mind, but I am sure I can get it quickly.

Senator WONG—So we are coming back to that, are we, Mr Pratt? Do you want to do that after lunch?

Mr Pratt—Yes, Senator. I will have a figure for you shortly, hopefully.

Senator WONG—Mr O'Sullivan, what is the rate of staff turnover in the department?

Mr O'Sullivan—I can help you there, Senator. For the last quarter, the current voluntary separation and turnover position is 4.9 per cent.

Senator WONG—Do you have any historical data on that? Sorry, was that for the last quarter or for the last financial year?

Mr O’Sullivan—Compared to the equivalent quarter last year, it was 4.82 per cent.

Senator WONG—So this was for the last quarter?

Mr O’Sullivan—Yes.

Senator WONG—Do you have the information by financial year to date?

Mr O’Sullivan—I have a year-to-date figure. I think I have this by calendar year, so the latest year-to-date figure I have is 4.9 per cent.

Senator WONG—Okay. Do you have the information for past years available by either calendar year or financial year?

Mr O’Sullivan—I have, for 2005, 16.96 per cent.

Senator WONG—Is that for the calendar year?

Mr O’Sullivan—That is for the calendar year.

Senator WONG—What about for 2004 and 2003?

Mr O’Sullivan—No, I do not have those.

Senator WONG—Could you take that on notice?

Mr O’Sullivan—Yes.

Senator WONG—If it is done by calendar year or financial year, that is fine. Do you do—

Dr Boxall—Exit interviews?

Senator WONG—I actually wasn’t going to ask about that; but you can tell me about that if you want, Dr Boxall!

Dr Boxall—Mr O’Sullivan can tell you about that.

Senator WONG—You do exit interviews; I think you have discussed this before.

Mr O’Sullivan—Yes, we have given you answers to questions on notice to that effect.

Senator WONG—Do you have measures by which you track staff morale?

Mr O’Sullivan—I think I can help you there as well.

Senator WONG—I am just interested in how you do that. Do you do surveys?

Mr O’Sullivan—One of the measures of staff morale accepted by HR professionals is metrics for unscheduled absences and sick leave. I am happy to say that our rate of unscheduled absences at DEWR is probably the best in the APS. I can probably give you some figures to support that.

Senator WONG—Mr O’Sullivan, there could be a number of explanations for that.

Mr O’Sullivan—Well, one of them is that people are happy to be there.

Senator WONG—There might be some other ones. So one of the measures is the number of unexplained absences; what else do you do to track staff morale?

Mr O'Sullivan—Dr Boxall referred to another measure, exit surveys. You would appreciate that, if you are going to survey one demographic that will tell it to you straight, it would generally be people who were leaving. Our exit metrics indicate that people are very happy, overwhelmingly happy, with the department's pay and conditions, its training and all other kinds of indicia that suggest that they are not leaving for anything other than meritorious reasons—typically, promotion. I think the other point I would like to make is about the separation figures in a department. You have to remember that they do not translate well to equivalent measures for private sector agencies, because, in a legal sense and in an APS-wide sense, this is not actually a separation of employment. It is just a movement from one department, typically, to another department.

Senator WONG—Of the 16.96 per cent turnover, what proportion was within the APS?

Mr O'Sullivan—My colleague might be able to answer that.

Ms Sadauskas—I understand it is 48 per cent.

Senator WONG—So it is just under half.

Mr O'Sullivan—So in one sense only eight per cent represent a classic separation of employment from the Commonwealth.

Senator WONG—Yes, I understood that. I can probably work out what 48 per cent of 16.96 per cent is, or thereabouts! But thank you.

Mr O'Sullivan—Being a lawyer, I am very proud when I can actually do a simple mathematical equation! Surrounded by economists, I feel quite—

Senator Abetz—Don't deny him the opportunity!

Senator WONG—To do a percentage calculation!

Mr O'Sullivan—That is right!

Senator WONG—Is someone able to tell me what proportion of the appropriation for outcome 2, across the department, goes to salary and associated on-costs such as superannuation? Ms Graham can usually answer questions like this.

Ms Graham—In terms of the total appropriation for the department?

Senator WONG—Yes.

Ms Graham—The breakdown is in the financial statements in the PBS, on page 77, under budgeted financial statements for the department. So for 2005-06 you can see that employee expenses are \$252 million. But that includes all employee expenses, not just salaries and on-costs but also a whole range of other things related to employees.

Senator WONG—Not contractors though, presumably?

Ms Graham—No, contractors—

Senator WONG—Would be in 'suppliers' or—

Ms Graham—May well be in 'suppliers', that is right.

Senator WONG—So \$246.959 million for 2009-10, and \$252 million currently—is that right?

Ms Graham—That is right.

Senator WONG—So that is total on-costs—salary plus everything else?

Ms Graham—Plus training, accruals for leave and all sorts of things—yes.

Senator WONG—A final question, I think. Mr O’Sullivan, is your section responsible for retaining data regarding the AWAs within the department?

Mr O’Sullivan—HR branch would probably be the area most responsible for that.

Senator WONG—That is Ms Sadauskas. Do you break down or do you retain data about who has AWAs and some sort of analysis of classification level et cetera?

Ms Sadauskas—The only data I have available with me is the data on numbers of AWAs in the department.

Senator WONG—Do you break it down by gender or by classification, or can that be done?

Ms Sadauskas—I will check whether that can be done.

Senator WONG—Thank you.

Mr Pratt—I have a range of numbers for you in response to your previous questions. If we start with the additional estimates statement, the compliance line we were looking at before on page 16, of that in 2005 \$5.679 million is funding for the Office of Workplace Services.

Senator WONG—You do not have for the outer years there—that measure?

Mr Pratt—No, I do not have them handy, Senator.

Senator WONG—Can you provide those?

Mr Pratt—Yes, we can provide those. If I take you to page 275 of the PBS, which is the Office of Workplace Services, you can see in the table that the estimated actual for 2005-06 is \$7.645 million, which is made up of the \$5.679 million plus the transfer of funding for the part year that OWS operates as an independent agency.

Senator WONG—Is that the remainder?

Mr Pratt—That is right. You can see then, in the next column, the estimate for the funding of the Office of Workplace Services for next financial year at \$32 million and the estimate of the average staffing level at 275, noting that that is an average, of course. That then leads to the questions about the recruitment of staff for the Office of Workplace Services. I am advised that, not too far from my recollection, the transfer of staff who were existing departmental staff before the bulk recruitment exercise was 100 with 76 new recruits transferring across.

Senator WONG—Post the bulk recruitment?

Mr Pratt—That is right.

Senator WONG—I like that: ‘bulk recruitment’. Was that all I asked there? Are you able to tell me, for that section of the department, what was its total funding on which the part-year funding is calculated? So, from \$5.679 million to \$7 million there is a \$2 million difference. What was the annual figure on which that part-year calculation is based?

Mr Pratt—I will have to take that on notice.

Senator WONG—If it is from April, I presume I could just work it out by percentages. Sometimes it does not work like that with a part year.

Mr Pratt—It is complicated by the fact that it is also an expanding section. If I can get an answer for you, I will come back to you.

Senator WONG—Basically, what I am asking for is, in 2005-06, what was your appropriation in respect of that aspect of the department? I am trying to get a handle on OWS equivalent functions' funding.

Mr Pratt—I will have to take that on notice.

Senator WONG—Okay. Would I address renovations, fit-outs, communications, advertising and those sorts of things to OWS? You were not responsible for anything associated with that post 27 March?

Mr Pratt—That is correct.

Mr O'Sullivan—I was just going to provide what information I could now on the break up between those staff on the CA and those on AWAs. Is that convenient now?

Senator WONG—I didn't think that was the question I asked.

Mr O'Sullivan—Perhaps you could repeat the question.

Senator WONG—The one I just asked of Ms Sadauskas or previously? I was asking for a breakdown on who had AWAs and whether you did a gender or classification analysis of the frequency of them.

Mr O'Sullivan—At this point, we are going to have to take that level of analysis on notice. What I can give you, if this is helpful, is a broad breakdown as to what percentage of staff are on AWAs.

Senator WONG—I am happy to get that. But I am also interested in how many women and how many men and, also, if you can get it, the classification levels, even if they are in bands. You do banding, do you not?

Mr O'Sullivan—Yes, broad banding. We will take that on notice.

Senator WONG—Do you want to give me the percentages?

Mr O'Sullivan—76.4 per cent of staff are on AWAs.

Mr Pratt—You were interested in the outyear estimates for the Office for Workplace Services in relation to the table on page 16 of the additional estimates.

Senator WONG—Yes.

Mr Pratt—2006-07, \$22.782 million; 2007-08, \$20.97 million; and 2008-09, \$20.726 million.

Senator WONG—Thank you.

Proceedings suspended from 12.31 pm to 1.33 pm

Dr Boxall—We have answers to two questions that Senator Wong asked earlier.

Ms Sadauskas—Senator Wong, you asked for commencements in various time frames. From 1 January to 28 April, the number of commencements in that period was 543. From 1 April to 28 April, the number was 131. From 27 March to 30 May, the number of commencements was 247.

Senator WONG—Thank you.

Mr O’Sullivan—Senator Wong, just before the break, you asked for information about what training and information was provided to DEWR staff generally in relation to Work Choices.

Senator WONG—Yes. Did we determine the window period where you had no template agreement post the introduction of Work Choices?

Mr O’Sullivan—Sorry, I cannot expand on my answer right now.

Senator WONG—You were taking it on notice. I am just wondering if you have that information.

Mr O’Sullivan—No. What I have been able to ascertain at this stage is that the department was able to leverage off the very useful information published by Workplace Relations Services Group on Work Choices. Accordingly, the HR branch referred staff by directing them to the relevant internet sites, including the dedicated Work Choices section put up on the department’s intranet site for this purpose. Of course, any subsequent request for further advice was dealt with by HR branch. Additionally, the Workplace Relations Services Group are coordinating and conducting a series of information sessions for all interested staff. Those additional seminars will be commencing in June.

Senator WONG—Were any seminars held prior to these?

Mr O’Sullivan—I understand that WRSG provided some seminars, firstly, in relation to outcome 2 staff, which were obviously a high priority.

Senator WONG—How many were provided in relation to outcome 2 staff by WRSG? Is Mr Pratt around?

Mr Brennan—I cannot give you precise numbers of seminars. I can indicate the types of seminars that were conducted and the types of audiences. I can give you some general information. If you want details, I would need to take that on notice.

Senator WONG—You can tell me the general information first.

Mr Brennan—Firstly, we produced some overview models aimed at outcome 2 staff with a pre-existing technical knowledge. They were circulated in December. They were run locally by the areas in outcome 2, including state offices, the Workplace Advisory Service and the workplace relations implementations group. Those areas that you would expect would want to get briefings got some briefings in December. We then did a follow-up workshop for Workplace Advisory Service and the implementation group in February, going into some areas in a bit more detail. I cannot tell you exactly what was in there off the top of my head, but we did some extra seminars then. Beyond that, we had the induction training for new recruits, which was 10 days in duration. With regard to the number of new recruits we had on board for that training, we had about 190 attend that.

Senator WONG—How many staff were involved in the outcome 2 staff training process that you referred to WRSG?

Mr Brennan—Because a lot of that was done locally in the different areas and in the state offices, I would need to take that on notice to find those details.

Senator WONG—But it is a proportion of outcome 2 staff. Mr Pratt has walked in, so he might be able to tell me. It was quite an entrance, Mr Pratt—very impressive.

Mr Brennan—I am hesitant to place a proportion on it. I do not have the data in front of me because of the decentralised way in which it was done. I suppose I would say that the audience did not include people in policy and legal groups who were already involved in the preparation of Work Choices so, as an overall proportion of the outcome, it would be a minority but, to get more precise on that, I would need to go and do some chasing.

Senator WONG—Could you take that on notice?

Mr Brennan—Yes.

Senator WONG—How many were involved in the February follow up?

Mr Brennan—I think that was around 30 people. Through the central process, apart from the evidence about what happened in outcome 2, essentially, any information was done through the internet site and subsequent requests for further advice.

Mr O'Sullivan—That is right.

Senator WONG—There were no other training sessions?

Mr O'Sullivan—No, I think that is it.

Senator WONG—With regard to additional requests for advice, was that a contact about a specific issue, or a contact about coming in to do a training session?

Mr O'Sullivan—We do not keep comprehensive data on those kinds of requests.

Senator WONG—No but, to your knowledge, there has been no other centralised training.

Mr O'Sullivan—No.

Senator WONG—And the only training that you might have knowledge of is what Mr Brennan has outlined?

Mr O'Sullivan—Yes. Quite properly, HR branch leveraged off the wealth of information provided by WRSG.

Senator WONG—How many outcome 2 staff have undertaken training since the inception of Work Choices? Do you know, Mr Pratt?

Mr Pratt—Not exactly, but the vast majority of them would have attended a seminar about the Work Choices changes.

Senator WONG—Sorry, that is contrary to what Mr Brennan said, so do you want to tic-tac about that?

Mr Brennan—Outside of policy and legal groups, that would be true. The contact centre staff have been doing ongoing training and refining their knowledge in the normal on-the-job type training, as you would expect people to do in the ordinary course of business. We have

had a second, smaller round of induction training with another 20 staff recently, and we have delivered state legacy system training to the contact centre staff who are dealing with inquiries from clients who were formally covered by state systems and have moved into the federal system.

Senator WONG—Apart from induction. I understand your evidence about that. Is your previous evidence correct—that, other than policy and legal, the minority of staff would have received training to date?

Mr Brennan—If you are trying to get a more precise indication, I will need to take that on notice.

Senator WONG—Sure.

Mr Pratt—Senator, when I say the vast majority of outcome 2 staff would have had some form of training on Work Choices, they would have had to have had some on-the-job training or formal training in order to do their jobs post-Work Choices. That is what would have happened. Mr Brennan is talking about formal seminars and training courses.

Mr Brennan—That is correct.

Senator WONG—As opposed to informal?

Mr Pratt—Yes, and on-the-job training.

Senator WONG—Thank you very much.

CHAIR—Does that conclude your questions on cross-portfolio, Senator Wong?

Senator WONG—Yes, that is all. Thank you, Chair.

Dr Boxall—If I might clarify: cross-portfolio questions are finished, so the proposal is that we do Indigenous matters now and then outcome 2?

CHAIR—We will finish cross-portfolio now.

Senator MARSHALL—Mr Pratt, we had a discussion over the last couple of rounds of estimates about the predictions on jobs growth created as a direct result of the removal of unfair dismissal laws. You confirmed on a number of occasions that you stood by the reports that you had, which indicated around 77 new jobs to be created as a result of the unfair dismissal laws. Intuitively, you indicated that that number should in fact be higher, given that the ultimate change was in fact removing unfair dismissal laws for all companies with fewer than 100 employees. I have been watching the newspapers, waiting for the declaration of this massive jump in employment overnight. I have not seen anything so far, and my search on the job statistics for the month of April actually indicated a drop in employment of 3,200 and an increase in unemployment of 9,700 for that month. Can you explain where we are at?

Mr Pratt—Certainly. I think it is worth pointing out that, with the April figures, there was also a rather large jump in full-time employment—up 22,700—and that is riding on the back of a rather large jump in employment in March 2006, of 20,400. Our expectation is that we will see increases in employment over an extended period, not in the first month of Work Choices. This is something which we will be needing to monitor over a three- to five-year period.

Senator MARSHALL—That is not what you have said in the past. In fact, you were supportive of Senator Abetz's claims that there would be an overnight increase of 75,000 new jobs as a result of the removal of the unfair dismissal laws. Has that not eventuated?

Mr Pratt—I was supportive of the statements that Minister Abetz made in previous estimates but if I take you back to the transcript, in fact I said that if there was to be a large jump in employment following Work Choices that the means which the department and the Australian Bureau of Statistics had in place would allow us to identify that.

Senator MARSHALL—And they have not done so.

Mr Pratt—They have shown that over March and April there was big jump in overall employment in March followed by a big jump in full-time employment in April.

Senator MARSHALL—So the trend was going up. Work Choices was not in March. There were still unfair dismissal laws until March 27, so if the trend is going up—

Mr Pratt—That is correct but—

Senator MARSHALL—where is the jump? There is no jump, is there?

Mr Pratt—One could argue—not that I would—that people have taken employees on in anticipation of the new laws. But going back to my comment—

Senator MARSHALL—You are not seriously suggesting that; you are being a bit humorous now, aren't you?

Senator Abetz—Why not?

Mr Pratt—It is possible that people planned for Work Choices, and there was a lot of publicity about the changes to the unfair dismissal laws. Employers may well have decided to increase the number of employees they had in anticipation but, as I said before, these things will be measured over a longer period than one month.

Senator MARSHALL—I will come back to that because I would not mind hearing your opinion in respect of that. My understanding of the April figures is that they showed a decrease in employment. Are you saying that that is not the case?

Mr Pratt—No. In net terms, it is a small decrease of 3,200.

Senator MARSHALL—That is right—not an overnight increase of 77,000.

Mr Pratt—That is correct. In April, 77,000 jobs were not created.

Senator MARSHALL—You would have us assume that, if there was an increase in employment, it was due to the removal of unfair dismissal laws. Are you happy to take the next step and say that as a result of the unfair dismissal laws being removed, it created a decrease in employment because those are the facts, aren't they?

Mr Pratt—I think you might be putting words in my mouth slightly.

Senator MARSHALL—You say, as you always have, Mr Pratt, what you feel.

Mr Pratt—Indeed. Movements in the number of people employed are going to occur for a range of reasons, including the regulatory environment. They include things like whatever is happening with the economy domestically and internationally and, as we know, there have

been major developments internationally on the economic front. Population growth, business confidence—all of these things give rise to movements in employment numbers. As I was saying a few minutes ago, I expect that we will need to see the full impact of the removal of the unfair dismissal laws over a period of time. It is not something we are going to see in one or two months.

Senator MARSHALL—It may well continue downwards. With the benefit of hindsight, the minister's prediction of a 75,000 growth overnight with the removal of the unfair dismissal laws was incorrect.

Senator Abetz—How very droll because they will get—

Senator MARSHALL—I was just asking. I have put it to you many times, Minister—

Senator Abetz—I am the minister at the table.

Senator MARSHALL—and you constantly stand by your very dodgy figures.

Senator Abetz—Sensis—

Senator MARSHALL—Were you right or were you wrong?

Senator Abetz—suggested 150,000 jobs would potentially be created, and I think in May 2005 estimates I indicated therefore that the figure I was relying on from another source was in fact conservative because it was half of that predicted by Sensis. When a person says that things will change overnight to suggest that at 12.01 am the next morning there would be an extra 75,000 jobs is just ridiculous. Nobody seriously is trying to import that from what I said other than those inactive minds of the opposition.

Senator MARSHALL—I am not holding you to the overnight claim; it was a ridiculous claim when you made it and it has been well and truly proven. I have given you the benefit of a—

Senator Abetz—No, it is not, you see.

Senator MARSHALL—whole month and employment has actually gone backwards; it has not increased.

Senator Abetz—Full-time employment, very interestingly—

Senator MARSHALL—Do you stand by the claims that you made at the time?

Senator Abetz—What I stand by, and this is very interesting, is that—

Senator MARSHALL—Or, with the benefit of hindsight, are you going to withdraw those?

Senator Abetz—people now feel confident about putting people on full time, because, as I understand it, the full-time numbers actually increased by 22,700 in the month of April. That is the very point we as the government have made time and again—that, as soon as the unfair dismissal laws—

Senator MARSHALL—You are dissembling now, Minister.

Senator Abetz—are removed, people will have the confidence to no longer employ people casually or part-time but to take them on on a full-time basis. I reckon those statistics that Mr

Pratt has just alerted us to are very good figures and potentially indicate that what we were hoping for is in fact happening—I confess, a lot sooner than many of us expected.

Senator MARSHALL—Well, really, Minister! You can say that, but the reality is—

Senator Abetz—Can I say to you that your shadow minister—

Senator MARSHALL—that your claim of an overnight increase of 75,000 in full-time employment has resulted in employment actually declining over the month of April after the removal of unfair dismissal laws. Those are the facts, Senator.

Senator Abetz—It was your shadow minister who said casual jobs were not real jobs. I happen to disagree with that vehemently. Nevertheless, if that is the standard applied by your shadow minister, your Deputy Prime Minister—

Senator WONG—Why don't you debate the issue instead of going after all these things?

Senator Abetz—there are 22,700 full-time jobs—

Senator MARSHALL—These are new claims, are they?

Senator WONG—You cannot debate the policy issues; you have to go the low road.

CHAIR—Order! Now, Senator Marshall—

Senator Abetz—Take a Bex, have a cup of tea and you'll be right.

CHAIR—Order! Minister!

Senator WONG—Why don't you try and debate the policy issue, Minister?

CHAIR—Senator Wong! Order!

Senator Abetz—Take a Bex.

Senator MARSHALL—Chair, I thought I—

Senator WONG—Here we go: take a Bex.

CHAIR—Order, Senator Wong and Minister Abetz! Senator Marshall has the floor. He is asking questions. Has your latest question been answered, Senator Marshall?

Senator MARSHALL—Mr Pratt, I guess, has answered it. I understand and acknowledge the minister's acute embarrassment over the actual results rather than the claims they made and the grandstanding they were doing in the lead-up to this, but—

Senator Abetz—That is very provocative, Chair, very provocative.

CHAIR—I would ask that you not provoke matters any further.

Senator Abetz—I am being very good!

Senator WONG—No, you're not. You're being—

CHAIR—Mr Pratt has answered your question, I believe, and I would like to ask you to move on to the next question, Senator Marshall.

Senator MARSHALL—I am actually finished. And I am glad that the minister is suitably embarrassed!

[1.52 pm]

CHAIR—Thank you. In that case, that concludes the cross-portfolio questions, Dr Boxall, so we will now move on to Indigenous employment programs. I believe, Senator Crossin, you have questions on that. Is that correct?

Senator CROSSIN—Yes. Thank you. I understand the changes to the CDEP guidelines for 2006-07, the coming financial year, were announced by the minister on 29 March. Can you give me an indication of when these changes and new guidelines were circulated to CDEP organisations and how that was done?

Mr Harvey—The guidelines were circulated electronically to CDEPs across Australia on the same day. We also made contact with CDEPs to make sure they received those, and we are conscious that they did receive them because in the process of discussions that we had with CDEPs they came to the negotiations with them in hand. The actual hard copies of the document itself did not go out until a month later. There were some challenges with the printing of the document. But that is when the hard copy of the document went out, Senator.

Senator CROSSIN—So all CDEP organisations have email addresses and would have got them electronically?

Mr Harvey—Yes.

Senator CROSSIN—Are there any CDEP organisations that are not accessible by—

Mr Harvey—No, we have email addresses for all CDEPs, Senator.

Senator CROSSIN—What consultations were undertaken before the changes were made?

Mr Harvey—The changes build on the Future Directions document that the government released last year, and a lot of the changes flow from that. There was a range of issues raised not only through the consultations that we had but also through the submissions, particularly about how we encourage young people to stay in school, how we make sure that people are limited to the time that they go into CDEP, and also about how we can build the partnership between the Job Network and CDEPs. The key changes that came through with the announcements by the government in March were around, firstly, a youth rate for CDEP; the second one was around the 12-month limit on urban and regional CDEPs—that people participating after July 2006 have a 12-month limit; and then finally the issue about registration with Job Network came through loud and clear in the consultations that we had as well.

Also, during the year, we have had a number of other feedbacks. There has been a House of Representatives committee that reported quite extensively on a range of issues. We have been monitoring that and reading all the submissions. Every time the National Indigenous Council meets we meet with them about the development of issues, and we also have wide, continuing consultation across the community through the work that our account managers and state managers do. That was the basis on which the reforms were put forward this year.

Senator CROSSIN—How many submissions did you have that suggested a youth rate for CDEP?

Mr Harvey—I do not have that figure with me, but we did do a correlation. Generally there were concerns about incentives for people leaving. I had a number of issues raised about how we encourage young people, and the call for basically ensuring that we do things for young people. I do not have that figure with me but it was a constant theme, and it was also raised in the discussions that we had across Australia.

Senator CROSSIN—Could you take that on notice for me: how many submissions actually specifically suggested a youth rate for CDEP?

Mr Harvey—I would also add that currently there are CDEPs that have youth rates and have already introduced youth rates themselves.

Senator CROSSIN—They are paying the equivalent of junior wages though, aren't they?

Mr Harvey—That is correct, yes.

Senator CROSSIN—I think it is quite different to the proposal you are suggesting, but could you also take on notice for me the number of submissions you received that suggested the 12-month limit for people being on CDEP?

Mr Harvey—There were also views coming through at the consultations that we actually should not have CDEP for young people—16, 17 and 18-year-olds—and that people should only be able to join CDEP at a later age. But I will also provide you with information about the 12 months as well.

Senator CROSSIN—So, technically, it was not the announcement and not a suggestion that further changes would be made, and those specific changes were not the subject of consultation? Is this just an evolving osmosis of CDEP changes arising out of Future Directions?

Mr Harvey—That is correct, and a lot of those issues were discussed in Future Directions. The main change in terms of the impact of funding for CDEPs is around supervisor wages, but the other policies were things that came out of Future Directions.

Mr Carters—Senator, I just want to add that the important thing about the youth wages as well is that the CDEPs will still be funded for the adult wage for those participants, and the additional money will be spent on training for those young people.

Senator CROSSIN—So you are saying that there will not be an overall reduction in money going to organisations.

Mr Carters—There will not be an overall reduction in money for those young people who will go onto the CDEP youth wage.

Senator CROSSIN—We might get back to that in a minute. On your website, it clearly states that eSubs requesting CDEP funding for 2006-07 closed on 22 February.

Mr Harvey—That is correct.

Senator CROSSIN—How do organisations apply in February when you have got new guidelines being announced on 29 March?

Mr Harvey—The guidelines in terms of the changes that we talked about are basically policy changes. In terms of the submissions that CDEP puts forward, generally they put

forward submissions around types of activities and a level of funding. The main funding change was in regard to supervisors. What we were doing with supervisor funding was taking money out of wages, putting it into activities and creating jobs within Indigenous communities. The only significant impact was that of the supervisor wages. Then we went through a process of negotiation. So we were actually able to negotiate in the process after they submitted the costing for supervisors. But we had built that in. So in terms of how CDEP responds, generally when they respond they talk about activities and budgets—which they did. Then, overlaid on top of that, were the new policy directions.

Senator CROSSIN—How can they accurately apply for funding for 2006-07 when you change some of the guidelines one month after the closing date?

Mr Harvey—When they make a submission it is generally around the types of activities that they want to run. When we go into negotiation, which follows that submission, we then have the opportunity to discuss budgets with them—which we did, after the policy changes had come out.

Senator CROSSIN—If you have got a significant number of people on your CDEP who are under the age of 20, say, and there has now been a requirement to spend some of that money on training, that is quite a significant change to their activities. I am wondering why people were not given the chance to see the new guidelines and why the time line was not extended from there. It is a bit like shutting the gate after the horse has bolted, isn't it?

Mr Harvey—No. What we saw basically was that there was an opportunity to negotiate funding. In terms of training, there had been a call for a long time, through the consultations, about training. Mr Carters was saying that the CDEPs are retaining the difference between the youth rate and the adult rate, which in the case of remote communities is \$3,000 and in the case of non-remote communities it is \$2,300. That is a significant amount of money for training. There is then an opportunity to spend that funding on training. CDEPs do provide training. What they are now doing is focusing on providing that training for young people. We believe that there is sufficient time for them to respond and to negotiate and run those training programs.

Senator CROSSIN—There was never any consideration given to changing the closing date for submissions?

Mr Harvey—We did obviously consider that, in terms of the timing of the new policy. The timing of the new policy was tied in with budget processes, but the judgment was made that we could deal with that in consultations and negotiations. Generally in the negotiations that we had across Australia, CDEPs came prepared to discuss all of the changes, and that was very fruitful in terms of planning the way forward. Generally, we did not get any significant reaction about the implications for budgeting and delivery of services. There were obviously some concerns about the type of change, but generally, in running their CDEP, they were quite relaxed about the direction, because funding was being provided.

Senator CROSSIN—Have there been any CDEP organisations that have been disadvantaged because of the new funding guidelines?

Mr Harvey—The changes focus on the individual, the CDEP participant, and making sure there is adequate transition. I do not believe CDEP organisations are put in place to assist

communities and individuals, so I do not believe that CDEPs are disadvantaged. In fact, what is happening with these reforms is that there is significant advantage to both communities and participants.

Senator CROSSIN—Are there any CDEP organisations that have been told they do not meet the funding guidelines?

Mr Harvey—We are currently going through a purchasing process, which will be completed next week. Preliminary advice has been given to some CDEPs about the status of their application. At this point, because we are still going through that processes, it would be inappropriate to comment on that but I can say that a number of CDEPs have been put on hold for a range of reasons.

Senator CROSSIN—How many CDEP organisations are we talking about nationally? Is it still around 340?

Mr Harvey—221.

Senator CROSSIN—What is the total amount in the PBS for CDEP programs for 2006-07?

Mr Harvey—\$574 million.

Senator CROSSIN—Are you telling me that organisations will not be disadvantaged if they have got a significant number of, say, participants under the age of 20 and not factored in the additional costs for training?

Mr Harvey—No, because they will get those training funds; they will automatically get that money.

Senator CROSSIN—Will they be asked to resubmit or redo their submission to show how they are going to spend that training money?

Mr Harvey—No. All of that has been negotiated following the announcements. We have completed negotiations with the vast majority of our CDEPs—there are a small number that we are still negotiating with—and the budget requirements are understood by them.

Senator CROSSIN—Insurance requirements have changed.

Mr Harvey—No. Insurance requirements are still the same. In regard to insurance, we have put in place a consultant to assist CDEPs with insurance arrangements. We did an audit of insurance and we determined that there was a wide variation in the costs.

Senator CROSSIN—Are we talking about health and safety and workers compensation insurance?

Mr Harvey—Every aspect of insurance—accident, health and safety, workers compensation. There was a significant variability in the costs that CDEPs were paying, so we put in place a consultant. We have also released a document about insurance suggesting how they might go about securing insurance. We are also doing a bit of a quality control process because we require CDEPs to advise us about the types of insurance that are in place, but there was significant variability.

Senator CROSSIN—But the actual requirements for insurance have not changed—is that correct?

Mr Harvey—That is correct.

Senator CROSSIN—Are there some CDEPs that are likely to have insurance increases with the consultant?

Mr Harvey—Yes, they have increases; we will fund those.

Senator CROSSIN—It will not have to come out of their existing applications.

Mr Harvey—If they need additional funding they will make a case for that. If there is an increase and they cannot fund it within their activity fees, we will fund that.

Senator CROSSIN—How many of the 2006-07 submissions have been returned or rejected?

Mr Harvey—I cannot comment at this stage because we have not completed that.

Senator CROSSIN—I am wondering how many there were; not who or what the details were but the numbers?

Mr Harvey—If I comment on that and in the next couple of days we make a statement, I could be incorrect about the information I give you. So it is probably not—

Senator CROSSIN—Can you approximate? Are we talking about 220 out of the 221 or are we only talking about six out of the 221?

Mr Harvey—A small number.

Senator CROSSIN—A very small number?

Mr Harvey—Not a very small number but a small number. We go through a process where we look at the number of submissions made by CDEPs. You do not only look at the submission. There is something—

Senator CROSSIN—Is there something you want to give me and you cannot? There is something you cannot give me.

Mr Harvey—No.

Dr Boxall—To be honest, I thought you were asking how many applications but Mr Carters advises me off the record that you are actually asking how many have been declined. If you are asking how many have been declined, we simply cannot comment on that because the process is still under way.

Senator CROSSIN—I am assuming if there are 221 organisations, you have had 221 applications—is that correct?

Mr Harvey—No, we have had 254 applications.

Senator CROSSIN—How many of those have been rejected or returned to applicants because they have not met the guidelines?

Mr Harvey—We do not actually reject them or return them; we put applicants on hold in this process, for a range of reasons, whether they are incomplete, do not comply with financial

requirements or if there is a more competitive bid or application that we have received. That is the basis on which we send out an on-hold advice to an applicant.

Senator CROSSIN—When you say a more competitive bid are you talking about two organisations perhaps in the same area?

Mr Harvey—Yes.

Senator CROSSIN—Or are you talking about an organisation that you are not happy with and then you actively go and encourage someone us to apply?

Dr Boxall—This goes to the assessment of the tenders and I think it is best that we do not get into the detail of this because the tender assessment process is still under way.

Senator CROSSIN—In the past have you actively sought organisations to apply for CDEP programs that have not normally conducted CDEP activities?

Mr Harvey—If you look at the process that we have gone through this year—and we did the same last year—it was open to providers to provide the CDEP service.

Senator CROSSIN—But you do not actively look for or encourage organisations to apply for CDEP?

Mr Harvey—If there is a situation where there is a CDEP that is not providing a service because of a whole range of issues and we have placed them on hold we may have to go out and look for an alternative provider—for example, if they do not comply with the requirements under the guidelines in terms of financial viability or they do not meet the assessment criteria. And this could happen during the year.

Senator CROSSIN—Yes, I understand that. Will the assessment criteria differ from organisation to organisation?

Mr Harvey—No, it is exactly the same assessment.

Senator CROSSIN—It is the same assessment for each organisation.

Mr Harvey—That is correct.

Senator CROSSIN—Data you would be looking for would be different, though. Is that right?

Mr Harvey—No. It is exactly the same. We had a set of four assessment criteria which we used. Each organisation that made an application had to put an answer against each of those assessment guidelines.

Senator CROSSIN—Aren't CDEP organisations asked to specify what percentage or number of participants they believe they could get into full-time employment in the course of the year?

Mr Harvey—That is part of a KPI, a key performance indicator. We set key performance indicators for the year. Equally CDEPs and other organisations that submit provide us with information about the KPIs. One of them is the number of people that they can get into employment. Once they have made that submission and we go into negotiations, we discuss that target with the organisation that made the application.

Senator CROSSIN—I am assuming, though, that any assessment is against the KPIs as well as your four assessment criteria. Is that correct?

Mr Harvey—That is correct.

Senator CROSSIN—It is the KPIs that will differ from organisation to organisation. Is that right?

Mr Harvey—Yes, the KPIs vary.

Dr Boxall—This process is all subject to probity sign-off.

Senator CROSSIN—Yes, I understand that. I am assuming that you do not just set a KPI and an organisation has no knowledge of that.

Dr Boxall—KPIs are discussed with the organisations.

Mr Harvey—Yes, they are negotiated with the organisations. So, when an applicant makes a submission, they set a KPI. Those KPIs vary significantly across Australia. Then when we go into the negotiation phase we discuss those KPIs with them.

Senator CROSSIN—Can I take you to the practical application of the youth rate. If we have a remote community that has only got a few participants under the age of 20, the difference will actually be then put towards training. Are you telling me that is around \$2,230 per participant for the year?

Mr Harvey—In remote it is \$3,065.92. In the case of non-remote it is \$2,323.35.

Senator CROSSIN—What training is expected to be undertaken for that amount of money?

Mr Harvey—What we expect and what we hope is that basically there will be training in place to assist young people getting into jobs. In the more remote communities there is definitely an emphasis on numeracy and literacy for employment, but then once there is numeracy and literacy there is also an emphasis on apprenticeships, traineeships or other courses that can be done more formally. So we are looking for more formal training but we are also looking in particular, in remote communities, at basic numeracy and literacy. But that funding can be supplemented by the fact that a participant can register with the Job Network. There is also the opportunity to apply structured training and employment funding as well, so the idea is to develop a package for each individual participant.

Senator CROSSIN—So the \$3,065 would be used to pay to get a trainer out to a remote community?

Mr Harvey—Yes.

Senator CROSSIN—And deliver whatever is left over—three hours of literacy and numeracy or 10 hours of literacy and numeracy?

Mr Harvey—That is correct, and you would be looking for economies of scale—so making sure that a trainer who went out was doing a course for a number of participants, and that if it was a one-on-one you could then look at funding that. The CDEP will have the flexibility to use that \$3,000 and the next one and two lots of \$3,000 it has for the participants flexibly, so it can look at how it spends those funds on the participants.

Senator CROSSIN—How is the \$3,065 derived?

Mr Harvey—It is the difference between the adult rate and the youth rate.

Senator CROSSIN—How did you structure the youth rate? Did you just take the junior wage?

Mr Harvey—No, what we actually took is the independent youth allowance rate as at 1 January.

Senator CROSSIN—The Centrelink independent youth allowance rate?

Mr Harvey—It is the youth allowance rate, yes. It is like the unemployment benefit youth allowance rate. Why we took that, Senator, is we were basically trying to ensure that there was not a disincentive for young people going into education or going onto unemployment benefits, so we basically set the same rate as that.

Senator CROSSIN—It has been put to me that out on a remote community it is costing around \$50 an hour just to get somebody their drivers licence, and they would need maybe five to 10 hours of that—so that is already around \$500. By the time you fly someone out there and give them a couple of night's accommodation, that is your \$3,065. So it has been put to me that it would just pay for someone to get their drivers licence.

Mr Harvey—The first thing is that that is only part of the contribution. In the case of an example like a drivers licence equally what we are encouraging the young people to do is register with the Job Network. When they register a number of these Indigenous people are classified as highly disadvantaged so there is an opportunity for other funding. What we are doing in a number of remote communities is not only plugging in CDEP but plugging in structured training and employment funding as well, and working with mining companies, pastoral companies or the tourism industry to try to structure a number of participants participating in a course so that it is not just a one-off. If it is drivers licences we know that in a number of these remote communities a number of the younger people do not have licences, so structuring it for a whole range of people is how to start to achieve economies.

Senator CROSSIN—If I live at Wadeye, what Job Network provider would I become a member of?

Mr Harvey—We have just gone through a tendering exercise and done what we called a bundling of services—bringing together the Job Network, personal support services and DSP. There are two job network members actually going into Wadeye.

Senator CROSSIN—They are not there yet?

Mr Harvey—No, but they are going in from 1 July.

Senator CROSSIN—Who are they?

Mr Harvey—I do not have those two Job Network members, I am sorry, Senator.

Senator CROSSIN—I am sure they will not take long to find.

Mr Harvey—We will have to make a phone call.

Senator CROSSIN—It is probably one of your colleague's reputation.

Mr Harvey—One is Job Futures. Unfortunately, I cannot recall the other one.

Senator CROSSIN—I am sure you will get me that back by the time my questions are up.

Mr Harvey—The other one is Mission Australia.

Senator CROSSIN—Mission Australia will not be offering CDEP, will they? They are simply going in there as a Job Network provider.

Mr Harvey—That is right. We already have a CDEP in Wadeye.

Senator CROSSIN—Are there other remote communities where Job Futures and Mission Australia are going into from 1 July in the Northern Territory?

Mr Harvey—Yes. There is a range.

Senator CROSSIN—You can take that on notice, if you like, because there are 120 communities and we might be here till midnight if you went through them all. Can you take on notice to provide us with the names of the remote communities and the names of the Job Network providers?

Mr Harvey—Okay.

Senator CROSSIN—Will they have a full-time presence there, or will they fly in and fly out?

Mr Harvey—It will vary depending on what was negotiated, the size of the population and so on.

Senator CROSSIN—If you are able to, you might tell me if it is a permanent arrangement or a fly-in fly-out arrangement.

Mr Harvey—We can. We publish that information on our website, but we can give that information to you.

Senator CROSSIN—I do not think it is on your website now, is it?

Mr Harvey—I think it is. I will provide it to you anyway.

Senator CROSSIN—If we get a remote community that is offering some training and it is going to be more than the \$3,065 per participant, how is that shortfall made up?

Mr Harvey—In such a situation, the CDEP has the opportunity to work in partnership with another service provider or approach the department about a step contract, so there is a whole range of option that are available to supplement training funding. They already get money through the activity fees. What we are getting through the activities is a greater emphasis on employment anyway, so you have that through the activity fee funding. There are a number of avenues from which additional funding can come.

Senator CROSSIN—If there is nothing else coming, they have to live within that \$3,065. Is that correct?

Mr Harvey—No. They can negotiate.

Senator CROSSIN—More money from you through CDEP for training?

Mr Harvey—Yes, they can, but we would look first to other service providers and what we are offering through structured training and employment.

Senator CROSSIN—Through your other programs?

Mr Harvey—That is correct: through the department's other programs.

Senator CROSSIN—Is there any provision for a participant who might be under the age of 20 who might be on CDEP to receive top-up, or is that forbidden?

Mr Harvey—For new participants in urban and regional areas, it is no longer possible but, in remote areas, they can receive the top-up.

Senator CROSSIN—While we are on that, have we made any inroads into contacting state and territory governments about how many people they have on CDEP?

Mr Harvey—We have. We continually raise these issues with a whole range of agencies under the umbrella of making sure that we are creating real jobs. We are working with a number of state and territory governments on that very point. There is very constructive discussion going on with the NT government. In a number of locations, there is very constructive conversation going on, such as with the Queensland and Western Australian governments. In the case of regional partnership agreements and shared responsibility agreements, we tried to achieve that so that real jobs are created.

Senator CROSSIN—Mr Harvey, since I last raised this with you in February, how many people in the Northern Territory on CDEP have actually obtained a full-time Public Service job rather than being on CDEP within the Northern Territory government?

Mr Harvey—I have not got those figures with me. We do not actually get a breakdown of numbers of people that have gone into Public Service jobs. What we do know is that there has been a significant increase in the numbers of people going into jobs across Australia. In the Northern Territory, 317—this is an end of April figure—individual participants have gone into jobs out of a target of 606. So roughly 63 per cent of the target for the Northern Territory has been achieved. We have more up-to-date figures. CDEPs are really moving ahead in terms of getting Indigenous people into jobs. The figure across Australia as of today is something like 3,234, which is an over 100 per cent increase over last financial year's employment target.

Senator CROSSIN—When I ask the Northern Territory government how many people they have on CDEP they say to me: 'We can't tell you. Ask the Commonwealth.' So now I am asking you.

Mr Harvey—We have done quite a lot of analysis of jobs. We do two things. We have done an analysis of the number of jobs that are partly funded by CDEP—they are also partly funded by state and territory governments—and we are starting to present that analysis to state and territory governments. We have also done with the Local Government Association of the Northern Territory an audit of all the communities in the Northern Territory. We have almost completed that. We now have a joint forum between the Australian government and the Territory government, where we present the number of jobs that are held in a community and the number of jobs that are held by Indigenous people, and we break that down into types of jobs.

Senator CROSSIN—So you still do not know how many CDEP participants would be doing a job inside a Northern Territory government agency?

Mr Harvey—I have only a very general idea. We are starting to bring that information together through this audit.

Senator CROSSIN—I guess I am hoping that DEWR has the capacity to make a difference there. At Barunga there is a woman working 20 hours a week as an attendance officer attached to the school and she is on CDEP. I am wondering why you are not asking the Northern Territory government why that person is not on an AO1 or AO2 Public Service salary and getting decent pay for the work she is doing. I would have thought that was DEWR's role.

Mr Harvey—Yes, it is. Can I give you every assurance that at every meeting we do that. We talk about the numbers—and the audit we are doing shows up those figures—and then we ask the questions. The other thing that the Australian government did this year was start to fund full-time jobs through some of the initiatives. We are hoping through this sort of lead that other governments will do the same and start to fund full-time jobs within the Indigenous community. This occurred in the health sector. It is our responsibility, and we do that.

Senator CROSSIN—I will look forward to your progress when we next meet, in November. I have diverged from my questions. I wanted to know if there is an allowance or a weighting made on provision of, going back to the training account, the training funding that takes into account the additional costs of training in remote areas. I suppose that is the difference between the 2,230 and the 3,065. Is that correct?

Mr Harvey—That is correct.

Senator CROSSIN—How long is a person under the age of 20 expected to stay in this training? If a person goes onto CDEP and gets this reduced rate, do they keep getting that rate till they turn 20?

Mr Harvey—That is correct.

Senator CROSSIN—Even though they might have done a certificate I or certificate II by now, if there is no job in the community for them to go to, do they still keep getting that junior rate?

Mr Harvey—Until they are 21, yes. But what we are trying to do is encourage young people to, say, do a year in CDEP, and that might be the beginning of an apprenticeship or a traineeship, and then convert that to a real job using a wage subsidy or using our structured training and employment. We have a number of examples where we have strategies in place with the mining companies, pastoral industry and the tourism industry to get an initial start on training. You mentioned an important point about drivers licences. The second one is numeracy and literacy for work. Once we can get through those two points then we have an incredible willingness on the part of employers to employ young people, and, either through an apprenticeship or a traineeship, they can get structured training and employment on top of that which gives mentor and additional training money and so on. We are trying to get young people out of the CDEP into a job as soon as possible.

Senator CROSSIN—So there isn't a maximum training fund allocation of \$455 per CDEP participant—or is that for an adult?

Mr Harvey—That is under the training account, which an Indigenous person can get. So that is separate funding.

Senator CROSSIN—So an adult on CDEP can only access \$455 under a training account?

Mr Harvey—No. Again, an adult can access a range of things. If they register with the Job Network, they can get access to a range of services including access to the job seeker account. An adult can also get an apprenticeship or a traineeship. We can get them access to structured training and employment. So there are a range of interventions that you can put in place for an adult CDEP participant.

Senator CROSSIN—But there may not be a Job Network member in all communities?

Mr Harvey—Correct.

Senator CROSSIN—And in some communities they will be there from 1 July?

Mr Harvey—Yes.

Senator CROSSIN—CDEP participants cannot receive Abstudy. How is that going to be policed?

Mr Harvey—Basically, we have information about participants who get Abstudy and CDEP, and we will be making contact with them and advising them. We already put out some advice in January, but this advice will be given directly to the individual, telling them that they cannot receive both. We also know that, in CDEPs with a large number of participants, they receive both Abstudy and CDEP and, as part of the funding agreement for next year, we will be specifying that they reduce the number of participants who get both Abstudy and CDEP.

Senator CROSSIN—Can I just ask about the workplace numbers—these are the KPIs that are negotiated. Are KPIs negotiated with CDEP organisations in all instances?

Mr Harvey—That is correct.

Senator CROSSIN—Are those numbers ever changed unilaterally by people either in regional areas or here in Canberra?

Mr Harvey—First we go through a negotiation process where we look at the achievement of the KPI but also at the regional labour market. We also look at the achievements of CDEPs within the same region at both state and regional levels. If, at the state level, it is considered that the target that has been put forward by the CDEPs is not high enough, our contract managers will go out and negotiate that. These stretching targets that we have put in place with this KPI 1 have proved very successful, because we are not yet through the full year but we already have a 100 per cent increase. But to answer your question, Senator, yes, it can be changed at the state or the national level based on what we think about the comparable performance of CDEPs as well as labour markets—whether there has been a shift on the part of the CDEP to embrace the government's agenda of getting participants into jobs.

Senator CROSSIN—So it would be possible for a CDEP organisation to decide to get 30 people in to do a job within a 12-month period, but someone here in Canberra might think 36 is a more reasonable figure? Is that right?

Mr Harvey—That is correct.

Dr Boxall—Senator Crossin, can Mr Carters elaborate on an earlier answer with respect to the Job Network in Wadeye?

Senator CROSSIN—Yes, sure.

Mr Carters—Senator, we suggested that there were two Job Network providers in Wadeye, Job Futures and Mission. In fact, Mission will be only a community work coordination provider in Wadeye; they will not provide general Job Network services. Job Futures will be the Job Network member in Wadeye and they will also provide job placement, employment and training, and personal support programs. It is important to note that there has not been any Job Network coverage previously. The other issue is that, following the remote services tender which was recently completed, there will in fact be employment services coverage in all communities. There will not necessarily be an office in each community, but there will be coverage in all communities.

Senator CROSSIN—So there will be fly-in and fly-out arrangements, will there?

Mr Carters—How they do it will obviously need to be worked through, but certainly they will be expected to cover every location.

Senator CROSSIN—Is Job Futures going to be based permanently out at Wadeye?

Mr Carters—We will need to check that.

Senator CROSSIN—Are your performance pay incentives for DEWR staff linked in some way to the workplace numbers negotiated with CDEP organisations?

Dr Boxall—Do you mean the performance bonuses for DEWR staff?

Senator CROSSIN—Yes.

Dr Boxall—There are no performance bonuses for staff in the certified agreement because that was negotiated out of the agreement by the union.

Senator CROSSIN—It must be a good agreement then.

Dr Boxall—Staff on AWAs can negotiate a performance bonus. That bonus is payable after an assessment, and the assessment will depend on the business plan for the work unit. I cannot imagine it would depend directly on the output for a CDEP organisation. It would be something a little more general than that.

Senator CROSSIN—So it might be outputs for many CDEP organisations.

Dr Boxall—Without detailed knowledge of all the performance assessments. But the person in charge of a branch will be held accountable for the operation of that branch, including the budget and the outcomes. Individual contract managers would tend to be held accountable for the contracts they managed. They would not be held accountable for the production of outputs of a particular CDEP organisation but they would be held accountable for how the contracts were managed.

Senator CROSSIN—The general overall increase of people going from CDEP into full-time jobs is surely an outcome that is considered as part of someone's overall performance.

Dr Boxall—It is an outcome of the contract between the department and the CDEP organisation. No doubt the management of that contract will be the responsibility of an officer or officers. There are many aspects to contract management apart from the achievement of that particular KPI.

Senator CROSSIN—What level of and how much training in cross-cultural awareness do DEWR staff have in regional offices or in Canberra?

Mr Harvey—In Canberra we require all our staff to go through cross-cultural training. I cannot tell you the number that have been through cross-cultural training, but it is very important. We also get our staff to get out and engage, and we engage the people that cannot get out with the local CDEP. There are similar arrangements in the state office as well but I cannot comment on the state office.

Senator CROSSIN—Can you take on notice for me how much cross-cultural awareness training was conducted in state and territory branches in the last 12 months and where it has been conducted?

Mr Harvey—Okay.

Senator CROSSIN—Do you have a policy or a program for recruiting and training Indigenous staff?

Mr Harvey—Yes, the department has an Indigenous employment strategy.

Senator CROSSIN—How many Indigenous staff would be within DEWR at this point in time?

Dr Boxall—That a cross-portfolio question. We do not—

Senator CROSSIN—Perhaps I will just get you to take it on notice then.

Dr Boxall—Yes. We can probably answer it but we do not have the relevant staff here at the moment.

Senator CROSSIN—It might be the same for the question of how many staff DEWR has in each ICC in the Northern Territory. I will put that question on notice as well.

Dr Boxall—Just to clarify—you would like to know how many Indigenous staff there are in the department as a whole and how many staff—

Senator CROSSIN—How many DEWR staff are in the ICCs in the Northern Territory.

Dr Boxall—Yes, we can get that information.

Senator CROSSIN—The new CDEP guidelines state:

selected high performing CDEP organisations may be offered a one year extension to their funding agreement as a reward for achieving results and improving capacity.

What would be considered a high-performing CDEP organisation?

Mr Harvey—A high-performing CDEP organisation would be one that meets the KPIs. The KPIs relate to employment targets; utilisation of what we call TEL, targeted level of employment; satisfaction with the service that they provide in the community; and the type of service they provide. So we have a range of measures where we continue to monitor the performance of the CDEPs against those KPIs.

Senator CROSSIN—So organisations that are likely to get a one-year extension would predominantly be those that move people into full-time jobs?

Mr Harvey—Into full-time jobs, but they have to meet the other KPIs as well.

Senator CROSSIN—What sorts of other KPIs would that be?

Mr Harvey—The other KPIs relate to utilisation of the targeted level of employment against employment—we have a matrix where we weight that—and the community's satisfaction with the delivery of the service. We do that by surveying a small number of people within the community. We have a quality KPI, and that is basically ensuring that they provide a quality service. We have a code about the performance but also a requirement around the type of service that they have to deliver. On the basis of the KPIs we will make a judgment, and CDEPs will be advised in December whether they are going to get an extension before the next round of funding applications are called for.

Senator CROSSIN—How many would have got that extension last December?

Mr Harvey—We did not have that in place last year.

Senator CROSSIN—So you have not actually done it yet?

Mr Harvey—No.

Senator CROSSIN—So this December will be the first time?

Mr Harvey—This is a new initiative by the government.

Dr Boxall—Senator Crossin, I have the data on the number of Indigenous employees in the department. As of 19 May 2006, it is 130, which is 3.64 per cent of staff.

Mr Carters—Senator, I also have an update on the Job Futures Job Network presence in Wadeye. They will have a presence five days a week in Wadeye.

Senator CROSSIN—Okay. On the KPIs, is any job skills analysis—

Dr Boxall—I am very sorry, Senator Crossin. I have just been given an update; it is actually 159 staff as of 19 May, which is 4.46 per cent of staff.

Senator CROSSIN—That must include casuals; does it?

Dr Boxall—No. What happened was the original figure did not include the most recent intake of contract management trainees, who are staff members.

Senator CROSSIN—Is any job skills analysis done of CDEP participants as part of the KPIs?

Mr Harvey—What we are requiring for this year is a participant plan, so for those—

Senator CROSSIN—An individual participant plan?

Mr Harvey—That is correct, for remote participants. For those in urban and regional areas, the important thing about registering with the Job Network is that the Job Network registration process goes through a range of activities, asking participants what they want to do, the types of jobs and so on, and basically points them in a direction. But more important for remote participants is the participant plan, which talks about a range of issues—the training that they have had, what sort of career they want to go into, what work they have done so far and so on. So that will be an important feature next year. But already I would say that a number of CDEPs go through and stream their participants, looking at the levels of job readiness, what additional training they might need to provide and so on.

Senator CROSSIN—So how is all this information conveyed to CDEP organisations?

Mr Harvey—It is conveyed to CDEP organisations, first, through the information we give, but we also run seminars for CDEPs. Also, our contract managers on the ground are in contact with the CDEPs and they explain the reforms to them and work in partnership with them on the reforms. So there are a range of strategies to make sure that the CDEPs understand the changes and are working with the changes.

Senator CROSSIN—So would you expect that by now all CDEP organisations have at least had contact with the contract manager and have had the new guidelines explained to them?

Mr Harvey—That is correct. An important part of the negotiation that they went through on the applications this year was to make sure that the CDEPs understood the changes. We found that a number of the CDEPs came forward with questions about the changes before they actually started the negotiations. We also ran seminars for CDEPs in a number of locations. There have already been a number of contacts from our contract managers with the CDEPs.

Senator CROSSIN—CDEP supervisors' wages are to be funded from activity fees instead of the CDEP wages.

Mr Harvey—That is correct.

Senator CROSSIN—Is that just a different way of labelling that money?

Mr Harvey—No. It is an important step to say that the government is creating jobs for Indigenous people within communities. It is basically injecting around 1,000 jobs into Indigenous communities. It is doing the sorts of things that you talked about earlier, Senator. It is funding jobs within communities. So we are shifting the money out of wages and saying to CDEPs: 'Here is an opportunity to create jobs. Not only that, we will fund that within your activity budgets so that you can—'

Senator CROSSIN—I see. So in future a CDEP supervisor will be paid a salary and have sick leave and long service leave. The money is just coming out of the activity bucket rather than the CDEP bucket. Is that correct?

Mr Harvey—Yes. The numbers will depend on the CDEP, the location and where it is. So there is a range of factors that go into that but they will be paid a wage and all of the relevant add-ons, and it will be recognised as a job outside of the CDEP.

Senator CROSSIN—So it is not an additional cost; it is just a reallocation of the existing funds that the CDEP gets. Is that correct?

Mr Harvey—Correct.

Senator CROSSIN—So they will become employees rather than participants?

Mr Harvey—Yes.

Senator CROSSIN—Will that be through AWAs with organisations?

Mr Harvey—It will be through whatever means the CDEP uses, but we obviously encourage CDEPs and any other organisations to embrace the government's reforms.

Dr Boxall—They are employed by the organisation, not by the department.

Senator CROSSIN—Organisations will be required to demonstrate satisfactory governance and appropriate insurance. I am assuming they will have to have appropriate insurance. If they do not have it, your consultant will be engaged to ensure they do. Is that correct?

Mr Harvey—Yes. The vast majority that have put forward their applications have included information about the type of insurance, the level of insurance and the policy that they have. Before we contract with them, we have a consultant going through and looking at those policies to make sure that adequate insurance is in place. The other important thing is governance, which is part of the process of assessment as well.

Senator CROSSIN—What is satisfactory governance determined as? Are you talking about a registered constitution?

Mr Harvey—Satisfactory governance is determined as having appropriate structures in place, a board to manage the organisation and assurances about the qualifications in terms of general qualifications and people able to manage and govern a CDEP. They are the key things. We already have information about how well a CDEP is managing. We also do financial viability checks, so we do detailed analysis and we scrutinise the financials of the CDEP. That is part of that understanding about governance as well. So there is a range of issues that we take into consideration. The CDEP guidelines that the government set basically say that by the end of 2006-07 we recommend that each CDEP board has a number of people with professional qualifications in law, accounting or other areas to assist the CDEP in governance, because we know that governance is a major issue in a number of these organisations.

Senator CROSSIN—How many of your 221 organisations would not have satisfactory governance arrangements or would need to change their constitution to comply with the new guidelines?

Mr Harvey—We are going through the assessment process and we have not completed enough of that to be able to say the number now. We constantly do a risk assessment of all of our CDEPs on the basis of visits that our contract managers make in terms of participating in meetings or going and looking at how the CDEPs are run. We do a risk assessment around financial matters, whether they have kept appropriate records—we check the records—and whether they keep minutes of meetings and so on. So we have a risk assessment for every CDEP.

Senator CROSSIN—Are you saying that all of these changes must be undertaken by CDEP organisations and be in place by the end of the 2006-07 funding year?

Mr Harvey—No, that is in regard to one particular matter about having professional people on their boards. We now require them—and we have required this since we took over the program—to fulfil the requirements about governance. That has been set out by our contract managers and in our guidelines for this year and next year.

Senator CROSSIN—Do all of the other changes that are required—such as employing a supervisor, allocating money towards training and getting people into training to supplement the youth rate—have to be in place by the end of the 2006-07 funding year?

Mr Harvey—No. All of that has to be in place by the beginning of 2006-07, so from 1 July.

Senator CROSSIN—Why is there such haste to get CDEP organisations to make that massive change in such a short period of time?

Mr Harvey—We do not think it is massive change. The government has been reforming CDEP over the last couple of years and improving performance. We have seen a significant improvement in performance. From 1 July about three changes will be happening. Those changes relate to the youth rate, the 12 months participation for urban and regional CDEPs, and supervisors. So there is change but it is not significant. But in terms of governance, that has been building over the last two years and we are building on that. Not only are we building on it, but it is a whole of government approach. When I say ‘whole of government’, I mean it is territory, state and local governments and the Australian government working together to build the governance capability of Indigenous organisations.

Senator CROSSIN—So your response is that you do not believe it is with undue haste to do it in that time; you think it is a reasonable period of time in which they have to do it?

Mr Harvey—The most pleasing thing to us is that we have just gone through a process of talking to our account managers and state managers from across Australia. On numerous occasions there were CDEPs that were already embracing the changes that the government has put in place, whether they be around business initiatives, employment initiatives or employment strategies. We have CDEPs developing services not dissimilar to the services that are provided by other service providers. So there is significant change and improvement already happening. That is very pleasing.

Senator CROSSIN—Since the changes and the reforms to CDEP have started, how many organisations have been suspended or have had their funding stopped?

Mr Harvey—We began this calendar year with 221 organisations. We still have 221. Two organisations left voluntarily and one organisation we terminated a contract with. In the case of the two organisations which left voluntarily, their activities have been taken over by another organisation. In the case of the one which we terminated the contract with, we had partial but not complete services going into that community.

Senator CROSSIN—So there has been no net reduction?

Mr Harvey—There has been no net reduction. There are still 221 organisations.

Senator CROSSIN—Your new guidelines state that community activities must meet community needs and increase employment skills.

Mr Harvey—That is correct.

Senator CROSSIN—Where someone, say, at a homelands outstation is cooking food or collecting firewood for an elderly person, would that be accepted as an activity?

Mr Harvey—It depends on the type of activity. In some of those outstations where those activities are being performed, they could be funded by either a Territory or a Commonwealth agency as part of aged care servicing. If it is not part of aged care, we are saying that that is not an activity that would be supported; however, if there is an arrangement with the territory

and state government and that activity is also developing employability skills, then it is supported.

Senator CROSSIN—You cannot give me a stock standard answer. It is on a case by case basis.

Mr Harvey—That is correct, and it is negotiated with the contract manager. They look at the activities and discuss them with the CDEP.

Senator CROSSIN—The guidelines state that urban or regional centres are defined as locations where there is a permanent job—that is the definition, I understand.

Mr Harvey—Permanent Job Network member.

Senator CROSSIN—All capital cities are urban.

Mr Harvey—Yes.

Senator CROSSIN—What is the status of regional towns like Alice Springs, Katherine, Tennant Creek and Jabiru?

Mr Harvey—In the case of Alice Springs and Katherine, they are classed as regional centres because they have a permanent Job Network member. In the case of Tennant Creek, the Territory manager can take into consideration a range of things in regard to whether that rule applies. For example, in Tennant Creek the unemployment rate is about nine per cent. There may well be some decisions made about whether—and this 12-month rule applies to the individual—it applies to all individuals in Tennant Creek, so the state manager can make a decision about whether it is regarded as regional or not.

Senator CROSSIN—When would he make that decision?

Mr Harvey—First up, the individual must be permanently living in Tennant Creek. If the individual is permanently living there, they will be classified as someone that can remain on the CDEP for 12 months. If they are coming into the community on a temporary basis, it may well be determined that that rule does not apply.

Senator CROSSIN—Places like Maningrida, Wadeye or Galiwinku are still classified as non-urban—is that correct?

Mr Harvey—Yes.

Senator CROSSIN—So there would be no change.

Mr Harvey—Wadeye, Maningrida—and what was the last one?

Senator CROSSIN—Elcho.

Mr Harvey—Yes.

Senator CROSSIN—Going back to the case with the state and territory governments, what happens to those CDEP participants after 12 months if they are not transferred into what you would call employment? Are they taken off CDEP and put on unemployment benefits?

Mr Harvey—They go off CDEP—and this is the importance of registration with the Job Network. In parallel, the Job Network will work with the CDEP to ensure that that participant is getting servicing. Once they have completed CDEP, they will most likely go into the stream

of Job Network servicing and be offered a range of services such as Work for the Dole, customised assistance, Job Search training or whatever depending on where the CDEP participant is in the continuum. They could go back onto unemployment benefits if they desire but during this year we are encouraging them to register with the Job Network, to get parallel servicing and continue to get that servicing.

Senator CROSSIN—That does not mean they will get the same level of payment though, does it, after 12 months?

Mr Harvey—No.

Senator CROSSIN—Technically they would need to move on to Newstart allowance, wouldn't they?

Mr Harvey—That is right. And the difference between the basic CDEP and Newstart is about \$20 a week.

Senator CROSSIN—Correct. We could have a situation, though, where we have got somebody employed under a state or territory government agency who, if they are not transferred into that permanent workforce, are put onto Newstart allowance after 12 months.

Mr Harvey—There could be cases like that, but the process that we are developing—and what the government has put in place in terms of registration—is to basically ensure that people are getting serviced. Also, the other funding that is available through the Structured Training and Employment Project contract is to make sure that things are in place. We will be monitoring the numbers across Australia that are coming off, and that will not occur until 1 July 2007. But effectively CDEPs and Job Networks have got a year to work through this process and make sure that people are being adequately serviced.

Senator CROSSIN—If a community agrees to the removal of the remote area exemption, do they get an unlimited increase in participant numbers and funding to take on all of those people coming off the remote area exemption?

Mr Harvey—They do not get an unlimited increase—

Senator CROSSIN—An increase, even.

Mr Harvey—They do get an increase, but if we look at the numbers where remote areas are coming off, we are starting to deal with small numbers of people. But we have built into the funding for next year additional places for remote area exemptions. Depending on whether they are in the first phase, we already provide the CDEPs with additional funding, through the contract for next year. As these are progressively taken off, we will put more places into the CDEPs. But it will depend a lot on individual CDEPs.

There are other options as well. There are combinations of things where participants might not want to go onto CDEP; they might want to go into Work for the Dole type programs. That is also being put in place.

Senator CROSSIN—Is the remote area exemption still being removed on a voluntary basis?

Mr Harvey—Yes. When I say a voluntary basis, the community says that they would like to participate. The government's policy is to remove remote area exemptions. We have not

had any resistance to the removal. Actually we have had the reverse. We have had communities saying, 'Why can't I be early in terms of the removal?' But it will be expected that a participant, once the remote area exemption is lifted, will either participate in CDEP or another activity such as Work for the Dole.

Senator CROSSIN—I just want to have a look at what is happening on the Tiwi Islands and get a handle on how this is working. The remote area exemption has been removed from the Tiwi Islands, as I understand it.

Mr Harvey—Yes.

Senator CROSSIN—In doing so, they have actually now given over 300 new positions. Is that correct?

Mr Harvey—That is correct.

Senator CROSSIN—How many real jobs are available in the limited job market on the Tiwi Islands?

Mr Harvey—I have not got those figures with me, but that is one of the communities where we see significant opportunities with running small businesses, with tourism, with the forestry industry and with a range of others—

Senator CROSSIN—Do you need to take it on notice, perhaps?

Mr Harvey—Yes, but what has also been put in place on Tiwi is a very large STEP contract, where we are making sure that there is adequate training of participants so they can have a pathway into a job. But also what is very encouraging is that the Tiwi community has fully embraced the changes. At the last meeting of the economic development and employment forum—a joint forum between the Territory government and the Australian government—local Indigenous people from Tiwi, from the council, presented to us their strategic plan for the next 20 years about what they are going to do in terms of business development and employment. That included where we are going with CDEP and the reforms that are occurring. So it is quite positive in terms of what is happening.

There is also work happening in the area of looking at business development opportunities and also—the issue that you are very keen about—making sure that the jobs that are funded by Commonwealth, state and territory agencies actually become real jobs and that Indigenous people get those jobs.

Senator CROSSIN—Could you take on notice, if you need to, what we are actually talking about in terms of jobs? You anticipate those 300 positions will be taken up by jobs over the next number of years. Is that correct?

Mr Harvey—No, I am not anticipating all of those will be taken up by jobs, but it will give people the opportunity to have the skills to secure those jobs that are available, so it will build the skills base.

Senator CROSSIN—What additional resources have they been given to take on and train large numbers of people?

Mr Harvey—The first one is the CDEP funding, so when you get the CDEP funding you get activity funding as well. In the case of the STEP contract, I think it is a \$1½ million to \$2 million contract, so it is a significant injection into that Tiwi community.

Senator CROSSIN—And that is the change? The STEP contract is significantly greater for the Tiwis, is it?

Mr Harvey—Yes.

Senator CROSSIN—I was not aware of that. From where I sat, I could see 300 positions being given up and nothing else in return.

Mr Harvey—No.

Senator CROSSIN—The STEP contract is an increase by how much from what it has been previously?

Mr Harvey—I have not got the figures with me, but it is a new significant increase. It includes mentoring and a whole range of others. I talked about the strategic plan. The development of that was funded through STEP as well.

Senator CROSSIN—Perhaps you might want to take the rest of these on notice: \$574 million is the breakdown of CDEP moneys in the budget. How much of that is allocated to the Northern Territory? How many CDEP organisations are there, and how many participants are there in each organisation in the Northern Territory—that you anticipate will be funded in the coming year out of that money? What funding delegations are provided to regional ICC managers?

Mr Harvey—What happens in the ICCs is that each department has their own delegation. The ICC manager, which is part of the Office of Indigenous Policy Coordination, would have delegation for the funding under that portfolio. Our DEWR person would have certain levels of delegation, as would our regional manager and our state manager. We have devolved down, to a very low level, delegations for approval of funding.

Senator CROSSIN—Is that a change in recent years?

Mr Harvey—No, DEWR has always had a practice where we devolve funding down to appropriate levels to ensure that we can get funding approved, signed off and put in place. Each of our state managers has quite a high level of delegation.

Senator CROSSIN—In Alice Springs on 13 April this year, Minister Andrews talked about officials in the Alice Springs office working hard to create strategic approaches with key employers for Indigenous job seekers. What exactly is a strategic approach, and do they have the responsibility to negotiate that approach and fund it?

Mr Harvey—They do, and it depends on the level of funding. Those are around business and industry strategies, particularly industry strategies. Those tend to get approved by the state manager. But there are a whole range of industry strategies that we have in place, particularly through the IEP program, the Indigenous Employment Program. We have strategies under STEP, and a lot of the industry strategies get leverage off the STEP program. It might be in the tourism industry and you will negotiate at a local level. So our Alice Springs people will negotiate with the local tourism industry and with other industries. An industry

strategy will be put in place. Funding will then be looked at, and that funding might come not only from us; it might come from the Territory government and the other Commonwealth agencies, and that is what will be put in place.

Senator CROSSIN—So there is a recognition that people still need training and support to take up what might be a well organised job market availability. Is that correct?

Mr Harvey—That is very correct.

Senator CROSSIN—But you do not need to be simply ‘breathing and upright’, as one of my colleagues in the Territory suggested.

Mr Harvey—No.

Senator CROSSIN—There is a recognition that you still need some support.

Dr Boxall—As foreshadowed, I am seeking to be excused now for 45 minutes.

ACTING CHAIR—That is fine.

Senator CROSSIN—On this theme about what is happening in Alice Springs, if you fail to turn up to work without a legitimate reason, what would DEWR consider a legitimate reason for a CDEP participant? What constitutes a legitimate reason for not turning up to work? Is it left to the CDEP organisations, or is it left to DEWR staff to determine that?

Mr Harvey—Each CDEP has its own work rules about no work, no pay. That is all in place. We give general guidance about the requirement that they must ensure that participants participate, but the work rules are left up to the CDEP.

Senator CROSSIN—Basically, the organisations determine those guidelines.

Mr Harvey—That is right, but we go through and also monitor on a regular basis the compliance with those guidelines. If we have concerns about that compliance, we raise them with the CDEP.

Senator CROSSIN—Will that still be the case with urban CDEPs? If someone has to go away to attend a ceremony for two weeks, are they still on CDEP according to that organisation, or is it anticipated your DEWR staff would step in and say: ‘That’s too long; that’s not a legitimate reason’?

Mr Harvey—Again, it depends on the work rules within. We give general guidance. Then the CDEP is asked to comply with that but, more importantly, to run the CDEP under their work rules.

Senator CROSSIN—So, generally, it is left to the organisation to determine that?

Mr Harvey—Yes.

Senator CROSSIN—With regard to employment outcomes for Indigenous people, I understand your claim is that Job Network had achieved 44,000 employment outcomes for Indigenous people. Is that right?

Mr Harvey—That is correct.

Senator CROSSIN—Is it the case that 7,000 remained in employment at the six-month measurement mark?

Mr Harvey—That is correct.

Senator CROSSIN—That 7,000 represents less than 16 per cent still in work.

Mr Harvey—The fact that, first-up, Indigenous people are actually getting into jobs is a very good achievement.

Ms Caldwell—I am from the intensive support group.

Senator CROSSIN—Have you moved?

Ms Caldwell—No. I have always been with intensive support group, also looking after Indigenous employment.

Senator CROSSIN—Weren't you with the Office for Women?

Ms Caldwell—Yes, some years ago.

Senator Abetz—Stick with the program.

Ms Caldwell—You are asking my colleague the difference between the number of job placements for Indigenous people and the number of 13-week and 26-week jobs. There are two factors that come into that. On the one hand, obviously some people do get short-term jobs by way of a stepping stone, so there will always be a larger number of day-one job commencements than there are continuing on for 13 or 26 weeks. The other important counting issue when you are looking at Job Network outcomes is that not everyone who is placed qualifies for a Job Network payment at 26 weeks. For someone who is short-term unemployed, the Job Network does give an outcome payment for that person. They may stay in the job, but that would not come up in the statistics.

Senator CROSSIN—What happens to those Indigenous people who are no longer employed? If they only last six months or 26 months, do they go back onto CDEP, or will they have to go back onto Newstart?

Mr Harvey—They can go back onto CDEP or they can go back onto Newstart. The individual determines what they will do.

Senator CROSSIN—Let me wind the clock forward a bit. If you are in Darwin and you get a job next year, which you might be in for eight months—so we are looking at 2008 now—at the end of the eight months, will you have to go onto Newstart, or will you be allowed back on CDEP?

Mr Harvey—If they have accumulated more than 12 months on CDEP they will not, but if they have not they will be able to go back onto CDEP.

Senator CROSSIN—So you can only accumulate 12 months on CDEP once in your whole working life—is that right?

Mr Harvey—That is what the policy is, yes.

Senator CROSSIN—That is interesting.

Mr Carters—That is only for new entries from 1 July 2006.

Senator CROSSIN—So existing CDEP recipients will not be moved off CDEP onto Newstart come 1 July.

Mr Harvey—That is correct.

Senator CROSSIN—Even if they have been on CDEP for four or five years, they will still stay there.

Mr Harvey—That is correct, unless they go off for a period of three months and then they will be determined to be new participants.

Senator CROSSIN—Of the 44,000 job outcomes that were specified, how many of those are full-time employment? Do you have that figure?

Mr Harvey—Not with me.

Senator CROSSIN—I will get you to take it on notice.

Mr Harvey—We can get that breakdown.

Senator CROSSIN—Could you also take on notice how many of the 7,000 remaining at the six-month mark are in full-time employment?

Mr Harvey—Yes.

Senator CROSSIN—The new guidelines require all new CDEP participants, I thought, to register with Job Network—existing and new, or just new?

Mr Harvey—All participants in urban and regional to register—

Senator CROSSIN—With Job Network.

Mr Harvey—That is correct, and we require that new participants register within the first month and then for current participants we give them three months to register.

Senator CROSSIN—If they fail to comply with the directives of the Job Network, they are removed from the CDEP.

Mr Harvey—No, they are not removed from CDEP. We are trying to service them within that stream and get them into a job. No, they are not removed if they do not comply.

Senator CROSSIN—What happens after 12 months?

Mr Harvey—After 12 months, they move into the Job Network stream and the compliance arrangements that apply for Job Network apply to the participant.

Senator CROSSIN—An employment outcome is someone who is placed in employment for either 13 or 26 weeks—is that correct?

Mr Harvey—It depends on what we are talking about. With CDEP, there is initial payment when a person is placed in a job and after 13 weeks there is an outcome payment.

Senator CROSSIN—So how many hours of work a week does a Job Network participant need to achieve to get this outcome? Is it full-time work we are talking about?

Ms Caldwell—It is full-time work apart from certain groups such as people with disabilities who may be measured on hours on a 20-hour job, for example. Assuming the person is able-bodied, you would be looking at a full-time job.

Mr Harvey—I said previously that I thought the STEP contract in Tiwi was about \$1.5 million. I have been advised that it is \$990,000. The contract was signed in March 2006 to run

through to December, and it is basically for pre-employment activities and activities associated with the removal of the remote area exemption.

Senator CROSSIN—The figures you quote a pretty hard to get a handle on, because not everybody is eligible to register for the 13-week and 26-week outcomes. Are they also distorted by multiple placements for the one client?

Mr Harvey—It is not a question of multiple placements. The individual gets placed, but it is possible that the individual has been assisted by both the Job Network and the CDEP and that funding can go to both the CDEP and the Job Network for achieving that. We structure it that way because there is concern about the level of disadvantage, and the more people that are assisting the Indigenous person to get into the job the better. We have seen, through these partnerships, significant improvement in Job Network and CDEP outcomes.

Senator CROSSIN—Is it counted as two outcomes when that happens?

Mr Harvey—No, it is only counted as one.

Senator CROSSIN—Which one do you choose then?

Mr Harvey—You just count it as an outcome.

Senator CROSSIN—So you do not have CDEP assisted people and Job Network assisted people?

Mr Harvey—That is correct.

Senator CROSSIN—You just have assisted people, despite who has assisted them?

Mr Carters—Basically, both the Job Network and the CDEP would get a performance credit for achieving that outcome, so they would both get paid for that service.

Senator CROSSIN—So is it right that it is counted as two outcomes?

Mr Carters—It is only one job outcome.

Senator CROSSIN—Are they double statistics, though? You are handing out two credits, so there must be a double statistic somewhere.

Mr Harvey—We count the outcomes by the job seeker ID, so it is only one job outcome but there can be two credits.

Senator CROSSIN—As long as you are not confused by it, because I certainly am.

Mr Harvey—I hope you are not.

Senator CROSSIN—So I could ask you how many CDEP credits there have been in the last year and how many Job Network credits there were last year, and the job outcomes would be a totally different figure, yes?

Mr Harvey—Yes. The job outcomes relate to an individual, but CDEP and Job Network can both get a credit.

Senator CROSSIN—It is the job outcome figure that you rely on at the end of the day. Is that right?

Mr Harvey—That is correct.

Senator CROSSIN—I understand that at the national meeting in Adelaide there were a number of concerns about the CDEP changes. Is that a fair statement?

Mr Harvey—That is correct.

Senator CROSSIN—In fact, would it be fair to say that concerns were that the reforms were unworkable, unrealistic and detrimental to remote communities?

Mr Harvey—No. There were a number of concerns raised, particularly around time limiting, Job Network registration and supervisors. I got an invitation and went to that forum and we talked in particular about the funding and the discussions that we were having about registration with Job Network, the funding for supervisors, the time limiting of 12 months—which we have talked about, Senator—and the fact that in certain locations there are delegations that the state manager will have in consultation. With regard to Job Network registration, we talked about the outcomes and benefits that are being achieved by Job Network. Also, with regard to supervisors, we clarified that we had taken it into account during the discussions that I had had with state managers that we would make sure that that was adequately funded.

Senator CROSSIN—But was there a view expressed at the national meeting that the changes to the guidelines should be reviewed?

Mr Harvey—There was a view about the timing of the implementation, yes.

Senator CROSSIN—Was there also a strong concern that the 12-month limitation period on urban and regional CDEPs should be reviewed?

Mr Harvey—There was a concern about the impact it would have on the organisations, but we said that the important thing was that these reforms were going to lead to important outcomes for the participants and the communities.

Senator CROSSIN—What action is now being taken in response to these concerns? Were they relayed to the minister? Will you put together a report of the meeting?

Mr Harvey—There were two things. David Thompson, the CEO of Jobs Australia, facilitated that meeting. I have already had a meeting with David about the outcomes. That forum is going to formally write to both the minister and the department about the outcomes. The important thing that we did at that meeting was to give an assurance that, with regard to the funding, we would take those into consideration. Last week and the week before, I had presentations from state managers and account managers and we looked at the sorts of issues that they raised. We looked at the issue of time limiting, particularly in some of the more remote regional locations. We are also making sure that Job Network registration is going to be put in place and the partnerships are going to be developed. We have done a number of things, and we will talk again with David Thompson and whoever else once a submission comes forward from that group.

Senator CROSSIN—There were about 65 CDEP organisations at that national meeting, weren't there?

Mr Harvey—There were 56 on the day.

Senator CROSSIN—When you did the reforms to CDEP, I understand that you got about 15 to 20 submissions from CDEP organisations. Is that right?

Mr Harvey—That is correct, yes.

Senator CROSSIN—So more organisations attended the forum a couple of weeks ago than put submissions into you. Is that right?

Mr Harvey—That is correct, but every CDEP had the opportunity. We had consultations in a large number of locations, and CDEPs very actively participated in that forum. The other point I would make is that there were a range of views from a number of individuals at the forum in Adelaide. Also, in the one-one-one consultations that we had with individuals after that forum, there were a range of issues raised. There were varying views within the forum, as you would expect at a forum that had up to 56 organisations.

Senator CROSSIN—I want to ask about the funding disparities between a Job Network member and a CDEP. I understand that CDEPs receive \$2,200 for a 26-week placement outcome, but a Job Network member receives \$7,500. Is that correct?

Mr Harvey—There are differences between the CDEPs and the Job Network because they have different functions and provide different levels of service. There is a difference, yes.

Senator CROSSIN—Is that a fair difference, though? Job Network members probably claim that they achieve greater outcomes than CDEPs, but is that a fair assessment, given that you have CDEP organisations that will be expected, through their KPIs, to put people into jobs?

Mr Harvey—Yes. The important part is that the CDEP can work in partnership with the Job Network but, equally, they are performing different functions. The Job Network works very closely with individual clients to ensure that there is a pathway to getting a job. Part of the function of the CDEP is to get that. There is different funding that we provide through the CDEP activity funding, so that is not part of the equation that you talked about. There are different funding models put in place depending on the types of service that CDEPs are providing.

Senator CROSSIN—So you are telling me that CDEP would get the same sort of funding if you looked at the activity funding CDEP gets that the Job Network does not get.

Mr Harvey—Not that they will get the same; they do different functions, so the government funds them for the function that they provide. The government continually reviews Job Network, CDEPs and a range of other employment service providers and makes judgments about the types of service and the level of funding. At this stage, we do not believe one is disadvantaged against another, because they provide a service to the participants which differs.

Mr Carters—There are probably two key issues here. One is that the CDEPs are—and Mr Harvey has mentioned this—able to fully utilise the services of the Job Network in attempting to get their participants into employment, so there is a double payment to encourage that to occur. The second is that the government's employment service is Job Network, and Job Network is a tendered service which is open to any organisation to bid for. So there are

opportunities during the tender process for CDEP organisations to bid to be a Job Network provider.

Senator CROSSIN—But at this point in time, it would seem unfair, wouldn't it, that if a CDEP organisation gets a person into a job they only get \$2,200 for it but if I happen to register with Job Futures and get a job, Job Futures gets \$7½ thousand.

Mr Harvey—That is at the outer extreme that they get \$7½ thousand. It depends on the level of disadvantage of the client what level of outcome funding they get, so it does vary.

Senator CROSSIN—I would assume all Indigenous people would qualify for extreme disadvantage payments, wouldn't they?

Mr Harvey—No, it varies. It depends on the level of unemployment, the level of disadvantage and a whole range of other reasons but, again, they are providing different services. The judgment is that we are not disadvantaging them: in fact, the CDEP has an outcome payment but it also gets an activity payment, which the Job Network does not get. The focus is on paying for achieving the outcome. They get other funding for a range of services around Jobsearch training and so on. At this stage, there is more of a focus through the Job Network on funding for outcomes; part of the focus in CDEP is funding for outcomes.

Ms Caldwell—I think you have referred to the advice of Job Network getting \$7,000 or more in outcome fees compared to a lesser amount for CDEP. Job Network would not receive a \$7,000 outcome fee. It appears that we may be talking apples and oranges. It seems as though you are comparing one component of the CDEP fee of \$1,650. The equivalent payment for a non-disadvantaged job seeker at Job Network would be as low as \$1,650 or as high as \$3,300 for that 13-week job that you referred to.

Senator CROSSIN—The 26-week placement was the figure I was quoting.

Ms Caldwell—It still does not add up to \$7,000 for Job Network. The maximum Job Network payment would be \$6,600 for a three-year unemployed person, so extremely disadvantaged and unemployed for more than two years on top of that.

Senator CROSSIN—Your discussion paper of 2005 suggested that CDEPs might tender for Work for the Dole contracts. You are telling me that CDEPs can tender for Work for the Dole contracts or could become part of the Job Network—is that right?

Mr Harvey—That is right.

Senator CROSSIN—They can do that now if they want to.

Mr Harvey—Yes.

Mr Carters—The point I was making was that they could have tendered. Those tenders have obviously just recently been completed, but that is always open to them in the future.

Senator CROSSIN—You have not prepared or commissioned any reports or briefings on how CDEP organisations might be encouraged to do that more in the future.

Mr Harvey—We actively encourage CDEPs to do that. There is a strategy in place for CDEPs that have Indigenous employment centres to get additional funding to move towards a Job Network type model.

Senator CROSSIN—Is the Darwin IEC one of those, for example?

Ms Caldwell—There are 43 Indigenous employment centres which assisted a CDEP to move more into open employment services. Darwin regional CDEP does have a contract for an Indigenous employment centre, and that allows that CDEP to have experience working in open employment services in particular.

Senator CROSSIN—So the one organisation has CDEP as well as Job Network status. Is that correct?

Mr Harvey—CDEP and IEC status at the same time—

Senator CROSSIN—Yes, I see.

Mr Harvey—And the opportunity to work towards a Job Network model.

Senator CROSSIN—Has any work been done on IECs becoming Job Network members?

Mr Harvey—There is continuing work to encourage CDEPs and IECs to become Job Network members, but at this stage that has not occurred.

Senator CROSSIN—So there is no report or any paperwork that proactively encourages them to do that?

Mr Harvey—It is part of the responsibility of contract managers and account managers to look at those issues and to try to encourage them to move into that area.

Ms Caldwell—In addition to that, I believe that we specifically brought that to the attention of all CDEP and IEC organisations when the last round of Job Network services were let. So in addition to the general advertising we took special efforts to remind them when those tenders were open. In addition to that, IECs over time have moved into extended services that are more similar to Job Network. It is a better position to be able to tender successfully for Job Network if they so choose.

Senator CROSSIN—I want to go back to the impact on Abstudy and CDEP. There has been some confusion from the CDEP sector on the impact of the guideline changes to Abstudy. I have got a letter from one particular CDEP corporation that probably proves the point. Currently any CDEP participant that is enrolled in an accredited course is eligible for Abstudy and a CDEP wage, provided that the two activities are separate and the participant works the number of hours required. Is that right?

Mr Harvey—The first thing is that the guidelines have not changed. It has always been a requirement of the CDEP guidelines that the individual participant cannot receive both Abstudy and CDEP, because they are receiving two income support payments. What we have done with these changes is to emphasise again, and make it very clear in these guidelines, that they cannot get two types of income support. That is the basic issue, and we did send out advice to CDEPs in January of this year emphasising that again. What is important is that it is the living allowance. So CDEP participants could be getting some funding under Abstudy other than living allowance, but they cannot get two sets of income support, basically.

Senator CROSSIN—Would there be recipients who are currently receiving that now?

Mr Harvey—Getting two lots of income support? Yes, there are. That is why we emphasise it in this reform.

Senator CROSSIN—So, in the future, they will not be able to get both of those.

Mr Harvey—That is correct.

Senator CROSSIN—So there is no confusion; there is a change.

Mr Harvey—No, there is not a change, it is just that people have not understood what the policy is.

Senator CROSSIN—But there could be people now getting both kinds of income support.

Mr Harvey—There are people now getting both.

Senator CROSSIN—And they should not be.

Mr Harvey—That is correct.

Mr Carters—The policy will be enforced from 1 July.

Senator CROSSIN—It is going to be enforced?

Mr Carters—Yes.

Senator CROSSIN—Another enforcement policy from 1 July. But there may be other aspects of Abstudy that they would be entitled to.

Mr Harvey—Correct.

Senator CROSSIN—Support aspects of Abstudy.

Mr Harvey—Yes.

Senator CROSSIN—I have only a few more questions. I want to ask you about the Centre for Aboriginal Economic Policy Research—CAEPR—and the study that was done by John Taylor in 2005: *The opportunity costs of the status quo in the Thamarrurr region*, which is in the Port Keats-Wadeye area. That study contains a number of practical proposals for job creation and economic development in the region. Have you had a chance to look at that?

Mr Harvey—I have not personally, but my people would have looked at it. The first comment I would make is that the government is not in the game of job creation; it is in the game of getting Indigenous people into jobs. There are a range of issues in terms of business development, and business development opportunities are a big focus of the government's Indigenous Economic Development Strategy. IBA, Indigenous Business Australia—which is part of the portfolio—and the department work together with other agencies on that. I am not aware of the particular detail. That is all I could say at this stage.

Senator CROSSIN—So you are saying that, apart from IBA, DEWR is not in the game of creating jobs.

Mr Harvey—No. IBA does not create jobs. We are not in the game of running programs that are job creation programs. The government's policy is very much about getting people off welfare into jobs, and we will assist that through business development opportunities or through industry strategies, which we talked about earlier, with the private sector or with other organisations to ensure that there are pathways into jobs.

Senator CROSSIN—All right. I think I can put the rest of my questions on notice. Thanks.

Senator SIEWERT—I have some specific questions about the Wheatbelt Aboriginal Corporation in WA. I have been chasing this for a little while, and I have not had a response to some letters, so I thought I would take the opportunity to ask some questions about it here. Can you tell me if a decision has been made about whether WAC will continue to deliver CDEP services?

Mr Harvey—The Wheatbelt Aboriginal Corporation will continue to provide services up until 30 June of this year. In terms of services beyond that, we are currently going through a competitive purchasing process, the outcomes of which will not be known until early next week, so I unfortunately cannot comment on that.

Senator SIEWERT—Sorry, I missed that. What are you doing after that?

Mr Harvey—What we have in place is a competitive purchasing process for CDEPs across Australia, and we have almost completed that process but not yet. From next week, all going well, there will be announcements to CDEPs about service provision next financial year.

Senator SIEWERT—There was a comment that rather upset a few people in Western Australia in the *Avon Valley Advocate*, a widely read newspaper in Western Australia, made by the member for Pearce, Judi Moylan. She said the Commonwealth was considering withdrawing money from WAC, and went on to say:

“However, the Commonwealth is keen to make sure WAC is provided with the appropriate funding, provided they can demonstrate good governance, financial stability and sound management practice which doesn’t discriminate.”

On what basis would she have made that comment?

Mr Harvey—She would have made that comment on the basis of the negotiations, discussions and work that we have been doing in managing the CDEP contract with that organisation.

Senator SIEWERT—Did you make an announcement about that?

Mr Harvey—No.

Senator SIEWERT—If there was no public announcement and, it is my understanding, WAC has not been told that either, on what basis would she have made that comment?

Mr Harvey—Individual applicants and CDEP organisations will make statements about all sorts of arrangements to a whole range of people. So they do make those statements.

Senator SIEWERT—But it was not WAC that made that statement. It was the member for Pearce who made that statement. If WAC does not know about that, how is it that the member does?

Mr Carters—Senator, that is an issue for Mrs Moylan herself. We cannot interpret statements she makes and why she makes those statements. It is an issue for her, not for us.

Senator SIEWERT—I will ask this, then: what information has been made public about this?

Mr Harvey—With regard to that, Senator, we do not make public statements about individual CDEPs.

Senator SIEWERT—Okay. Do you still support WAC as a CDEP provider?

Mr Harvey—For this financial year, as we do with all other CDEPs, we continue to support CDEPs that are delivering services.

Senator SIEWERT—My understanding is that DEWR gave WAC a notice of intention to suspend. Is that correct?

Mr Harvey—We do not make a practice of talking about individual CDEPs or the advice that we give individual CDEPs. Individual CDEPs can make statements about what DEWR does or does not say to them but we do not make a practice of talking about the statements that we provide to individual CDEPs. What I can say to you is that we are continuing to fund WAC until the end of this financial year. In terms of the future of WAC after that, we have not completed the assessment of bids for CDEP services in that region.

Senator SIEWERT—My understanding is that WAC have gone through a process: there was a workshop and they have been through a process of improving their governance to meet DEWR standards. They have dealt with their liquidity problems and they have employed an experienced CEO. Does that now meet DEWR's standards?

Mr Harvey—Again, I cannot comment on whether they do or they do not. However, I will comment that we are continuing to fund them, so certain requirements are being met.

Senator Abetz—It is interesting, without being provocative, that you know about these things within WAC. Undoubtedly, Senator, I would assume somebody in WAC may have told you about their improving the governance and other liquidity matters. I dare say in a similar way the federal member may have become aware of things within WAC as well, and then she was asked to comment on it by that hugely circulating paper that you talked about.

Senator SIEWERT—I did actually start my question by saying that I had written and I had not had a response to a number of letters that I had written. I did start my comments with that. But I did not know—

Senator Abetz—But you seemed informed about governance and liquidity problems. If you were aware of it, chances are the federal member would have been aware of it as well.

Senator SIEWERT—The point being that the federal member seemed to know more about what was happening with the CDEP funding than the organisation knew.

Senator Abetz—That is speculation, but it is interesting that both of you knew certain things about it.

Senator SIEWERT—That concludes my questions.

Proceedings suspended from 3.48 pm to 5.01 pm

CHAIR—The committee will resume. I understand that Senator George Campbell has questions on outcome 2, Workplace relations.

Senator GEORGE CAMPBELL—I presume these questions go to you, Mr Pratt, but no doubt you will direct them to the right area if that is not the case. I refer you to page 56 of the PBS and to the item headed 'Departmental appropriations', which reads 'Output 2.1.2—Workplace relations legislation development'. Can you explain to us what the additional appropriation of around \$4 million for legislation development is for?

Mr Pratt—I will start with what the \$12.195 million included. It included funding for legislation development and also for court interventions. We get a substantial increase in funding for legal interventions into 2006-07 over the funding for 2005-06, and a slight reduction in the funding for legislation development. So it is largely in relation to increased interventions.

Senator GEORGE CAMPBELL—Why is it under the heading ‘legislation development’ if it is for intervention in court matters?

Mr Pratt—That output covers legislation development as its primary role but it also includes work on interventions.

Senator GEORGE CAMPBELL—What type of interventions?

Mr Pratt—It could be interventions in industrial relations commissions, state tribunals, the federal commission; it could be interventions in court cases, including the High Court.

Senator GEORGE CAMPBELL—Would this be funding that sits behind the absolute right of the minister to intervene in any set of circumstances where he thinks it is appropriate?

Mr Pratt—In the public interest, it would include funding for that purpose.

Senator GEORGE CAMPBELL—There is \$16 million for that purpose?

Mr Pratt—No, that \$16 million covers the costs of running the legal area as well as the funding in relation to legislation development and interventions. It covers the funding for the operation of the workplace relations legal group. It is all-encompassing.

Senator GEORGE CAMPBELL—How many people are involved in the workplace relations legal group?

Mr Pratt—Presently it is a bit over 40.

Mr Smythe—At present there are 44 staff in the workplace relations legal group.

Senator GEORGE CAMPBELL—Are these all people with legal qualifications?

Mr Smythe—With the exception of two executive assistants, they are all people with legal qualifications.

Senator GEORGE CAMPBELL—This is in addition to the external advice that you bring in from time to time?

Mr Smythe—That is correct.

Senator GEORGE CAMPBELL—What types of issues in terms of legislation development is the group working on at present?

Mr Smythe—Currently, we work on things like regulations for the Work Choices act and the independent contractors bill. Those are two examples.

Senator GEORGE CAMPBELL—So this group is currently working on the independent contractors bill?

Mr Smythe—That is correct. You would also be aware that there are a number of bills before the parliament dealing with occupational health and safety. This group also has some responsibility for working on those.

Senator GEORGE CAMPBELL—Is this expected to increase the work of this group?

Mr Pratt—Yes, in the sense that the funding has increased across that period. From 2005-06 to 2006-07, the group has expanded substantially and may expand a bit further on the basis that the workplace relations system that we are overseeing has much expanded as a result of Work Choices.

Senator GEORGE CAMPBELL—Is there any funding provided for the out years beyond 2006-07?

Mr Pratt—Not that has been published by government.

Senator GEORGE CAMPBELL—Not that has been published by government?

Mr Pratt—Not in the portfolio budget statement.

Senator GEORGE CAMPBELL—Have any allocations been made for the out years?

Mr Pratt—In relation to Work Choices, those were published in the additional estimates statement earlier this year.

Senator GEORGE CAMPBELL—In the February statement?

Mr Pratt—That is correct. It is on page 16.

Senator GEORGE CAMPBELL—What about this group?

Mr Pratt—No.

Senator GEORGE CAMPBELL—So there is no estimate of what the funding for this group will be in the out years beyond next year?

Mr Pratt—That has not been published.

Senator GEORGE CAMPBELL—Why has it not been published, Mr Pratt?

Mr Pratt—The government chooses to publish in the portfolio budget statements the estimate for next financial year.

Senator GEORGE CAMPBELL—Will any of this additional funding be used for external legal advice by consultants?

Mr Pratt—Potentially.

Senator GEORGE CAMPBELL—Mr Pratt, can you tell us who the members of the award review task force and/or reference group are?

Mr Pratt—Yes. Mr Kovacic will run through that.

Mr Kovacic—The chair of the task force is Matthew O'Callaghan, who is a senior deputy president with the Australian Industrial Relations Commission. The members of the reference group are—

Senator GEORGE CAMPBELL—That is the chair of the task force. Who else is on the task force.

Mr Kovacic—He is the only member of the taskforce. The reference group is comprised of six members. They are Peter Constantini; Andrew Herbert, who is a barrister in Queensland; Greg John; Warren Stooke; Tony Slevin, who is a barrister in New South Wales; and Nicholas

Wilson, who was formerly the Industrial Registrar and is now the head of the Office of Workplace Services.

Senator GEORGE CAMPBELL—What qualifications do Mr Constantini and Mr John have?

Mr Kovacic—Greg John is a member of the Defence Force Remuneration Tribunal and a director of the Chessman Group, a specialist human resources and industrial relations consultant based in Melbourne. Peter Constantini is a consultant in the vocational and technical education sector and previously worked with Commerce Queensland.

Senator GEORGE CAMPBELL—Is the department confident that all of the members of the group have qualifications, background and experience in the awards area of the commission?

Mr Kovacic—They were appointed by the minister.

Senator GEORGE CAMPBELL—I understand that they were appointed by the minister. I am asking if you are confident that they have experience in that area. Theirs is a specific task.

Dr Boxall—We cannot pass judgment on the minister's appointees.

Senator GEORGE CAMPBELL—The department had no role in these appointments?

Dr Boxall—The minister makes all of his appointments after consulting various people, including the department. But, at the end of the day, it is his decision and we are not in a position to pass judgment on the competence or otherwise of the minister's appointees.

Senator GEORGE CAMPBELL—So the department had an input into the selection of the reference group?

Dr Boxall—The department has an input. The minister consults the department on just about every appointee. It does not mean to say that he always takes our advice, because he consults a lot of other people as well.

Senator GEORGE CAMPBELL—With respect to the appointment of Nick Wilson to the reference group, you say he is also the head of the Office of Workplace Services. Isn't there a potential area of conflict there?

Dr Boxall—When he was appointed to the reference group, he was actually the head of the Industrial Registry. Subsequently he has been appointed as the head of the Office of Workplace Services.

Senator GEORGE CAMPBELL—Isn't there a potential conflict there, in terms of his role with Workplace Services and his role with the work of the reference group?

Mr Pratt—I can't see that, Senator.

Dr Boxall—The department can't see any conflict in that.

Senator GEORGE CAMPBELL—It can't see that there is any conflict?

Dr Boxall—No, the department can't see a conflict.

Senator GEORGE CAMPBELL—Isn't his primary role that of prosecution of persons who breach the act in whatever form?

Mr Pratt—That is a role of the OWS. Importantly, the head of the OWS, like the head of the Industrial Registry, can benefit from having a strong understanding of the award system, which Mr Wilson has.

Senator GEORGE CAMPBELL—So it is your view that because he has headed up the registry, that experience would outweigh—

Mr Pratt—That was the minister's view.

Senator GEORGE CAMPBELL—any conflict that he might have?

Mr Pratt—I am not able to identify any major risks of conflict of interest.

Senator GEORGE CAMPBELL—It is our understanding that the ART is required to recommend to the minister strategies for rationalising awards and wage and classification structures, initially by the end of March 2006, which has gone, and then to complete the rationalisation process for wage and classification structures by the end of July 2006, which is not that far away. Can you tell us what the current status of the review of federal awards is?

Mr Pratt—The task force has provided a draft report to the minister on the award rationalisation undertaking, and the minister is considering that currently.

Senator GEORGE CAMPBELL—So there is a draft before the minister at present?

Mr Pratt—Correct.

Senator GEORGE CAMPBELL—Is it likely that these time lines that were set out for the task force will be met or can be met? The one in March obviously cannot be.

Mr Pratt—Could you repeat the question?

Senator GEORGE CAMPBELL—Is it your understanding that the time frames for the rationalisation process that were originally outlined can be met, with the exception of the March one, which has already gone?

Mr Pratt—The chair of the task force requested an extension, which was granted by the minister. The chair has met that time frame.

Senator GEORGE CAMPBELL—What was the extension?

Mr Kovacic—Until the end of April.

Senator GEORGE CAMPBELL—And that has been met?

Mr Kovacic—That is correct.

Senator GEORGE CAMPBELL—Is it your expectation that the July 2006 time frame will be met?

Mr Kovacic—That is correct.

Senator GEORGE CAMPBELL—A draft report is currently before the minister?

Mr Pratt—Correct.

Senator GEORGE CAMPBELL—The extension of time to April: is that the only extension of time that has been sought?

Mr Kovacic—In a formal sense, yes. When the task force was established the time frame was originally mooted as, from memory, the end of January. There was an extension until the end of March and then the subsequent extension until the end of April.

Senator GEORGE CAMPBELL—That is the only extension there has been?

Mr Kovacic—Yes.

Senator GEORGE CAMPBELL—How many awards are currently being reviewed with a view to rationalisation?

Mr Kovacic—I cannot give you a precise number but in the order of 2,200 federal awards are being considered and there would also be examination of notional agreements preserving state awards which have been brought into the federal system as a result of the Work Choices legislation. Some consideration would also be given to the provisions in those instruments in terms of award rationalisation, looking at details in respect of those instruments about pay and classification levels as well as a range of conditions matters in awards, to the extent that they can be rationalised.

Senator GEORGE CAMPBELL—Did the task force seek submissions?

Mr Kovacic—That is correct. There were two discussion papers released before Christmas: one on the issue of award rationalisation and the other on the issue of rationalisation of wages and classifications. Comments were invited from interested stakeholders. From memory, over 80 submissions were received from a wide range of interested parties. That was subsequently followed by a range of direct consultations with a wide variety of stakeholders. Indeed, something in the order of 130 organisations attended those consultations, representing a wide range of industries and employee and employer associations as well as other interest groups.

Senator GEORGE CAMPBELL—Of those organisations that attended, would they have been parties to awards of the state or federal commissions?

Mr Kovacic—I think predominantly that would be the case. I could not give you a cast-iron guarantee that it was universal.

Senator GEORGE CAMPBELL—Has the task force instigated any private meetings in relation to the rationalisation with any individuals or organisations who have not made submissions to the review?

Mr Kovacic—Not that I am aware of.

Senator GEORGE CAMPBELL—Would it be possible to get a list of those 130 organisations?

Mr Kovacic—I will take that on notice. I think we possibly could, but I do not have the details here with me.

Senator GEORGE CAMPBELL—How did the consultation take place? Was it a group meeting or one-on-one meetings with these individuals?

Mr Kovacic—In some instances, it may have been with a key organisation but, invariably, my understanding is that there may have been a range of organisations represented at particular consultations. For instance, I recall one consultation which was with the ACTU and affiliated unions. There were officials from the ACTU as well as officials from a range of unions. A subsequent consultation later that day had representatives from three or four different employer organisations or industry bodies.

Senator GEORGE CAMPBELL—So there were group consultations as well as one-on-one consultations?

Mr Kovacic—Yes.

Senator GEORGE CAMPBELL—Were any other submissions received outside of those submissions that have been published on the web site?

Mr Kovacic—No.

Senator GEORGE CAMPBELL—All of the documentation received is in the public arena—is that right?

Mr Kovacic—That is correct.

Senator GEORGE CAMPBELL—I think you said that there is a draft report before the minister on the rationalisation of the awards classification structures and it is expected that that time line of July will be met. Is it possible for a copy of that interim report, which is currently with the minister, to be made available to the committee or is that regarded as in confidence?

Mr Pratt—You would have to ask the minister.

Senator Abetz—I will take that on notice and ask the minister.

Senator GEORGE CAMPBELL—Are you able to outline any of the general strategies that have been promoted in the report?

Mr Kovacic—It would be inappropriate to do so.

Senator MARSHALL—When did the report go to the minister's office?

Mr Kovacic—I think it was the Monday after 30 April—I cannot recall whether 30 April was a Saturday. It was that sort of time frame.

Senator Abetz—It just confirms we did not give a blanket response this morning, Senator Marshall.

CHAIR—Yes. Every case is treated on its merits.

Senator Abetz—Exactly.

Senator MARSHALL—There are different officers here.

Senator Abetz—Same minister.

Senator GEORGE CAMPBELL—In terms of the issue of rationalisation, this draft report that is before the minister will be the final report?

Mr Pratt—In terms of the award rationalisation, potentially. It is a draft report.

Senator GEORGE CAMPBELL—From the point of view of the task force, they have completed their work; they have produced a draft report. The minister may well say he is not happy with it, presumably.

Mr Pratt—Subject to the finalisation of the draft, it is our expectation that that will be the report on the award rationalisation part of the task force's job.

Senator GEORGE CAMPBELL—Is that then the end of the role of the task force, once that process is complete?

Mr Kovacic—That, to some extent, is unresolved. In terms of the award rationalisation report, it will be. Once the report is finalised and the minister considers the report, the minister is then, under the legislation, in a position to then make a formal request—at his choice, in terms of timing—to the Industrial Relations Commission to undertake an award rationalisation. The correct terminology is an 'award rationalisation request'. But, as I said, that is a matter for the minister.

Senator GEORGE CAMPBELL—Will the task force have any role in relation to the Australian Fair Pay Commission's current investigation into an appropriate federal minimum wage?

Mr Kovacic—The other element of the task force's work is the issue of rationalisation of classifications and wages. There is an interim report that the task force has developed, and again that interim report is with the minister for his consideration. The time frame for the task force finalising its report on that issue is the end of July. Whether the task force has any continuing role in that regard beyond the end of July is contingent on a number of factors—the nature of its final report but also the minister's response to the final report.

Senator GEORGE CAMPBELL—But, if the task force report in that area is not finalised and presented to the Fair Pay Commission, doesn't that potentially provide a basis for holding up the determination by the Fair Pay Commission of the minimum pay rates?

Mr Pratt—No, Senator.

Senator GEORGE CAMPBELL—They will proceed?

Mr Pratt—Yes, Senator.

Senator GEORGE CAMPBELL—Without consideration of that.

Mr Pratt—I would not like to speculate that that is what would happen. In fact, all indications are that that is not what would happen. But, if necessary, the Fair Pay Commission can make its determination on the first minimum wage case based on its own processes. It is not dependent on the Award Review Taskforce's outcome.

Senator GEORGE CAMPBELL—So it is the department's view that they can proceed to determine the minimum wage irrespective of the classification structures?

Mr Pratt—That is what the legislation allows.

Senator GEORGE CAMPBELL—Is the issue of pay equity one of the issues the task force has considered as part of the award rationalisation process?

Mr Pratt—Yes.

Senator GEORGE CAMPBELL—Has the task force developed a view as to how it will build pay equity standards into industry classification structures?

Mr Pratt—That is part of the work that it is undertaking.

Senator GEORGE CAMPBELL—But has it come to the conclusion that it can build them into classification structures?

Mr Kovacic—Senator, it has received submissions on those particular issues and is considering those issues in the context of finalising its reports.

Senator GEORGE CAMPBELL—I thought you said it had already finalised its reports.

Mr Kovacic—No, they are both interim reports—draft reports—which are yet to be finalised, if I can put it that way, Senator.

Senator GEORGE CAMPBELL—But I drew the conclusion from what Mr Pratt said earlier that yes, they are draft reports and subject to whether the minister rejects them or not and they have to go away for further work, but they will become final reports. Are they not put before the minister as interim reports? I understood you to say that they are put before the minister as draft reports.

Mr Pratt—The classification wage report is an interim report in draft. The award rationalisation report is a draft report but, while it is our expectation that will eventually become the final report, that is still subject to the minister's consideration.

Senator GEORGE CAMPBELL—So the rationalisation is an interim report. Does that mean the task force has not completed its work in respect of rationalisation?

Mr Pratt—The rationalisation report is a draft final report.

Mr Kovacic—The report that has been developed thus far is an interim report, and there is further work to be done until a final report is prepared by the task force. In terms of the award rationalisation report, that is a draft report as Mr Pratt has indicated.

Senator GEORGE CAMPBELL—So, back to the classification structure—the task force has not completed its work?

Mr Kovacic—That is correct.

Senator GEORGE CAMPBELL—The timetable for it to complete its work is 30 July?

Mr Kovacic—That is correct.

Senator GEORGE CAMPBELL—Is the expectation that it will finalise its report by 30 July?

Mr Kovacic—Yes, Senator.

Senator GEORGE CAMPBELL—And any subsequent delay, Mr Pratt, you have confirmed will not impact upon the Fair Pay Commission's capacity to make a decision in respect of the minimum wage?

Mr Pratt—Correct, Senator.

Senator GEORGE CAMPBELL—In considering the pay equity issue, can you tell us whether the task force has taken into account the pay equity decisions of state tribunals?

Mr Kovacic—In what sense?

Senator GEORGE CAMPBELL—State tribunals have ordered incremental increases over forthcoming years.

Mr Kovacic—Where those increases are reflected in awards at the moment, it is my understanding that they are preserved under the Work Choices legislation.

Senator GEORGE CAMPBELL—Have those state tribunal decisions been taken into account? For example, New South Wales child-care workers have been awarded incremental pay increases to 2008 by the state industrial relations commission.

Mr Pratt—Those increases are already built into the Australian pay and classification scales. In other words, they are part of the classification wages into the future; they are retained.

Senator GEORGE CAMPBELL—In the consideration by the task force of the pay equity issues—not the specific issue of that group of workers—have these approaches that have been taken by state tribunals in some areas been the pay equity issue which the task force has considered? I am not talking about the specific award as such, I am talking about the general approach.

Mr Kovacic—It is an issue, as I have mentioned before, that has been raised in the context of some submissions, and the task force is still continuing its deliberations on some of those issues around pay equity issues as well.

Senator GEORGE CAMPBELL—So it is still an active issue of consideration by the task force?

Mr Kovacic—That is correct.

Senator GEORGE CAMPBELL—Has the task force developed a view in respect of basing classifications on educational experience, or a combination of these factors or other factors?

Mr Kovacic—That is still a matter of consideration by the task force. As I have mentioned, the work in respect of classification wages is a work in progress, and some of these issues are still being canvassed by the task force.

Senator GEORGE CAMPBELL—I presume that one of the issues that has been raised and that is under consideration by the task force is the question of classifications made on an industry basis.

Mr Kovacic—That is correct.

Senator GEORGE CAMPBELL—Has the task force considered how an industry based approach will accommodate labour hire employees? Have you received any submissions about labour hire employees?

Mr Kovacic—Yes.

Senator GEORGE CAMPBELL—And that is still under active consideration?

Mr Kovacic—To the extent that the issue of classification of wages itself is under active consideration, yes.

Senator GEORGE CAMPBELL—Given that constitutional corporations are now the primary basis for coverage under the act, does the task force envisage that the wage and classification structures will extend to managerial and supervisory employees of constitutional corporations? In other words, will they extend to all employees of the corporation rather than just those who would have been previously regarded as wage employees?

Mr Kovacic—That is an issue that is the subject of deliberation.

Senator GEORGE CAMPBELL—Has your group, Mr Smythe, been providing legal advice in respect of this aspect?

Mr Smythe—No.

Senator GEORGE CAMPBELL—Have any external consultants or external legal advisers been providing advice on this issue?

Mr Smythe—On that issue you have just raised? Not that I am aware of.

Senator GEORGE CAMPBELL—Not that you are aware of. Are you aware of any, Mr Kovacic?

Mr Kovacic—No, we have not commissioned any external legal advice on that issue, to the best of my knowledge.

Senator GEORGE CAMPBELL—Has the task force sought legal advice on any of these issues?

Mr Kovacic—We have had discussions with the Workplace Relations Legal Group on a number of aspects of the legislation, such as provisions relating to award wages et cetera, which have been to either clarify or confirm the task force's understanding—or assist its understanding of the legislation.

Senator GEORGE CAMPBELL—But you have not specifically sought any advice from that group on the implications of using the corporations section of the Constitution and whether that requires you to be broader about who is covered within the corporation in terms of this aspect?

Mr Kovacic—Not on that specific issue, to the best of my knowledge.

Senator GEORGE CAMPBELL—Has the task force given any consideration to what the role of awards is going to be into the future, after having completed this rationalisation?

Mr Kovacic—That is not part of the task force's charter, Senator.

Senator GEORGE CAMPBELL—It is not, but they are going through the rationalisation process.

Mr Kovacic—The terms of reference require the task force to provide advice on how awards may be rationalised. The role of awards under the Work Choices legislation is indeed dealt with through the legislation, if I can put it that way.

Senator GEORGE CAMPBELL—So they will not be expressing any views, having rationalised these awards, about what role they will play in the overall structure into the future, if any?

Mr Kovacic—The role of awards, as I have mentioned, is dealt with in the Work Choices legislation. That is not to say that there may not be commentary in the task force's report that reflects that role, but I do not think that they will necessarily be providing advice or interpretation—'advice' is probably the better word in terms of the role of awards, or determining what the role of awards is, if I can put it that way.

Senator GEORGE CAMPBELL—Can we move on to the issue of employer training. Is that you again, Mr Pratt?

Mr Pratt—Is that outcome 2, Senator?

Senator GEORGE CAMPBELL—Yes, it is. Mr Pratt, the explanatory memorandum to the legislation stated that \$10.8 million was to be spent in this financial year on information and education. How much of this was spent on training employers?

Mr Pratt—If we can go back to your first point, Senator, I think we need to clarify the funding which was allocated through the additional estimates process for information and education provision. Firstly, there was an amount of \$7.3 million for phase 1 of the information and education campaign, which we have discussed at previous estimates and which related to the operation of call centres, printing and distribution of products and the mail house. Further to that, the additional estimates gave us an additional \$7.3 million for phase 2 of the education activities, covering the education of employers, employees and other stakeholders about the flexibilities and opportunities that are available under Work Choices and also the rights and obligations of employees and employers. The bulk of that is utilised through the employer access program, which is the program we have under way at the moment where we have engaged 17 organisations to provide information to employers and employees on Work Choices. At this stage, I could not tell you how much money we have spent on that, as it kicked off about four weeks ago. The first invoices would only be making their way to us now, I imagine.

Senator GEORGE CAMPBELL—Can you outline to us who the 17 groups are that are providing training?

Mr Pratt—Yes. The minister made an announcement on this on 11 April. The 17 organisations are: the ACT and Region Chamber of Commerce and Industry; the Aged and Community Services Association of New South Wales and ACT; Australian Business Ltd in association with the Victorian Employers Chamber of Commerce and Industry and the Tasmanian Chamber of Commerce and Industry; the Australian Hotels Association; the Australian Industry Group; Australian Mines and Metals Association—and that is a consortium with the Agribusiness Employers Federation; the Australian Retailers Association; Business SA; the Chamber of Commerce and Industry, Western Australia; Commerce Queensland; Master Builders Australia; the National Farmers Federation; the National Retail Association; the Chamber of Commerce, Northern Territory; the Recruitment and Consulting Services Association; the Restaurant and Catering Industry Association of Australia; and the Victorian Automobile Chamber of Commerce.

Senator GEORGE CAMPBELL—These are all, without exception, employer organisations or variations thereof?

Mr Pratt—That is correct, Senator. The program was designed to develop a national network of industry based advisers.

Senator GEORGE CAMPBELL—When did the actual training commence?

Mr Pratt—Shortly after 11 April. It was probably in late April, I think, that the first seminars would have started. Can I also mention, Senator, that the department, through its Workplace Advisory Service, is also conducting more general seminars for employers and employees around the country, and they commenced earlier in April.

Senator GEORGE CAMPBELL—Can we stick with this program for the moment. Can you outline how many seminars have been conducted, where those seminars have been conducted and the level of attendance at those seminars.

Mr Pratt—I would have to take that on notice. From memory, between 700 and 900 seminars have been conducted to date by the employer advisory program providers. They will provide over 1,600 seminars by the end of this financial year.

Senator GEORGE CAMPBELL—What do the seminars consist of? Is there a standard format?

Mr Pratt—No, each provider has its own seminar format.

Senator GEORGE CAMPBELL—On average, how long will they last?

Ms Connell—As Mr Pratt said, the seminars vary, but they are around two to four hours. There may be some that are longer; I would have to take that on notice, as each organisation sets its own format.

Senator Abetz—Would it be fair to say that some of these organisations then develop a CD-ROM or have information kits that people can take away from a seminar?

Ms Connell—That is right. There are a number of products that are produced as part of their contract with us.

Senator GEORGE CAMPBELL—Do you have any pro formas of the agendas for these seminars that you can make available to the committee?

Ms Connell—We would have to go to the organisations themselves to obtain that. I do not have those at the moment.

Senator GEORGE CAMPBELL—Could you take that on notice and see whether you can get us copies of the agendas so that we can see the nature of the training that is being introduced?

Mr Pratt—Yes.

Senator GEORGE CAMPBELL—Do you have any figures on how many attendees have been at each of those seminars?

Mr Pratt—We would have an indication.

Ms Connell—We do. Each of the providers does provide us with a report on the activities they are undertaking and how many people attend. By the end of June they are required to provide us with a full report on all their activities. We do not have that yet but that is part of their contractual obligations to us.

Senator GEORGE CAMPBELL—You don't have those figures yet?

Ms Connell—I can tell you that as at 29 May there have been 504 seminars scheduled to be run. As Mr Pratt said, we are expecting there to be over 1,600 workshops and seminars. At the moment I could not guess how many people have attended to date.

Mr Pratt—It would be many thousands.

Senator GEORGE CAMPBELL—Is it possible, when you get the break-up of those figures, to identify how many of those attendees are employers and how many are employees? Or are these seminars exclusively for employers?

Mr Pratt—No, they are for both employers and employees. I suspect we would have difficulty in being able to identify the split between employers and employees. I do not believe that we ask for that information.

Ms Connell—No, I don't think individuals are pushed for that. I know there are some feedback forms that attendees to the seminars are asked to fill out. Some may advise us whether they are employers or employees; others will not. It will not be a figure that we could give you with any certainty.

Senator GEORGE CAMPBELL—Are there any training programs being specifically provided for employees?

Ms Connell—There are a number of activities that we are directing particularly at employees. As you would appreciate, it is very difficult to get groups of employees together.

Senator GEORGE CAMPBELL—I never had any trouble, Ms Connell.

Ms Connell—Through our Workplace Advisory Service, as Mr Pratt mentioned, we are running another series of seminars. There are 350 of those, and we are particularly trying to encourage employees to come along. We are developing a number of products particularly for employees and we are also encouraging employers that attend our seminars to take these back to their workplaces and distribute them to their employees. With respect to our Work Choices info line, certainly the bulk of callers are employees. We are looking at a series of products, as I said, and we are also trying to have our Workplace Advisory Service visit a number of organisations which do reach employees. So we are undertaking a number of activities.

Senator GEORGE CAMPBELL—How do you identify these employees that you are seeking to bring into this education process? Are you delivering the training on the job or are you bringing them off the job?

Mr Pratt—Primarily, the mechanism is to make people aware that they can get information if they wish to. For example, we advertise our workplace advisory service seminars as open to employers and employees. People are directed to the website and our Work Choices information line. That is one mechanism.

Ms Connell—We are also targeting employees in certain sectors of the community, whether it is young workers, migrant workers or women, and we have a range of strategies to get the message out in a format that is easy to distribute to those groups. There is a range of activities using mainly our networks and a multiplier effect, if you like—going to those organisations that can help us distribute that information to those groups.

Senator GEORGE CAMPBELL—How do you define your target groups? Are you doing it on a geographical basis or on an industry sector basis?

Ms Connell—All of that, yes. We are using a range of strategies to reach as many employees and employers as we can.

Senator GEORGE CAMPBELL—Can you give us an example of the sorts of strategies you are using?

Ms Connell—For rural and remote areas, for example, particularly through our employer advisory program—through the contract—we were requesting people to present us with a strategy for reaching rural and remote employers and employees. We are using our workplace advisory service to go out and contact particular areas, whether it is working with women or migrant workers in the workforce—again, using organisations that service those groups—and we are approaching those groups directly. Again, we are using the existing networks to distribute the information.

Senator GEORGE CAMPBELL—How many employees have you been able to reach so far?

Ms Connell—I could not give you a definitive number but, as Mr Pratt said, we have had seminars and activities under way since the legislation was passed, so any number of employers and employees would have been recipients of information through any of those channels.

Senator GEORGE CAMPBELL—You do not have any figures on the number who have been in attendance at those seminars?

Ms Connell—We can get the numbers of attendees at the seminars.

Mr Pratt—It would be over 10,000 to date, I imagine.

Senator GEORGE CAMPBELL—Can you give us a geographical break-up of where the seminars have occurred?

Mr Pratt—Yes.

Ms Connell—We have had 393 seminars in the metropolitan areas and 160 in the regional areas. That is just for the workplace advisory seminars; that is not the employer advisory program seminars.

Senator GEORGE CAMPBELL—When you say 393 in the metropolitan areas, do you mean just Canberra and Sydney or all the metropolitan areas?

Ms Connell—The seminars are in metropolitan areas in every state.

Senator GEORGE CAMPBELL—You say there were 393 in metropolitan areas. You were not talking just about the metropolitan area of Canberra, were you?

Mr Pratt—No.

Ms Connell—No; around Australia.

Senator GEORGE CAMPBELL—Are these seminars held during working hours?

Ms Connell—We have a mixture of morning, afternoon and evening seminars, trying to encourage as many people as possible to come along.

Senator GEORGE CAMPBELL—Is there any difficulty with employees getting time off work to attend these seminars?

Mr Pratt—I am not aware of any complaints.

Senator GEORGE CAMPBELL—Are they being paid to attend?

Mr Pratt—I could not tell you.

Senator GEORGE CAMPBELL—So that sort of payment is not illegal under the act?

Mr Pratt—My reading of the act is that attendance at workplace advisory seminars is not prohibited content.

Senator GEORGE CAMPBELL—Collecting money for the miners in Beaconsfield almost was.

Senator Abetz—We know the facts behind that. Let us move on.

Senator GEORGE CAMPBELL—You do not want to hear that one!

Senator Abetz—It is not relevant to the matter at hand, and it allows—

Senator GEORGE CAMPBELL—It is certainly not good publicity for you or for your legislation.

Senator Abetz—for the full exposure of that, and I do not think it is helpful to anyone.

Senator GEORGE CAMPBELL—When was the tender for the delivery of the employer advisory program released?

Ms Connell—The actual date of the tender?

Senator GEORGE CAMPBELL—Yes.

Ms Connell—It was 25 January.

Senator GEORGE CAMPBELL—Was that publicly released?

Ms Connell—It was a public tender, yes.

Senator GEORGE CAMPBELL—It was publicly advertised—so you could give us a copy of it. Does it set out the terms of reference?

Ms Connell—It does. There is a request for tender, and the information was all put up on the AusTender website, so it is a public document.

Senator GEORGE CAMPBELL—Can you make a copy of that available for us?

Ms Connell—Certainly.

Senator GEORGE CAMPBELL—Of the money that had been allocated, Mr Pratt, has any of that been set aside specifically for employee organisations who want to conduct training? Or were they expected to compete in this open tender process? You said the focus was on employer organisations.

Mr Pratt—The focus was on industry based advisers. No money was hypothecated for that purpose.

Senator GEORGE CAMPBELL—Why wouldn't you hypothecate money for employee organisations—most of which are industry based?

Mr Pratt—It simply was not, Senator.

Senator Abetz—Most of those employee organisations were committed to ripping up the legislation.

Senator GEORGE CAMPBELL—Was it considered?

Mr Pratt—They could have tendered for the advisory program if they had wished to.

Senator GEORGE CAMPBELL—But I thought you said the focus was on employer organisations.

Mr Pratt—The focus was on setting up a national network of industry based advisers.

Senator GEORGE CAMPBELL—I thought you said the emphasis was on employers.

Mr Pratt—Our seminars are aimed at employers and employees.

Senator GEORGE CAMPBELL—But I thought these advisers were aimed at employers—that your workplace advisory group were focusing on employees.

Mr Pratt—I think it is incorrect to characterise it as focused solely on employers. It is certainly called the employer advisory program, but it is aimed at educating employers and employees about Work Choices.

Senator GEORGE CAMPBELL—I presume it does not preclude the employer bringing his employees along if he wishes to do it—

Mr Pratt—Certainly not.

Senator GEORGE CAMPBELL—If you were to advertise it as being focused on employer advice, I do not think too many employee organisations would be actively seeking to tender—if that were the focus.

Mr Pratt—Could you repeat your question, Senator?

Senator GEORGE CAMPBELL—You said that the focus was on employers. I have not got the terms of reference, and I presume that is the emphasis in the terms of reference, but an employee organisation looking at that would not be anxious to go to the expense of putting in a tender, knowing—

Senator Abetz—Do you know any employee organisation that actually would have been interested in promoting the facts of Work Choices as opposed to running multimillion dollar campaigns against it and saying that if ever they got the chance they would be ripping up the legislation? I think it is a bit cheeky asking for funding for those organisations to then go around explaining it.

Senator GEORGE CAMPBELL—Are you finished with the commercial? I know a number of employee organisations which would be quite interested in getting resources to be able to go out and talk to their membership about the details of this legislation.

Mr Pratt—The tender documentation did not restrict tenderers to employer organisations.

Senator GEORGE CAMPBELL—We will have a look at the tender document. I am reasonably confident that there will be a built-in bias in terms of the wording of the document, but I understand what you are saying.

Mr Pratt—Certainly, but there is no bias, Senator.

Senator Abetz—Let us find out if any employee organisations actually did tender. You have indicated that you are aware of some that would have been interested. That is fine, but then there has got to be the next step of actually putting in a tender.

Senator GEORGE CAMPBELL—No, I did not say that. Don't put words in my mouth. I said that there would be a number of employee organisations that I know would be keen to get access to money to be able to inform their members effectively about the details of this legislation. I have not seen the terms of this tender, so I do not know whether it is something that would attract them to apply for funding under this tender. Until I see the terms of the tender, I could not make that judgment. As a result of this expenditure, if the major focus of the training is on employers—and I am not discounting the effort that has been made to get to employees—and advising them of their rights under Work Choices, won't that distort the objective of Work Choices, which the government says is to encourage collective agreement making between employers and employees?

Mr Pratt—No. We have identified a range of mechanisms for advising stakeholders on the Work Choices changes. The seminars are one part of that.

Senator GEORGE CAMPBELL—What are the other parts?

Mr Pratt—I refer you back to Ms Connell's list of products, web sites, call centres and the workplace advisory service arrangements.

Senator GEORGE CAMPBELL—What sort of feedback do you get from the training you are running, particularly from employees? What sort of analysis have you done about how much detail they have been able to absorb of your new legislation?

Mr Pratt—Each of these seminars has a feedback survey and the results so far have been very positive.

Senator GEORGE CAMPBELL—How much of this documentation is a fitter in a workshop in Wollongong able to absorb in a two-hour seminar?

Mr Pratt—It is not expected that a fitter in Wollongong would need to absorb all of that.

Senator GEORGE CAMPBELL—How are they going to understand what their rights and entitlements are under the legislation? Equally, I could say the same for an employer attending a two- to four-seminar. How do you expect them to absorb that?

Senator Abetz—I could say the same about the 100-plus page awards that float around.

Mr Pratt—The seminars as well as the other products are designed to identify the issues which are of most interest to employers and employees and to focus on those.

Senator GEORGE CAMPBELL—What are the priority issues that are identified in these seminars?

Mr Pratt—For example, the need to ensure that employees are paid their entitlements correctly against the fair pay condition standard or the relevant instruments that they are employed under, whether they are a collective agreement or an individual agreement. They are provided with information about the Office of Workplace Services and the assistance it can provide them if they think that they are not receiving their entitlements. They are provided with advice about the role of the Office of the Employment Advocate and the information it can provide them on agreement making, particularly for vulnerable employees or people in groups whom we would characterise as vulnerable employees.

Senator GEORGE CAMPBELL—If that is the approach that the department has been taking, did you provide any training to the employees at Cowra Abattoir, for example?

Mr Pratt—I could not tell you whether or not any employees from Cowra Abattoir attended a seminar.

Senator GEORGE CAMPBELL—Did you seek to provide them with any advice about what their entitlements were under Work Choices when that dispute erupted?

Mr Pratt—The Office of Workplace Services, the Work Choices info line and its predecessor, the wage line, have been in existence for many years.

Senator GEORGE CAMPBELL—I know that. Depending on whether they were staffed or not staffed determined how effective or ineffective they were.

Mr Pratt—They were certainly staffed.

Senator GEORGE CAMPBELL—They were staffed, yes, but the level of staffing at times was an issue. Were the employees at Eagle Engineering given any advice as to what their rights were under Work Choices when that dispute erupted?

Mr Pratt—They may have been. I do not know.

Senator GEORGE CAMPBELL—Would Ms Connell know?

Mr Pratt—No.

Senator GEORGE CAMPBELL—If the objective behind your education approach was to enlighten employers and employees about their rights and obligations under Work Choices, wouldn't it have been a sensible approach to have dealt with these dispute areas where people obviously did not understand what their rights, entitlements or obligations were under the new act?

Senator Abetz—This is the height of cheek.

Senator GEORGE CAMPBELL—It is quite obvious.

Senator Abetz—You guys go out complaining when we have information campaigns suggesting people should ring up call centres and avail themselves of a *Workchoices* booklet so that they can become educated about these things. You decry those sorts of campaigns and then you come in here asserting that we have not done enough to educate the workers and other people in the community about Work Choices. You have to decide what your policy is on this. You cannot have it both ways.

Senator GEORGE CAMPBELL—I am not asserting that at all. The department is asserting that it is running an education campaign to make people, employers and employees, aware of their rights and obligations under your new act.

Senator Abetz—But it is not in isolation.

Senator GEORGE CAMPBELL—Whether or not I agree with your act is irrelevant. That is what the department has determined to do.

Senator Abetz—But this is part of a suite of educational activities.

Senator GEORGE CAMPBELL—It has called for tenders for industry associations to go out and do that for employers. The department says it is running seminars for employees. I am simply making the point that there have been a number of disputes that have been very public where people obviously have not understood the implications of the new legislation. I am asking the department whether or not they got involved in those areas and helped those employees and employers to understand what their obligations were. I understand from what Mr Pratt said that they did not.

Mr Pratt—No, I did not say that. What I said was I did not know whether employees of those organisations availed themselves of the various services which we and other agencies provide. I am aware that the Office of Workplace Services has been in contact with several of the organisations that you mentioned and has talked to the employers and the employees in those circumstances.

Senator GEORGE CAMPBELL—They have, very tardily, I might add, on at least a couple of occasions. But their role is not an educational one. The Office of Workplace Services' role is as a prosecutor.

Mr Pratt—No, not entirely. Certainly their main role is to prosecute or to ensure that employee entitlements are met but they also have an education role as well.

Senator GEORGE CAMPBELL—But their prime role is to ensure compliance with the act.

Mr Pratt—But that goes hand in glove with their role to provide targeted education activities.

Senator GEORGE CAMPBELL—What funding do they have available to run education campaigns?

Dr Boxall—You should ask them. They are a separate agency.

Senator GEORGE CAMPBELL—We will. Are they funded separately from the department?

Mr Pratt—I will take you to page 275, from memory, of the portfolio budget statement. It indicates that for the next financial year the Office of Workplace Services has funding of \$32 million.

Senator GEORGE CAMPBELL—Funded under your department?

Mr Pratt—That is their funding.

Dr Boxall—They are a separate agency.

Senator GEORGE CAMPBELL—Independent from the department?

Dr Boxall—Yes.

Senator GEORGE CAMPBELL—We will raise that issue with them. I will find out how much of their money is going to targeted education, as Mr Pratt defined it. Mr Pratt, can you provide us with the breakdown of the funding that has been provided to the 17 organisations to date?

Mr Pratt—Yes. I can tell you what their contract value will be. The payments they will receive will be subject to their successful completion of their contracts. Would you like me to do that now or would you like us to take it on notice?

Senator GEORGE CAMPBELL—I am happy if you want to do it now. Is it lengthy?

Mr Pratt—It is lengthy.

Senator GEORGE CAMPBELL—Perhaps you can take it on notice, or you can table it if you have it in writing.

Mr Pratt—The money is not specifically allocated for that purpose only. This forms part of output—

Senator GEORGE CAMPBELL—I also wanted to ask you if you can identify what proportion of the money has been spent on providing associated materials such as brochures, CDs and DVDs et cetera?

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

Senator GEORGE CAMPBELL—I understand that.

Mr Pratt—For your information, this falls under output 2.2.3 where, for this financial year, we estimate that in total we will spend approximately \$49 million on the running of that part of the department, including the various education activities and other programs that that area runs. It is all part of that funding. To the extent we can give you that information we will do that on notice.

Senator GEORGE CAMPBELL—I do not know if this is a question for you, Mr Smythe, or not, but can you identify for us what the total legal costs involved in developing and drafting the Workplace Relations Amendment (Work Choices) Bill 2005 and the regulations?

Mr Smythe—If you are talking about the costs of both the external legal providers that gave us some secondees and the costs of staff within the department, I will take that question on notice.

Senator GEORGE CAMPBELL—Yes, I am talking about the total cost.

Mr Smythe—I am not sure that I am able to quantify that, but I will take it on notice and see if I can.

Senator GEORGE CAMPBELL—Can you also include the costs for the legal advice that you used on the corporations power?

Mr Smythe—I am not sure I follow that question. The department and the government have been taking advice on the availability of the corporations power to underpin workplace relations for as long as I have been in the department, which is quite a long time.

Senator Abetz—You ought to read Laurie Brereton’s speech and Gough Whitlam’s comments on the concrete pipe’s case.

Senator GEORGE CAMPBELL—Minister, stop the advertisement. You are only interfering with the—

Senator Abetz—They were luminaries on the corporations power and IR law.

Mr Smythe—As I understand it, the government’s decision in respect of the use of the corporations power has been based on a number of advices from a number of sources that have been round for a long time.

Senator GEORGE CAMPBELL—I am specifically talking about any advice that you sought specifically related to this block of legislation.

Mr Smythe—I will take that on notice but I am not sure that I can disaggregate from the various advices that we have developed both internally and externally.

Senator GEORGE CAMPBELL—Are you saying to me that in terms of the act you only went through the parliament, that there was no legal advice sought as to whether or not the form of that act would not run foul of the corporations power?

Mr Smythe—I am not saying that at all. I am saying that because advice on the availability of the corporations power has been around and relatively settled for quite a long time, I suspect that the cost of the advice confirming that, which was received during the final stages of the legislation, would have been very low. If, for instance, someone just said, ‘Yes, we confirm the previous advice,’ they probably did not charge us very much.

Senator GEORGE CAMPBELL—If that is the case, that is the case.

Mr Smythe—I will see if I can quantify those costs.

Senator GEORGE CAMPBELL—For the minister’s edification, I was involved in the 1993 negotiations around the act. There was legal advice sought then, but it was specific to the drafts that were in front of us not more generally. That is specifically what I am looking at. I know there has been a range of general advices over the years about the corporations power and how narrow or how widely you can interpret. But there was specific advice sought in 1993 on certain aspects of the draft legislation at that time that might have contravened the corporations power. I presume a similar type of advice was sought in respect of this legislation.

Mr Smythe—As I said, I will take the question on notice and see what I can do.

Senator GEORGE CAMPBELL—Fine. Can you also advise us of what legal costs have been involved in the Commonwealth’s intervention in each of the state and territory wage cases?

Mr Smythe—The department can. It is not actually in my bailiwick. Mr Kovacic has the answer to that question.

Mr Kovacic—The legal costs as at 30 April 2006 were \$314,441.51—that is excluding GST.

Senator GEORGE CAMPBELL—Do you have a breakdown of those figures by state and territory?

Mr Kovacic—Not by state. Because we have used counsel in a number of state jurisdictions, I have some of the invoices for some of the counsel. I have invoices for the solicitors that we have engaged—Blake Dawson Waldren. I would have to take it on notice as to whether we could provide that breakdown.

Senator GEORGE CAMPBELL—That is for the current round of state wage cases?

Mr Kovacic—That is correct. I stress that that is up until 30 April.

Senator GEORGE CAMPBELL—Can you provide me with the legal costs incurred by DEWR since June 2005 in intervening in individual state wage cases?

Mr Kovacic—In terms of state wage cases, those costs that I have mentioned would be comprehensive.

Senator GEORGE CAMPBELL—Would they? And they would go back to 2005?

Mr Kovacic—In terms of state wage cases, it would be this financial year. The only cases that we have intervened in are the current round of state wage cases.

Senator GEORGE CAMPBELL—Does this \$314,000 all relate to external advice and representation in relation to these cases or is it a mixture of external plus internal?

Mr Kovacic—It covers external legal costs.

Senator GEORGE CAMPBELL—It is all external?

Mr Kovacic—Yes.

Senator GEORGE CAMPBELL—Is the \$314,000 the total anticipated for legal costs arising out of these cases?

Mr Kovacic—It is not the total anticipated. As you are aware, state wage case hearings are yet to occur in Tasmania and New South Wales, and I would anticipate that there would be some additional costs associated with those matters. There were also hearings earlier this month in Queensland and Western Australia, and to the best of my knowledge we have not been invoiced for those costs so I would anticipate that that figure would increase.

Senator GEORGE CAMPBELL—Can you give us what the legal costs have been for the department in the ministerial review of the decision by Vice-President Lawler allowing the ANF to take protected industrial action without holding a secret ballot?

Mr Smythe—Yes, I can provide you with that. The final costs have not been settled yet, but we anticipate that it will be approximately \$55,000.

Senator GEORGE CAMPBELL—What other matters or cases in the AIRC has the minister intervened in?

Mr Smythe—The minister has intervened in only two cases this year: a case involving a disability employment action centre and a section 113 application by the ALHMWU and also an application by the Construction, Forestry, Mining and Energy Union about apprentices' wages.

Senator GEORGE CAMPBELL—Do you have the costs associated with those interventions?

Mr Smythe—Yes, I do. For the disability employment action centre matter, the total cost was \$18,944. The CFMEU application was handled in house so we do not have an external cost.

Senator GEORGE CAMPBELL—Does the department have guidelines in respect of costs involved in intervening in cases?

Mr Smythe—No.

Senator GEORGE CAMPBELL—So you don't have guidelines about whether you do it in-house or hire external barristers?

Mr Smythe—No, we don't have any guidelines.

Senator GEORGE CAMPBELL—So you make judgments about it on a case by case basis?

Mr Smythe—That is correct.

Senator GEORGE CAMPBELL—With respect to the Eagle Engineering issue, it was reported in the *Workplace Express* on 14 March this year that you had taken Federal Court proceedings against 72 maintenance workers over alleged breaches of section 170MN of the act. What law firm was engaged on behalf of DEWR in this matter?

Mr Smythe—This one is not my responsibility, Senator. Mr Maynard will answer the question.

Mr Maynard—Freehills was the legal firm engaged for that particular matter.

Senator GEORGE CAMPBELL—Who are the barristers?

Mr Maynard—Michael McDonald and Liz Wilson.

Senator GEORGE CAMPBELL—Is Mr McDonald a senior counsel?

Mr Carr—Yes.

Senator GEORGE CAMPBELL—What was the cost for the solicitors and barristers?

Mr Maynard—The total legal costs that have been invoiced to date have been \$20,486.19.

Senator GEORGE CAMPBELL—Mr Pratt, what fines did DEWR consider that the individual workers and the unions involved would be liable for if it was found that they did breach section 170MN?

Mr Pratt—The department would have no opinion on a fine that might be applied by a court.

Senator GEORGE CAMPBELL—Did you consider it appropriate to bring this matter to court, given that the employer involved, Eagle Engineering, was not involved in the action?

Mr Pratt—By definition, yes; otherwise we would not have pursued the case.

Senator GEORGE CAMPBELL—Doesn't that amount to third party intervention?

Mr Pratt—This is not an intervention.

Dr Boxall—It is not an intervention, Senator.

Senator GEORGE CAMPBELL—What is it?

Dr Boxall—It is a compliance action.

Senator GEORGE CAMPBELL—Who made the decision to pursue the case, Dr Boxall, and on what basis?

Dr Boxall—The department made the decision to pursue the case. The department is tasked with compliance with section 127 notices. That is pre Work Choices—section 127 notices pre Work Choices.

Senator GEORGE CAMPBELL—Given that Eagle Engineering themselves had not taken any action against the workers over the industrial action, didn't you consider the issue to have been adequately resolved at the workplace level between the employer and the employees?

Dr Boxall—That is not the issue. The issue is whether parties, both employers and employees, abide by section 127 notices. It is not an issue about whether or not the other party took action; the question is whether parties abided by the law.

Senator GEORGE CAMPBELL—If the department determined that they had breached section 127 and that prosecutions should therefore be launched, why did the minister withdraw them?

Dr Boxall—No, the minister did not withdraw them. The minister decided at the introduction of Work Choices, and he put out a press release to that effect on 11 April, that:

Proceedings in all matters currently before the Court or under investigation related to breaches of AIRC orders made under section 127 of the pre-WorkChoices *Workplace Relations Act 1996*, will be withdrawn.

And Eagle was one of the ones that were withdrawn.

Senator GEORGE CAMPBELL—Yes, but that was in response—that occurred immediately after he had been contacted by the ABC over the Eagle case.

Dr Boxall—It did not occur immediately after he had been contacted by anybody. It was a decision he made to—

Senator GEORGE CAMPBELL—Well, he appeared on the ABC at 7 am that morning, on 11 April.

Dr Boxall—I do not know who appeared when on the ABC, Senator Campbell.

Senator GEORGE CAMPBELL—I can assure you he did.

Dr Boxall—What I am telling you is that he decided to withdraw them exactly as he said in that press release:

Proceedings in all matters currently before the Court or under investigation related to breaches of AIRC orders made under section 127 of the pre-WorkChoices *Workplace Relations Act 1996*, will be withdrawn.

Eagle is not mentioned. It just happens to be one of the cases that was withdrawn.

Senator GEORGE CAMPBELL—Wasn't it really withdrawn, Dr Boxall, because the minister was severely embarrassed that you were pursuing a case where workers were refusing to live in accommodation that was infested with fleas, feral cats and raw sewage?

Dr Boxall—Not at all. That is completely false.

Senator GEORGE CAMPBELL—That had nothing to do with it?

Dr Boxall—No, not at all.

Senator Abetz—This is a debating point, Chair, on which you could not expect Dr Boxall to comment.

Senator GEORGE CAMPBELL—It is not a debating point.

CHAIR—Mr Maynard, you were going to say something?

Mr Maynard—That is all right, Senator.

Senator GEORGE CAMPBELL—Please feel free, Mr Maynard.

CHAIR—Senator Campbell, do you have some more questions?

Senator GEORGE CAMPBELL—I have a lot more questions.

CHAIR—Good. Let's move on.

Senator GEORGE CAMPBELL—Mr Pratt, is the department considering making any amendments to the Work Choices act?

Mr Pratt—The department does not actually make amendments to the acts or the regulations. The government makes decisions about any changes to legislation.

Senator GEORGE CAMPBELL—Sure, I appreciate that, but are you considering any amendments to the Work Choices act?

Mr Pratt—It would be up to the government to determine whether or not there were going to be any changes to the Work Choices act.

Senator GEORGE CAMPBELL—Mr Pratt, the government claims that the independent contractors bill is designed to protect independent contractors, but what is it that they are to be protected from specifically?

Mr Pratt—In a general sense, it is to protect the commercial arrangements that independent contractors have with their head contractors to ensure that they are not considered part of the workplace relations system.

Senator GEORGE CAMPBELL—Sorry, I missed that last bit. Do you mind repeating that?

Mr Pratt—In a general sense, the independent contractors bill, as announced by the government at the last election, is designed to protect the commercial arrangements between independent contractors and their contractors.

Senator GEORGE CAMPBELL—The government claims that there are 1.9 million independent contractors in the Australian labour force. The most reputable academic estimates put the figure at around 600,000 at most, or six per cent of the workforce. How was the 1.9 million figure derived?

Mr Smythe—I do not know. I am not aware of the government having made that claim. I am aware that other persons have, but I was not aware that the government had made that claim.

Senator GEORGE CAMPBELL—That figure has been bandied around.

Mr Smythe—As I say, I am aware that other parties have made that claim. I am not aware of the minister having made that claim.

Senator GEORGE CAMPBELL—Do you have an accurate assessment of how many independent contractors there are in the labour force?

Mr Smythe—I do not. I do not know whether any of my colleagues do. I will take the question on notice.

Mr Kovacic—Recently, the Productivity Commission report on non-traditional forms of employment estimated the number of independent contractors at around 800,000, from memory. ABS data in this area is not precise, if I can put it that way, so there is great difficulty in getting a precise figure on the number of independent contractors, which is reflected by the range of numbers that are sometimes canvassed.

Senator GEORGE CAMPBELL—That seems more realistic. There have been a number of academic studies which put it in the range of 600,000. It depends, I suppose, on how you define it.

Mr Pratt—To my knowledge, the 1.9 million figure is provided by the independent contractors association not by the minister.

Senator STERLE—They would not mislead us! It must be spot on!

Senator GEORGE CAMPBELL—That figure is out there being bandied around. It is like the 50,000 small businesses that were ready to employ that COSBOA told us about. The minister said that overnight there would be an explosion of jobs.

Senator Abetz—12.01 am.

Senator GEORGE CAMPBELL—Tony Abbott indexed it to 55,000 and you got another survey that put it up to 75,000.

Senator Abetz—Sensis claimed 150,000, and I am a conservative; I always underestimate.

Senator GEORGE CAMPBELL—The minister's media material mentions the state deeming provisions. Given that these deeming provisions have been in place for a long time and only apply to certain occupations, what is the specific problem with them that will be fixed by the independent contractors bill?

Mr Smythe—I do not think we can go any further than what the minister mentioned in his press release—that state deeming provisions will be overridden and there will be a transitional period to bring that about.

Senator GEORGE CAMPBELL—What particular aspect of the deeming provisions is seen as being not in the interests of independent contractors? A lot of independent contractors, to my knowledge, actually like those deeming provisions for a whole variety of reasons. The

transport industry is a classic example. My colleague Senator Sterle knows much more about the industry than I do.

Mr Smythe—In relation to the transport industry, the minister's press release also indicated that the special protections that exist in the transport industry in New South Wales and Victoria would be preserved and not overridden by the independent contractors bill. The minister also indicated that the deeming provisions in respect of outworkers would not be overridden by the independent contractors bill. But, as a general proposition, the government has indicated that deeming provisions remove the choice. If people want to be independent contractors, deeming provisions make them into employees, whether or not they wish to be.

Senator GEORGE CAMPBELL—The current provisions, which you say will not be overridden in the transport industry or for outworkers—

Mr Smythe—In his press release, I think the minister indicated that he recognised specific vulnerabilities in respect of outworkers and the transport industry such that it was appropriate to not override the state provisions.

Senator GEORGE CAMPBELL—I cannot ask you to talk for the minister, and I do not know whether or not it would apply where there are other independent contractors who would also seek to retain those deeming provisions, but would they be treated in the same way as the transport workers, outworkers and the textile, clothing and footwear industry?

Mr Smythe—As you said, I cannot speak for the minister.

CHAIR—It is now 6.30 and I propose that we break for a meal break until 7.30.

Senator Abetz—Before we do, Chair, this is for complete clarity: I understand that the minister may have used the figure of 1.9 million, but it was in the context of quoting other people that it was estimated at 1.9 million independent contractors, so he was clearly repeating other people's assessments.

CHAIR—Thank you, Minister.

Proceedings suspended from 6.30 pm to 7.32 pm

Senator WONG—I am not sure if Senator Campbell, when he was asking questions regarding Eagle Engineering, asked a question in relation to the other 127 investigations being conducted at that time. Was that question asked?

Senator Abetz—Yes. The department gave evidence that all section 127 actions were discontinued.

Senator WONG—I meant how many other section 127 investigations were being conducted by DEWR at the time.

Senator Abetz—No, I do not think that was asked.

Mr Maynard—There were three other matters which had commenced litigation which were withdrawn at that time.

Senator WONG—What about investigations?

Mr Maynard—There were a number of other investigations that were under way of which I could provide the number and give you some details shortly.

Senator WONG—Thank you. Do you want to come back on that?

Mr Maynard—Yes, if I can.

Senator WONG—Okay. I was going to move to a different topic.

Mr Maynard—I am informed that 17 investigations were under way at that time.

Senator WONG—Into?

Mr Maynard—Breaches of matters that related to section 127 orders.

Senator WONG—For a number of companies?

Mr Maynard—Yes.

Senator WONG—I understand Senator Campbell commenced the questioning about the independent contractors act. Is that right?

Senator Abetz—That is right. We thought he had finished.

Senator WONG—In his public statements the minister has identified various state deeming provisions as problematic. Can someone explain to me what is the specific problem with these deeming provisions?

Senator Abetz—We did that.

Senator WONG—I am going to ask it again.

Senator Abetz—You are going to ask it again? All right. I was just going to say that the deeming bit has been gone through, but if you want to go through it again I suppose we can. It is the same faction, isn't it?

Senator WONG—That just shows your lack of understanding of the Labor Party.

Senator Abetz—It could well be; I do not profess to be an expert.

Senator WONG—But it is not as bad as the Queensland Nats and the Libs, Minister.

Senator Abetz—Harmony is breaking out, I thought.

CHAIR—We will confine questions to the portfolio, thank you.

Senator WONG—I am just responding, Madam Chair.

Senator Abetz—I thought harmony was breaking out, but there you go.

Senator WONG—What is the problem with the state deeming provisions that the government regards as necessary to be fixed?

Senator Abetz—We believe, as the legislation says, in work choices, and these deeming provisions have the effect of not giving people the choice. They are deemed to be employees when they clearly want to be—and are—independent contractors.

Senator WONG—Are you aware that a number of these deeming provisions have been in place for quite a substantial period of time and have limited application?

Senator Abetz—On this occasion I am willing to take your word for it.

Senator WONG—So if they have been in place for a number of years in respect of particular occupations without bringing down the—

Senator Abetz—It does not make it right. The White Australia policy was in force for a long time but that did not make it right. Similarly, just because legislation has been in force for a long time does not make it right. We, as a government, have taken a policy decision to alter the law for what we believe to be the benefit of this group of people who are known as independent contractors.

Senator WONG—I do not recall the New South Wales economy grinding to a halt after the introduction of the independent contractors legislation. Is that a matter that the government has turned its mind to?

Senator Abetz—Sorry, what is this?

Senator WONG—Is the government asserting some deleterious economic effect, for example, from the New South Wales independent contractors regime?

Senator Abetz—We believe, as a matter of principle, in work choices. That is like asking: did compulsory trade unionism, for example, grind the country to a halt? No, it did not, but we think it is better for workers to have a choice whether they belong to a union. Similarly, we think it is desirable for these independent contractors to be given a choice.

Senator WONG—Given that you have mentioned the choice issue, Minister, it is the case, isn't it, that the Work Choices legislation contains various provisions which specifically prohibit the inclusion in federal agreements of various clauses? I think we discussed training earlier today.

Senator Abetz—That is right.

Senator WONG—Yes. Isn't it the case that parties to those agreements could freely choose, but for the application of the Work Choices legislation, to include such clauses?

Senator Abetz—That is right but, unfortunately, in the past those sort of clauses have been forced by duress into workplace agreements and then used for purposes other than that for which they were designed. Having said that, there is nothing stopping the employer and employee from actually agreeing outside of the agreement that somebody can go along to occupational health and safety training. Is that right?

Dr Boxall—That is correct.

Senator Abetz—All we are doing is prohibiting it in the actual agreement but not stopping them from undertaking it. I thought the question was limited to the union—

Senator WONG—No. I pointed out that Work Choices actually expressly precludes the inclusion in various agreements, independent of the free wishes of the contracting parties.

Senator Abetz—I was answering in relation to OH&S.

Senator WONG—On the one hand you want to override state legislation which has been in place for a significant period of time, on the basis that people should be free to choose; on the other hand, in your federal legislation, you are specifically preventing freedom of contract.

Senator Abetz—Absolutely, and we are prohibiting freedom of contract below the five minimum standards as well. We are not absolute ideologists in relation to this. It is a matter of balance in all things. We have drawn the line where clearly you, Senator, would not. But, just because we believe in choice, it does not mean that we allow everybody to have absolute

choice. We still insist—not that it is in our jurisdiction—that people drive on the left-hand side of the road. There is a limit to these things; it is a question of where you draw the line.

Senator WONG—Yes, but your stated justification for overriding state legislation in respect of independent contractors is that people should be free to choose. Yet you are prohibiting, making unlawful, parties agreeing to certain provisions in agreements or AWAs.

Senator Abetz—That is right.

Senator WONG—You do not see any inconsistency in that, Minister?

Senator Abetz—No. We have a general approach which is one of choice, but we fully understand, for example, that the textile, clothing and footwear sector was deserving—and can I pay a compliment to the chair for the wonderful work she and her committee did in relation to that sector—and they were given extra protection. It is a question of balance.

Senator WONG—You are talking about removing entitlements, not about extra protection. Frankly, it is a false argument to say, ‘We won’t allow freedom of contract below the five minimum conditions.’ That is a completely different issue.

Senator Abetz—No, it is not.

Senator WONG—I had not finished. It is a completely different issue to say there are certain minimum standards—as pathetic as they might be—to saying, ‘If the parties choose to agree to include training in their agreement, we the government will expressly prohibit such a clause in the agreement.’

Senator Abetz—As I said before, possibly in a clumsy way—allow me to try to say it again—the only thing that is prohibited is if they provide for trade union training leave, bargaining fees to trade unions or paid union meetings. It does not actually stop them, as I understand it, from having trade union training.

Senator WONG—You are giving a specific response to—

Senator Abetz—A specific question on training.

Senator WONG—training. I am asking why it is that the government believes it should intervene in and override the state legislation on the basis that people should be free to choose but at the same time is highly interventionist in terms of excluding certain clauses in agreements.

Senator Abetz—The world is not completely black and white. We make decisions on the basis of balance in a whole range of areas. I thought that I had explained that. Our general outlook is that of choice, but we fully understand that on some occasions a full range of choice would not necessarily be in the community’s best interests. That is why, for example, we have got the five minimum standards below which you cannot agree or contract. Similarly, in some other areas we have put limitations because of concerns of past abuse or whatever. In this area, we believe that independent contractors are able to look after themselves, and there has been a strong push by the independent contractors to be given this choice.

Senator WONG—Minister Andrews said on 3 May:

... we’re taking, basically, the common law approach to independent contractors. ... the totality of the circumstances surrounding the arrangement ... to determine whether or not it is an independent

contracting arrangement, or it's an employer/employee arrangement. And those tests have been well established by courts over many years.

Could you explain to me, if that is the case—that is, if the government is essentially only enacting what the state of the existing common law is—what the purpose of the legislation is.

Mr Smythe—What Minister Andrews said was that the government will be adopting the common law definition of independent contract for the purpose of the legislation. The purpose of the legislation is to prevent state laws from interfering with independent contracting relationships.

Senator Abetz—The state law overrode the common law definition.

Senator WONG—Is it intended that the bill will alter the common law test in any way?

Mr Smythe—I do not think that it is appropriate that I say any more than what the minister said in his press release.

Senator WONG—Is the government considering alternative definitions, such as the genuine business test suggested by Professor Andrew Stewart or the postal services income test which is contained in the Income Tax Assessment Act?

Mr Smythe—You would probably be aware that Minister Andrews issued a discussion paper and called for submissions on that. Various parties put submissions in about alternative definitions. In addition to that, there was a House of Representatives committee inquiring into independent contracting which also heard a number of submissions. The government naturally considered all those submissions.

Senator WONG—And rejected them.

Mr Smythe—The government considered those submissions.

Senator WONG—Where will the burden of proof for demonstrating that an employment arrangement is a sham lie under the bill?

Mr Smythe—As I said before, I cannot comment on anything beyond the package that the minister has indicated in his press release.

Senator WONG—Will the exception in respect of outworkers, which are deemed in a number of state laws as employees, be touched at all by this legislation?

Mr Smythe—I am sorry?

Senator WONG—Will the status of outworkers, who are deemed under various pieces of state legislation to be employees for the purposes of those acts, be affected in any way by this legislation?

Mr Smythe—The minister indicated in his press release that as a general proposition state laws will be overridden. However, exceptions will be made for textile, clothing and footwear outworkers. In addition, as I indicated to Senator Campbell before the break, the minister also indicated in his press release that the special protections in the transport industry in Victoria and New South Wales will also be maintained. The federal law will not override those.

Senator WONG—Yes, I understood that. When is the bill to be introduced?

Mr Smythe—The minister has indicated publicly that the bill will be introduced towards the end of May or early in June. I cannot add to that.

Senator WONG—Has the bill been finalised?

Mr Smythe—We have had this discussion in the past. The bill is being finalised.

Senator WONG—In terms of the non-infringement of the deeming provisions in relation to outworkers, will this bill include any alteration to the award coverage of outworkers?

Mr Smythe—You are asking me to go into the detail of what will be in the bill.

Senator WONG—Would I do that?

Mr Smythe—I think you probably would. And I would probably say, ‘I can’t answer that question.’

Senator WONG—Can you explain the three-year transitional period that was announced?

Mr Smythe—I cannot explain more than what is in the press release, because—

Senator WONG—Remind me what was in the press release.

Mr Smythe—I will read it out to you:

For independent contractors who have previously been “deemed” employees, there will be a three year transitional period to give businesses and workers time to adjust to the new legislation.

Senator WONG—Perhaps Minister Abetz will want to answer this. The bill is described by the minister as providing a more balanced approach to the regulation of unfair contracts. Perhaps you can explain how the New South Wales and Queensland provisions are unbalanced.

Mr Smythe—If it is of any assistance, I can read out what the press release says.

Senator WONG—I can read that on the website. That does not help me. Is that the extent of the answer?

Mr Smythe—That is as much as I can provide.

Senator WONG—Has the department had any involvement or made any contribution to the ILO’s work in developing a standard to protect workers in independent contracting or disguised employment situations?

Mr Kovacic—We have been involved in the ILO deliberations on the possibility of the ILO developing an instrument relating to employment relationships.

Senator WONG—What has been the position you have been advocating?

Mr Kovacic—In terms of the position that has been advocated, it is one which reflects the government’s broader position—that is, that contractual relationships are best dealt with by corporate law and employment relationships are best dealt with by employment related legislation. In terms of the form of instrument, if any, which the ILO decides to put in place, the instrument should recognise that distinction.

Senator WONG—What is that code for? I do not understand what that is code for.

Mr Kovacic—In essence, the relationship that a contractor has with a person or the organisation that contracts with them is essentially a commercial relationship and that relationship should be dealt with by commercial law as opposed to employment law.

Senator WONG—Is this going to be the position too in relation to the Commonwealth seeking to use the corporations power to implement its industrial relations legislation and that the corporations power should be restricted to commercial arrangements?

Mr Kovacic—In terms of the use of the Corporations Law, that is reflected in the Work Choices legislation.

Senator WONG—Correct. Independent contractors are a commercial relationship.

Mr Kovacic—That is correct. Any instrument that the ILO might put in place needs to recognise the distinction between what are commercial arrangements as opposed to employment arrangements.

Senator WONG—What does that mean?

Mr Kovacic—In essence, if an arrangement is a contractual arrangement or a commercial arrangement, the ILO instrument should not apply to those commercial arrangements.

Senator WONG—So it is about the application of the ILO instrument?

Mr Kovacic—That is one element of the government's views.

Senator WONG—Perhaps you could finish them and then I will go back and ask some questions about each element.

Mr Kovacic—In terms of the other elements, there is general consistency in the government's view that any instrument which the ILO might decide, rather than being a prescriptive document, should be a principles based document, which recognises the differences in terms of the economies to which it might apply.

Senator WONG—Is the principles based approach reflected in the prohibited content provisions of Work Choices or are they specific?

Mr Kovacic—In terms of the provisions of the regulations relating to prohibited content, they are specific.

Senator WONG—Are there further elements?

Mr Kovacic—They are the key elements of the government's views.

Senator WONG—Two elements essentially: the first, that the application should be limited in that it should not apply to what you regard as contractual relationships—

Mr Kovacic—That is correct.

Senator WONG—and the second, that you want a principles based approach.

Mr Kovacic—That is correct.

Senator WONG—Has Australia indicated that it will not support the present proposed ILO standard?

Mr Kovacic—That is a matter for discussion at the current International Labour Conference, which I think commenced today. The government's view in terms of what may or may not emerge from those discussions depends on what emerges from those discussions.

Senator WONG—We have people there presumably putting a position.

Mr Kovacic—We certainly have.

Senator WONG—Is the current proposed draft inconsistent with the two elements which ground the government's position?

Mr Kovacic—I have not read the entire detail of the draft instrument. There are issues of concern.

Senator WONG—Currently, is it the case that our delegates to this meeting, meaning the Australian government's delegates, would be indicating a non-supportive position of the current draft?

Mr Kovacic—I could not say that at this stage because the nature of the instrument may change.

Senator WONG—What about in relation to the current draft?

Mr Kovacic—The deliberations at the conference may indeed clarify some of the interpretation of the instrument as it is currently instructed, so it would be pre-emptive to express an opinion.

Senator WONG—What are the current instructions? How many people do we have there?

Mr Kovacic—The government delegation constitutes four people.

Senator WONG—What are the instructions from the government to those four people?

Mr Kovacic—They are consistent with the elements that I outlined previously.

Senator WONG—What about in relation to the current draft?

Mr Kovacic—It is in terms of ensuring that any instrument recognises the distinction between commercial arrangements and employment arrangements. Secondly, it reflects the preference for a principles based instrument.

Senator WONG—Meaning the current draft does not correspond with those views.

Mr Kovacic—As I have said, it would be pre-emptive for me to indicate whether Australia would be prepared to support the current instrument in its current form.

Senator WONG—I am asking what the current instructions are to our delegation who are meeting as we speak.

Mr Kovacic—I have explained what those—

Mr Boxall—Mr Kovacic has explained that on behalf of the department.

Senator WONG—Are they departmental officials?

Mr Boxall—Yes.

Senator WONG—What are the instructions to them about the current draft: that it needs to be altered in order to take into account—

Mr Boxall—Mr Kovacic has just—

Senator WONG—I had not finished, Dr Boxall. Are the current instructions for the current draft that it cannot be supported in accordance with the two elements that you outlined.

Mr Boxall—No. Mr Kovacic has just outlined the two elements which underpin the instructions to the representatives.

Senator WONG—Have there been any instructions in relation to the current draft?

Mr Kovacic—The instructions in terms of the further consideration of the draft are to explore the scope for any instrument or the draft to reflect the government's view that it should recognise the distinction between commercial and employment arrangements and to support a principles based arrangement. In terms of the current draft, there are no instructions at this stage because it has not been put to a vote as to whether Australia would or not support the instruments.

Senator WONG—Are we seeking amendments to the current draft?

Mr Kovacic—We will certainly be contributing to the discussion and the consideration of the instrument.

Senator WONG—Will we be seeking amendments?

Mr Kovacic—It is quite possible.

Senator WONG—Thank you. Has DEWR sought an estimate of the cost of conducting a secret ballot?

Mr Kovacic—There is an administered item which sets aside funding for Commonwealth contribution to the cost of secret ballots.

Senator WONG—But have you costed what one would cost? What proportion of the cost of a secret ballot would the Commonwealth—

Mr Kovacic—That will range from ballot to ballot. Obviously it would depend on the number of employees involved in the ballot. It would also depend on the geographic spread of the circumstances.

Senator WONG—Presumably for the purpose of seeking the appropriation there must have been some estimate of either average cost or cost in terms of different sizes of organisations and so forth. Was that not done?

Mr Kovacic—The appropriation has been available to the department for some time. In the context of Work Choices it was considered to be appropriate.

Senator WONG—What does that mean?

Mr Kovacic—The estimate is that the amount of resources there is appropriate. Should it prove not to be, we would obviously seek additional funds in the budget context.

Senator WONG—So have you done any costing of likely costs incurred by secret ballots?

Mr Kovacic—We may have done so some time ago, but certainly not recently.

Senator WONG—Have you done any since introduction of the Work Choices bill?

Mr Kovacic—No.

Senator WONG—Can someone tell me about the advertising for the independent contractors education and enforcement campaign?

Mr Kovacic—Yes.

Senator WONG—What is the budget appropriation for that again?

Mr Kovacic—There is \$15 million over four years for an education program and an enforcement regime. That \$15 million is comprised of \$8.94 million for DEWR for an education campaign and just over \$6.2 million for the Office of Workplace Services for enforcement activities.

Senator WONG—Can you give me the breakdown again? It is \$6.2 million over four years?

Mr Kovacic—That is for the Office of Workplace Services.

Senator WONG—Okay.

Mr Kovacic—No, it is \$8.89 million over the four years for DEWR and \$6.22 million for OWS over four years.

Senator WONG—Okay. So OWS is enforcement?

Mr Kovacic—That is correct.

Senator WONG—So I need to ask them about that, presumably.

Mr Kovacic—That is correct.

Mr Pratt—It is on page 271 of the portfolio budget statement.

Senator WONG—I was just using the budget measures at the front; I always find that easier.

Mr Pratt—And page 271 has the OWS equivalent.

Senator WONG—Yes, I am just making a note to myself to make sure I ask them that, but thank you for your assistance, Mr Pratt. What is the \$8.89 million to be used for, Mr Kovacic?

Mr Kovacic—It is for an education program, the details of which are yet to be settled. They are likely to include printed material, seminars, information to be provided through the Work Choices information line and also possibly a best practice guide in terms of developing contracts—those sorts of elements.

Senator WONG—Any advertising, media buy?

Mr Kovacic—At this stage none is contemplated, Senator.

Senator WONG—When will it commence?

Mr Kovacic—Following passage of the legislation.

Senator WONG—Is there any enforcement aspect to the DEWR component of the funding?

Mr Kovacic—No, Senator.

Senator WONG—Are you able to give me some information about what telephone services, hotlines et cetera are provided by DEWR? There are OEA and OWS services as well, are there not?

Mr Pratt—Yes. The OEA has a separate information hotline. The department has the WorkChoices Infoline, which was built on the former Wageline, and it operates as a one-stop shop for people interested in getting information or assistance on Work Choices. It acts as a portal for people interested in getting assistance from the Office of Workplace Services and from various parts of the department.

Senator WONG—Is that the only information line or phone service DEWR itself provides, as opposed to OEA or OWS?

Mr Pratt—In relation to Work Choices, yes. Other parts of the department have info lines relating to the Job Network, IT services and Welfare to Work, I believe. We also had a temporary information line for people who wished to ring up to book a place at one of the seminars. It was an events hotline.

Senator WONG—How many people are employed to staff the WorkChoices Infoline? Is that part of the Workplace Relations Services Group?

Mr Pratt—Yes.

Ms Connell—Senator, there are three contact centres that make up the info line nationally. In Sydney we have 70 advisers and seven team leaders currently, in Melbourne we have 43 advisers and five team leaders currently and in Perth there are 11 advisers and two team leaders. That is the current staffing.

Senator WONG—Do you have details of the call loads for each of those three services?

Mr Pratt—In total it is about 10,000 calls a week. We should be able to give you a split.

Mr Brennan—The contact centres work as a virtual contact centre even though it is spread across the three sites. They do not have their own patch of calls that they answer.

Senator WONG—It is bit like getting a call from a particular financial institution from the subcontinent, is it? So if I am in Adelaide, I might get Perth, Sydney or Melbourne.

Mr Brennan—There is some segregation of call traffic based on the state that the person is calling from for some call types. So, for example, if you are ringing to book an event, it really does not matter who answers the call. If you are ringing to ask a specific question about wages and conditions and you come from South Australia, you will go to an adviser who has been trained in the former state system in South Australia, because a proportion of the traffic will relate to people who are transferring into the system. At the moment, that person could be in either Melbourne or Perth. In the future, they could probably be anywhere. It is just a matter of gradually building up the skills base of our staff. It is what is called skills based routing. We identify call types and we route to particular people with particular skills.

Senator WONG—How many calls have been received by each of these three information lines? Is it three information lines?

Ms Connell—There are three centres.

Senator WONG—There are three centres, but do you ring the same number?

Ms Connell—Yes.

Mr Brennan—Yes.

Senator WONG—How many calls have been received since the commencement of the legislation?

Mr Brennan—There have been 86,240. That is as at 26 May.

Senator WONG—Do you track average time et cetera?

Mr Brennan—Average time to answer and those types of things? Yes.

Senator WONG—Do you track the average duration of calls?

Mr Brennan—The average duration of a call is seven minutes.

Senator WONG—Do you track who they come from, as in employer, employee, person aggrieved, person happy—that sort of thing?

Mr Brennan—Yes, we do. In terms of employers and employees, there are 55 per cent from employees and another six per cent from employee representatives. There are 30 per cent from employers and there are another four per cent from employer representatives. There is a proportion of calls we do not actually know about because it was not necessary to answer the question or the person did not want to tell us.

Senator WONG—Do people also ring these hotlines to order the *WorkChoices* booklet?

Mr Brennan—They can do. It is probably fair to say that predominantly that comes in via the website, but they do get some calls about that. I do not think I have any information on that.

Senator WONG—Presumably someone can tell me how many have been dispatched since Mr Pratt told me last time how many had been sent out. Do you have updated figures?

Mr Brennan—I will need to fish for them, but I do have some recent ones.

Senator WONG—Was it eight million?

Mr Pratt—No, it was six million.

Senator WONG—How many have you sent out since we last met?

Mr Kovacic—I cannot give you a precise number as to how many have been sent since we last appeared before the estimates committee. The total number of booklets ordered since they became available is 314,638. The total number of booklets dispatched as at 28 April was 302,462.

Senator WONG—That is since the commencement of the legislation is it?

Mr Kovacic—That is since the booklets became available.

Senator WONG—Which was December last year?

Mr Kovacic—It would have been on 9 October last year.

Senator WONG—Are you able to give me a figure for since the act commenced?

Mr Kovacic—I would have to take that on notice. I do not have that with me.

Senator WONG—But presumably you track it.

Mr Kovacic—Yes, we could track it back.

Senator WONG—Could you let me know that. It is a slight case of over ordering, isn't it, really! Are they still being housed, Mr Pratt, or have you moved them?

Mr Pratt—No, they are being housed. They are being distributed to the various seminars.

Senator WONG—You said this earlier and I said you would have to hold a lot of seminars.

Mr Pratt—And we are, Senator.

Senator WONG—Do you think you will get rid of 5.9 million?

Senator Abetz—Fifty of them have been distributed to my old high school by me personally.

Senator WONG—That is going to make you so popular!

Senator Abetz—It will!

Senator WONG—Are you going to distribute the Spotlight AWA too, Minister? Two cents for all that overtime, penalty rates, rostering certainty—you can go and sell that to the Tasmanians!

Senator Abetz—And all those people have got a new job at one of the new facilities. Never discount the opportunities for the unemployed.

Senator WONG—You can go down to Tasmania and sell two cents. I am sure you will be highly popular. Mr Pratt, you were answering my question.

Mr Pratt—Yes, they are being distributed through the seminars. We expect to have nearly 2,000 seminars conducted by the end of June, and of course they are made available to employers and employees who turn up at the seminars. Employers are able to get multiple copies for their employees. We are using a range of mechanisms to provide them to people who need that sort of information.

Senator WONG—I am sure you are valiantly trying to distribute them, Mr Pratt. Was it Salmat where they were being warehoused? I cannot remember what you told me last time.

Mr Kovacic—Still at Salmat. Both in New South Wales—

Senator McEWEN—It was \$8,000 a month last time.

Mr Kovacic—It is \$7,870.50 per month.

Senator WONG—Is it still the same rate?

Mr Kovacic—It is in the same ballpark.

Senator WONG—Perhaps my memory does not serve me well, but I thought there was going to be a rearrangement around the warehouse.

Mr Kovacic—Certainly we were contemplating that last time we appeared before estimates. The decision was made that it is most cost efficient to leave them where they are.

Senator WONG—In other words, the other option was more expensive.

Mr Pratt—It is most cost efficient to leave them where they are and ship them to the points of distribution for the seminars.

Senator WONG—I love public servantspeak: ‘It was more cost efficient’. It was cheaper. Yes?

Mr Pratt—That is a very good description.

Senator WONG—Someone might remind me of this: whose idea was it to order six million? Was that a direction from government or was it DEWR’s decision?

Mr Kovacic—It was a decision by the Ministerial Committee on Government Communications.

Senator WONG—How many do you think you are going to get rid of through the seminars, Mr Pratt?

Mr Pratt—Many, many thousands. We will be conducting seminars and information functions about Work Choices for some years, we imagine.

Senator WONG—It depends who wins government, I suppose, Mr Pratt.

Mr Pratt—Certainly, Senator. So we will of course require storage—

Senator Abetz—If you win government, you will go the same way as Blair and Helen Clark. You will froth at the mouth but you will not repeal the legislation.

Senator WONG—Should I respond to that—I mean, really!

CHAIR—No, you should not.

Senator WONG—Do you want to have a talk to him? If we keep doing this, we are going to have a blue.

Senator Abetz—You can make gratuitous comments about us losing government—completely irrelevant to anything—

Senator WONG—I am making the point—

CHAIR—Order! Minister and Senator Wong, I would like you to proceed with questions and answers, thank you. Senator Wong: question.

Senator WONG—Okay, Mr Pratt. I am going to be generous and not just say thousands but tens of thousands. Let us say you get tens of thousands through the seminar. We have still got millions that will be unused.

Mr Pratt—Hundreds of thousands.

Senator WONG—You think you will get rid of hundreds of thousands?

Mr Pratt—I do, Senator.

Senator WONG—Is this part of your performance benchmarks? How many *WorkChoices* booklets can you get rid of in the next year?

Mr Pratt—No, Senator.

Senator WONG—I should not have mentioned it. They might make it one now.

Mr Pratt—Thank you, Senator.

Senator WONG—But I have made your life hell, haven't I?

Senator Abetz—Senator George Campbell said that some employee organisations had expressed interest. They might help distribute them.

CHAIR—Next question, Senator Wong.

Senator WONG—I will be generous and accept hundreds of thousands. We are still talking millions, aren't we?

Mr Pratt—I would not want to predict the usage rate. It is quite conceivable that we could use even millions over the course of the next year.

Senator WONG—I think you are going to regret saying that, Mr Pratt.

Mr Pratt—We could have a caveat on it.

Senator WONG—Is there any time frame on how long you will warehouse, say, half? How long are you going to warehouse five million, three million or two million?

Mr Pratt—I guess as long as we need the *WorkChoices* booklets or the seminars and the other functions that we use them for, there will always be something that is subject to review. If there is a cheaper alternative at some later stage because of the rate of distribution, we will investigate that.

Senator WONG—Does it have a picture of the Prime Minister in the front?

Senator Abetz—You ought to know it back-to-front; of course, there is not. You should know—

Senator WONG—If we had a change of Prime Minister, they would have to be pulped. I suppose for the next few estimates you might let me know how many you have got rid of.

Mr Pratt—Yes. I look forward to it.

Senator WONG—What is the total cost for the Work Choices Infoline?

Mr Pratt—I do not think we can provide that; we will take that on notice.

Senator WONG—What costing have you got?

Mr Pratt—As we have discussed at previous estimates, the funding that was set aside for the broad measure, which is the compliance function set out on page 16 of the additional estimates statement, includes funding for the OWS Wageline.

Senator WONG—It is not disaggregated. It is not very helpful to me, I am afraid. Did you answer something about this on notice—or not answer it on notice?

Mr Pratt—I do not recall taking a question on Wageline costs.

Senator WONG—It is not Wageline; this is the Work Choices line. When did it become Work Choices Infoline—let us get some time frames around this.

Mr Pratt—27 March.

Senator WONG—It was the day of the commencement. Are you able since that time to give me total staffing costs?

Mr Pratt—We may be able to.

Senator WONG—And other operational costs.

Mr Pratt—We probably would be able to do a split along those lines.

Senator WONG—I would appreciate that—to date. Can you tell me what training staff at the Work Choices Infoline receive?

Ms Connell—I think Mr Brennan gave that information earlier.

Mr Brennan—The initial induction training was a 10-day program. There has been follow-up training since, which included some state jurisdictions based training and mentoring and some follow-up training in areas for staff in the contact centres identified. As you would expect in a new operation, there will be an ongoing investment in training for some months.

Senator WONG—Did Senator Campbell ask you questions regarding AWAs and collective agreement engagement for these employees?

Mr Brennan—I think he asked some questions about AWAs as part of the recruitment process generally.

Senator WONG—What proportion of the staff employed at Work Choices Infoline are employed on AWAs?

Mr Brennan—I could not give you a precise figure, but the majority.

Senator WONG—Wasn't it a condition of employment?

Mr Brennan—In accordance with DEWR policy, it is for new employees who have not previously been inside the public service, but there are also employees who have come from other departments and pre-existing employees, some of whom would have been on AWAs and others who would have been on the certified agreement.

Senator WONG—These are people moving in?

Mr Brennan—Yes.

Senator WONG—But all new employees went on AWAs?

Mr Brennan—Yes.

Senator WONG—Are you able to give me percentages?

Mr Brennan—Not this evening.

Senator WONG—On notice?

Mr Brennan—Yes.

Senator WONG—Are any solicitors or legal officers engaged there? Are the team leaders, Ms Connell, solicitors or legal officers?

Ms Connell—They are not selected for that purpose. I could not tell you the CVs of each but, no, not to my knowledge.

Senator WONG—Are there any lawyers engaged in any of those call centres?

Ms Connell—No, there is no deliberate strategy to employ lawyers for the infoline.

Senator WONG—Are there any?

Mr Brennan—I could not tell you offhand.

Senator WONG—What happens if a call centre staff member gets a more complex question to which they do not know the answer. Who do they speak to? Do they ring Mr Kovacic or Mr Smythe?

Mr Pratt—Ultimately, I guess that is possible, but in the first instance they will talk to a more experienced hotline operator, one of the team leaders. If necessary, if it is a particularly complex query, it will come back into our national office and it may go to the policy or legal groups.

Senator WONG—How many queries of that nature have there been?

Mr Pratt—131 have gone to the legal group.

Senator WONG—131 out of 82,240?

Mr Pratt—We have had 131 queries of that sort go to the legal group. The figure you referred to is the number of calls.

Senator WONG—I can't recall if we asked this on the last occasion: do you have scripts, manuals, materials to which people are supposed to refer in these call centres?

Mr Pratt—Yes.

Senator WONG—What is the nature of the material to which they refer?

Mr Pratt—It is information based around the various types of queries people are likely to get on the various components of the Work Choices regulations and legislation. It is available to the operators through our IT system.

Senator WONG—Is it on the computer or is it in hard copy?

Mr Pratt—Both.

Senator WONG—How big is the document in hard copy?

Mr Brennan—It is not that type of document, Senator. It is a database of knowledge that is indexed by topic. So people can identify the nature of the query and be presented with a list of relevant material. It includes the industrial instruments that the person might be calling about, information about the transitional provisions—

Senator WONG—Are you able to provide us with a copy of that document?

Mr Brennan—No, Senator. It is not a document; it is a very large database.

Senator WONG—Sorry, I thought that Mr Pratt said there was—

Mr Pratt—Senator, there are some aspects which are available in hard copy as well as electronically, like the fact sheets. We can provide you with copies of those.

Senator WONG—Thank you. Do you have standard responses or are they set out in these fact sheets?

Mr Pratt—There are standard responses in relation to some queries, the more common queries. Those are found in the fact sheets. Our operators have to answer in relation to each case on the specific circumstances which are put to them, so they will have to make judgments based on the questions they are asked.

Senator WONG—Are the standard responses included in the document to which you are referring or is there further documentation which sets out various standard responses?

Mr Pratt—Both. Certainly, the answers on the system or the information which is available to the operators through the system will have standard responses they can draw on if they are appropriate. The fact sheets are designed to answer the most common questions, so they are standard responses as well.

Senator WONG—Can you provide those?

Mr Pratt—The fact sheets, yes.

Senator WONG—I am asking, if there are additional standard responses over and above the fact sheets, could I have those as well.

Mr Pratt—I expect that those are contained in the material that Mr Brennan was talking about; therefore it would be extremely difficult to provide them.

Mr Brennan—I think it would be difficult to provide all of that information.

Senator WONG—All of it? I am not asking for the entire database. I would like it but I am sure you are not going to give it to me.

Mr Pratt—I don't think it would be able to be extruded from the database, Senator. We will have a look at it but I don't think we could do that.

Senator WONG—You can't do what? Which bit can't you do?

Mr Pratt—Taking the entire database of information which is available to the operators and attempting to identify what could be considered standard responses and actually extricate those from the database.

Senator WONG—But you think you can give me fact sheets which might include some standard responses?

Mr Pratt—Certainly.

Senator WONG—Okay. Let's start with that; if you can't do the rest, I am sure that Dr Boxall, the minister or whoever writes these answers will say so. Apart from contacting the legal group for advice—is that who it is?

Mr Pratt—Certainly, the operators, if necessary, can contact the legal group.

Senator WONG—What about state industrial agencies? Can the people operating the Work Choices info line contact state industrial agencies?

Mr Pratt—They can.

Senator WONG—Do they?

Mr Pratt—Yes.

Senator WONG—How often does that occur and for what purpose?

Mr Pratt—As necessary they will refer callers on to the relevant state infolines. I cannot tell you how many times that has happened.

Senator WONG—You do not track that?

Mr Pratt—I do not believe so.

Senator WONG—I am not asking about referrals; I am asking, when there is an issue where the advice that the operator might give would be dependent on some information that a state industrial agency holds. Do you track whether or not they call them?

Mr Pratt—We can track that data, but I am sure that the operators would, as necessary, do that. Many of them will have pre-existing relationships with counterparts in the state departments.

Senator WONG—You mentioned referral to state authorities or state agencies. Before the infoline was established, was there consultation with your state counterparts for the purposes of working out how to manage referrals?

Mr Pratt—We certainly had a number of discussions with our state counterparts on the set-up. We had a number of discussions with state officials about many aspects of the implementation of Work Choices, including the infoline arrangements.

Senator WONG—Who conducted the consultations or discussions in relation to the information line arrangements?

Ms Connell—I spoke to each of the state departments and the individuals responsible for running their Wageline equivalents. We discussed the way that referrals between the jurisdictions would occur and agreed upon a process—a series of scripts and information flows—to make it easy for them to refer to the infoline and vice versa.

Senator WONG—What are the scripts?

Ms Connell—Primarily for the state departments to help the callers identify which jurisdiction they are in.

Senator WONG—Don't your Work Choices hotline people have to identify that too?

Ms Connell—Correct, but we cannot control where people call. If people are used to calling their local Wageline, they will continue to do so. If they then fall within the federal jurisdiction, they would then have to be transferred to the new Work Choices infoline.

Senator WONG—What was the basis upon which it was agreed that a caller would be referred to a state infoline and vice versa?

Ms Connell—Once it was determined which jurisdiction they were covered by.

Senator WONG—Who determines that?

Ms Connell—The adviser.

Senator WONG—So your call centre operator does that?

Ms Connell—Correct.

Senator WONG—Have they had training in identifying what a constitutional corporation is?

Ms Connell—They have been given information, scripts and guides in order to determine that, and a series of questions to help them.

Senator WONG—What are the series of questions in relation to a constitutional corporation?

Mr Brennan—I do not think we have that information here. They have some general guidance on the meaning of the term, but they cannot give definitive advice about whether or not a corporation is a constitutional corporation. So, while they can provide the sort of information that is in the facts sheets, ultimately the caller has to exercise some judgment themselves or to seek legal advice in some situations.

Senator WONG—Are you able to provide on notice the questions which are supposed to identify a constitutional corporation?

Ms Connell—We can take that on notice.

Senator WONG—Also, what about state system employees? Do you have a set of questions which identify the flip side, which is somebody who remains in the state jurisdictions?

Ms Connell—I will take that on notice.

Senator WONG—Do you have a set of questions around that?

Ms Connell—I suspect it is one and the same.

Senator WONG—I presume it would be. I am interested in what people ask to determine jurisdiction. That is what I am interested in.

Ms Connell—Certainly.

Senator WONG—What do you track in terms of the nature of calls? You gave me information earlier of 82,000. You gave me percentage based information about who they were from. Do you track in terms of states, territories, nature of the query, any referrals?

Ms Connell—We track which state the call originates from and also very broad categories such as the enquiry type—whether it was about wages or other conditions, whether it was about severance, redundancy, annual leave and whether it was call requesting events bookings. So we do have some broad categories.

Senator WONG—What are the categories? You have given me wages, severance pay and redundancy.

Ms Connell—I do not have them all here. I can give you the current top 10 by volume. Wages are the most common inquiry with just under 40 per cent of calls. Sixteen per cent of calls relate to conditions other than wages.

Senator WONG—Would that include public holidays?

Ms Connell—Conditions and other leave is at around four per cent.

Senator WONG—What is included in other conditions? Where are penalty rates? Is that under wages?

Mr Brennan—It could be something like an allowance question.

Senator WONG—Would penalty rates and overtime come under wages or other conditions?

Ms Connell—I cannot be certain from this broad breakdown that I have in front of me.

Senator WONG—You can take that on notice. Give me the top 10 and then we will come back to it.

Ms Connell—Wages, other conditions, events and bookings, requests for claim kits—

Senator WONG—Claim kits?

Ms Connell—As in Office of Workplace Services.

Senator WONG—For alleged underpayment or something like that?

Ms Connell—Correct.

Senator WONG—What is the percentage of that?

Ms Connell—It is just under four per cent.

Senator WONG—Were annual leave and other leave around four per cent as well?

Ms Connell—Yes. Severance and redundancy are at 3.4 per cent, other leave provisions are at 3.4 per cent, notice and PILN—payment in lieu of notice—are at 3.1 per cent and all other inquiry types are at around 18 per cent. There is a large group of others.

Senator WONG—On notice, are you able to give me what each of those categories comprises?

Ms Connell—I will see what further breakdown we collect.

Senator WONG—Are wages all monetary remuneration or are penalty rates or overtime included in other conditions? Do you see what I am saying? I am not clear.

Ms Connell—Yes, I understand. I just need to see whether we collect that level of detail.

Senator WONG—No. It is not about collecting that level of detail; your people must be given that instruction in order to identify what the nature of the query is.

Ms Connell—Correct. I do not know how they break down wages, though—whether it goes lower than that by breaking it up into other provisions.

Senator WONG—Maybe I am not making myself clear. What I am particularly interested in is this: if your call centre operator gets a call about penalty rates or overtime, are they instructed to identify that as a wages query or as an other conditions query?

Ms Connell—I will take that on notice.

Senator WONG—Thank you. Are these percentages of the total to date?

Ms Connell—The total is 86,000; that is right.

Senator WONG—It has not been that long, but has the trend of the division of this been reasonably consistent?

Mr Brennan—It has been fairly stable.

Senator WONG—Is Wageline still operating, or has this been subsumed?

Mr Pratt—It is now Work Choices Infoline.

Senator WONG—So it no longer exists as Wageline?

Mr Pratt—We still have the Wageline numbers available, but they—

Ms Connell—Some state services are still called Wageline. I think Western Australia and Queensland still call their services Wageline. That name was not owned by the federal government, so some states still use Wageline as the name for their services at the state level.

Senator WONG—If I have an old phonebook—or a current phonebook, because you did not do this before March, did you?—

Mr Pratt—That is correct.

Senator WONG—and I ring Wageline, I will get Work Choices Infoline?

Mr Pratt—That is correct.

Mr Brennan—It would depend on where you are calling from.

Senator WONG—Can you explain that to me?

Mr Brennan—If you were in Western Australia, where the service was previously provided through the Western Australian government, you would end up in the Western Australian centre. If you called Victoria, where it has been a federal service, you would end up at the Work Choices Infoline, so it does depend on where you are calling from.

Senator WONG—So where is Wageline still operative?

Ms Connell—I believe Western Australia and Queensland still call their state telephone services Wageline.

Senator WONG—And they are state government funded and state services and you have no involvement any longer?

Ms Connell—Correct. Prior to Work Choices, we contracted to those state departments.

Senator WONG—I remember. And you no longer contract that?

Ms Connell—The contract runs out at the end of June.

Senator WONG—And you are not going to renew it?

Ms Connell—There will no longer be any need to contract telephone calls to the states as we now have that national info line service.

Senator WONG—I understand the argument. I am just checking you are not intending to renew that.

Ms Connell—Not that element of the contract.

Mr Brennan—Not for that service.

Ms Connell—There are other elements to the contract.

Senator WONG—Does WorkChoices Infoline also provide some of the services previously provided by Wageline such as information about certified agreement and awards?

Mr Brennan—Yes.

Senator WONG—Basically what I want to know is: is the set of information Wageline previously provided able to be accessed in its entirety through the Work Choices hotline or not?

Mr Brennan—Yes. It is able to be accessed in its entirety.

Senator WONG—Did Wageline used to publish information such as copies of certified agreements and federal awards?

Mr Brennan—Not Wageline, but the department did under the brand of Wagenet. That service still continues.

Senator WONG—But you used to ring Wageline to get a copy, didn't you? Is that how it worked?

Mr Brennan—No. I think you just accessed it through the web.

Senator WONG—But if you wanted a hard copy didn't you used to be able to get it through Wageline?

Ms Connell—Quite possibly if it was on the internet and people did not have access to the internet we would have offered to print it out and send them a copy.

Senator WONG—Are you able to do that through the WorkChoices Infoline now?

Mr Brennan—Yes, we will be able to.

Senator WONG—In what circumstances do your guidelines or protocols indicate that staff should be telling people to go and get legal advice?

Mr Brennan—There would be a variety of situations where people might need to get legal advice.

Senator WONG—For example, on the jurisdiction issue, would a number of your scripts indicate that the person should be referred for legal advice?

Mr Brennan—I think the script probably indicates more along the lines that the person needs to decide whether they wish to get legal advice. For example, if someone was in a situation where there did not seem to be much question of their being covered by Work Choices, the script certainly would not suggest that they needed to go and get legal advice about that. It comes up more around the boundaries.

Senator WONG—Correct. Do you maintain a list of any community or pro bono sources of advice for referral?

Mr Brennan—Yes. We have a fairly extensive list of organisations, including community legal centres and those types of things, that people can go to on a range of topics.

Senator WONG—Who else is on the list?

Mr Brennan—It includes organisations such as the working women's centres, for example. I cannot remember many details but it is quite an extensive list. It includes the state organisations and their phone numbers, the previous Wageline services.

Senator WONG—Employer organisations?

Mr Brennan—I could not tell you off the top of my head.

Senator WONG—Trade unions?

Mr Brennan—I could not tell you off the top of my head.

Senator WONG—Perhaps you could take on notice the list of organisations to which people might be referred for the purposes of legal advice that is given to your call centre operators.

Mr Brennan—Yes.

Senator Abetz—If there is a pause, if I may, I have answers to questions W712_06, W713_06 and W727_06 to table.

Senator BARNETT—Thank you.

Senator WONG—Can I ask why they are coming now?

Senator Abetz—Because we try to get them to you as soon as possible. I could have delayed them further but I thought you would want them now.

Senator WONG—They are well beyond the deadline for questions.

Senator Abetz—They are indeed, and we had a discussion about that at the very beginning.

Senator BARNETT—Dr Boxall and Minister Abetz, there was some confusion earlier about the involvement of employers and employees in occupational health and safety training. I would like to ask a number of questions with regard to that. I want to refer to a media release by the minister on 21 May this year, where the minister says, firstly:

... nothing in WorkChoices prevents employees and employers entering into agreements containing provisions for Occupational Health & Safety ... or OH&S training.

Secondly, he says:

The provisions in the new Workplace Relations Regulations do not prevent a trade union or anyone else from providing OH&S training.

And, thirdly:

Nor do they prevent employers granting leave to their employees to attend OH&S training—or any other training.

Are those three statements correct?

Mr Smythe—Yes.

Senator BARNETT—Thank you. A comment has been made in the public arena that our federal Work Choices laws have a detrimental effect on mine safety. Would that be correct or not correct? Because traditionally mine safety has been a matter for state governments.

Senator WONG—Is that a request for an opinion, Chair?

CHAIR—No, I do not think so.

Senator BARNETT—I am asking the department because there were some questions about this earlier tonight and there was some confusion, so I am asking the department to clarify the record.

Mr Pratt—We have no evidence that that the Work Choices laws have affected mine safety.

Senator BARNETT—Thank you. It has been put to me and put into the public arena that a union official, in terms of the Beaconsfield mine, cannot even talk to the mine manager about safety and safety matters. Does that sound true or false?

Mr Pratt—That sounds incorrect.

Senator BARNETT—There is a reference in the minister's media release of 21 May to a leaked email from Labor frontbencher Wayne Swan. Can you advise if you have a copy of that email—or would the minister be able to assist?

Senator Abetz—I do, yes.

Senator BARNETT—Can you advise the committee of the contents of that, where it talks about acknowledging that employers may send their employees to union-sponsored training? Is that correct, and can you advise the committee of that?

Senator Abetz—It is not often that I would necessarily quote Wayne Swan or his office as a source, but in an email emanating from his office, it would appear, on 5 May at 12.42 pm, his office advised somebody—

Senator Wong interjecting—

Senator Abetz—in relation to all this.

CHAIR—Order!

Senator WONG—Chair, is this an estimates issue?

CHAIR—No, this is—

Senator WONG—This is not an estimates issue.

Senator Abetz—Yes, it is.

Senator WONG—On what basis?

CHAIR—Order! The minister has the floor.

Senator WONG—I mean, you are quoting opposition spokespeople; how can that possibly be?

Senator BARNETT—Senator Wong, the chair has asked the minister to respond.

Senator Abetz—Mr Swan's office advises this person:

Employees attending union-run training cannot be included in an agreement as a condition of employment but—

and this is the important bit—

an employer can send employees to union training.

That was in response to an inquiry. So the impression being given that employers are subject to \$30,000 fines if they send employees to union run safety training courses is misleading from my reading of the clause—that is, clause 8.5. The person draws certain conclusions, Wayne Swan then confirms that and then the person finishes up with an email saying: 'Thanks. Somebody had better tell Kim, as he is saying something else at the moment.'

Senator Wong interjecting—

Senator Abetz—And we do not know who that Kim is, but we might assume it was Kim Beazley.

Senator BARNETT—Thank you, Minister, for clarifying the record. Thank you, Dr Boxall and Mr Pratt.

Senator WONG—I am following up on one of the questions that Mr Pratt answered—that there was no evidence that Work Choices laws affect mine safety. Has the department undertaken any research or studies into the impact of occupational health and safety training on mine safety?

Mr Pratt—I will check.

Ms Parker—The department does not manage mine safety. That is managed separately.

Senator WONG—How can Mr Pratt profess a view about Work Choices impact on mine safety given that you have no responsibility for it?

Mr Pratt—My answer was simply that we did not have any evidence to that effect.

Senator WONG—Perhaps the more appropriate answer might have been, ‘We don’t have responsibility for it and we’re not qualified to answer,’ instead of playing a political game with a senator.

CHAIR—Ms Parker was endeavouring to make a statement and answer a question.

Mr Pratt—I was responding to Senator Barnett’s question correctly.

Senator WONG—We know what you were doing, Mr Pratt.

CHAIR—Ms Parker, would you go on?

Ms Parker—Despite us not managing mine safety in that sense, we do keep statistics and we do track safety across all industries. Mine safety is an area that has seen major improvements over the last few years. It is one of the industries that is doing very well in terms of safety.

Senator WONG—Yes, that is correct. Would you agree that mining unions have been an integral part of improving the safety, through various mechanisms including training, of the operations of mines in this country?

Mr Boxall—We cannot give an opinion on that.

Senator WONG—She just gave an opinion on the safety being improved. I am asking her about what has contributed to that.

Mr Boxall—We cannot give an opinion about whether mining unions have contributed to the safety or not contributed.

Senator WONG—Okay—

Ms Parker—The mine safety requirements are governed by the state legislation, so each employer has requirements to keep the mining area safe. How that is done is done on an individual basis according to the—

Senator Abetz—From a government point of view, I am happy to say that mine management and mine unions and mine communities—a whole host of people—have

contributed to increased mine safety over the years. I do not think that there needs to be any concern by Senator Wong in relation to that.

Senator WONG—Have you finished, Minister?

Senator Abetz—I am sorry, but if you respond like that to answers you will not be getting any.

Senator WONG—I am asking if you have finished, because I want to move on to the next question. If you are going to continue talking, I was going to wait.

Senator Abetz—I do not think it was an inordinately long answer.

Senator WONG—I am waiting to go back to Ms Parker.

CHAIR—Please go ahead in that case.

Senator Abetz—Has the secretariat—

Senator WONG—This is what I mean, Chair. I am happy to ask my questions, but if he is going to conduct some sort of intervention every time I open my mouth I really would prefer to wait until he has finished.

Senator Abetz—I am the minister at the table.

CHAIR—Senator Wong, would you proceed with your question to Ms Parker, please.

Senator WONG—So I just ignore his interjections?

Senator Abetz—I am the minister at the table.

CHAIR—I want you to proceed with your question, please.

Senator WONG—I am not going to keep doing it if he is just going to interject every time.

Senator Abetz—Chair—

Senator WONG—See?

Senator Abetz—can I indicate for the benefit of Senator Wong that I am the minister at the table and from time to time it is more than appropriate for me to intervene and assist or provide answers. I do not think anybody listening to the Senate estimates this evening would suggest that I have been over interventionist.

CHAIR—Thank you, Minister. I now direct Senator Wong to ask her question.

Senator WONG—Thank you. So I have the call, Chair?

CHAIR—Yes.

Senator WONG—Thank you. Ms Parker, would you agree that training is an important aspect of occupational health and safety in all industries, including mining?

Ms Parker—Yes.

Senator WONG—And that limiting access to occupational health and safety training is not a positive thing in terms of maintaining and improving health and safety standards?

Dr Boxall—That is a hypothetical question, which we cannot answer.

Senator WONG—You do not wish to answer, Ms Parker?

Dr Boxall—No. That is a hypothetical point.

Senator WONG—I just want to make note that Dr Boxall just gestured across the table to ensure that Ms Parker did not answer the question.

CHAIR—In any case, I would have ruled that question out of order regardless of what Dr Boxall was about to do or not do. That is a hypothetical question, and it is also asking Ms Parker to express an opinion on matters of policy, which you know is not permitted in these committees.

Senator WONG—Except that there were opinions expressed about 10 minutes ago when Senator Barnett was asking questions.

Senator Abetz—By me.

CHAIR—Do you have another question?

Senator WONG—Yes. I will rephrase the question. So you have agreed that training is an important aspect of improving and maintaining safety standards, Ms Parker?

Dr Boxall—The department's position is that training is an important aspect.

Senator WONG—Is there any benefit in limiting access to occupational health and safety training?

Dr Boxall—That is a hypothetical question, because nobody is proposing to limit access to training.

Senator WONG—A hypothetical question? Remind me again what is prohibited in terms of training under your legislation, Dr Boxall.

Senator Abetz—No training is prohibited. All that is prohibited is reference in an agreement to a particular type of training in an agreement, but that of itself does not stop training taking place.

Senator WONG—I think Mr McIlwain's answer today—and I presume it remains so—is that the department's position is that trade union training howsoever described is prohibited. Is that right?

Mr Smythe—It is leave to attend training that is proscribed from being included in a workplace agreement. Under the Work Choices legislation, one of the matters that is prohibited content in an agreement is employees bound by the agreement receiving leave to attend training, however described, provided by a trade union. What is prohibited content is providing a right to have leave to attend training conducted by a union.

Senator WONG—That is going to encourage occupational health and safety training, isn't it, Minister?

Senator Abetz—As I indicated earlier, the unfortunate thing about this is that trade unions have spoilt this and, unfortunately, have a record of abusing these sorts of provisions in the past. That is why the government has found it necessary to legislate in this particular way. Having said that, we are not prohibiting an employer and an employee talking about training and doing things. All that is prohibited is as Mr Smythe indicated to you.

Senator WONG—Ms Parker, have you done any research in your capacity or are you aware of the previous agency undertaking any research into the effectiveness of various training models—that is, on the job, off the job, classroom, active, those sorts of things?

Ms Parker—Sorry?

Senator WONG—Of various training models.

Ms Parker—No, I am not aware of that, but we did research into that.

Senator WONG—Do you have any knowledge of the prevalence of occupational health and safety training?

Ms Parker—No, but I do have information on each state and territory and what they require in terms of occupational health and safety training.

Senator WONG—Do you know on the ground how in various industries occupational health and safety training is structured and delivered?

Ms Parker—No, I do not have anything like that with me. We have not done research on that specific item.

Senator WONG—Are you aware, for example, that in the mining industry quite a proportion of the occupational health and safety training is done in conjunction with the trade union?

Ms Parker—Yes, I am aware of that.

Senator WONG—And leave for such purposes under Work Choices will now not be permitted.

Ms Parker—No. That is not correct.

Senator WONG—That is exactly what Mr Smythe just said.

Mr Smythe—No, it is not. You cannot include it in the agreement. It does not mean leave is prohibited.

Ms Parker—It is required under state legislation.

Senator WONG—Is the leave issue overridden by Work Choices?

Mr Smythe—No. State occupational health and safety laws are not overridden by Work Choices so, if a state required leave to be given to attend trade union training in occupational health and safety, it would still stand.

Senator Abetz—No wonder Kim Beazley made his comments.

Senator WONG—Are you finished, Minister?

Senator Abetz—It is sad reflection when a senior shadow minister does not know and has been going around the countryside misleading people about Work Choices and is now finally having it clarified for her. I think she owes a few apologies around the place.

Senator WONG—As I understood the OEA's advice—and perhaps you can clarify this for me—if there was a provision contained in an agreement that related to leave for training provided by a trade union howsoever described, that would be prohibited.

Mr Smythe—Correct.

Senator WONG—I think your evidence to the committee is that that can be overridden by state occupational health and safety laws if they specifically so prescribe.

Mr Smythe—It would still be prohibited content but, if there were a state law which required leave, that would stand.

Senator WONG—Yes, but I am asking about the practical implementation. Is it your understanding that the OEA would consider the application of the state law when assessing whether or not the agreement contained prohibited content and, therefore, could not stand?

Mr Smythe—It would be irrelevant. It would be prohibited content irrespective of the existence of the state law. All that prohibited content means is that you cannot have that term in an agreement.

Senator WONG—So you strike it out.

Mr Smythe—You strike it out. If there is a state law that says you have to have leave to attend to occupational health and safety training, that is the law.

Senator WONG—Are employees supposed to know? Have you finished, Minister?

Senator Abetz—I am just astounded at the misrepresentation that has been going on non-stop. This has been the law since 27 March and it is only now coming as a revelation to you. No wonder Mr Beazley made his silly comments about Beaconsfield and mine safety when he was in Brisbane.

Senator WONG—I am trying to explore something with Mr Smythe here in an estimates process. If you want to know, and perhaps the public servants might want to know, we were hoping to finish earlier than the 11.45 pm adjournment but, if we are going to have to keep dealing with your political interjections, which, frankly, could be dorothy dixers in the Senate chamber, we will not. As a minister, I am sure you can find many opportunities to make speeches, and it might be better for everybody concerned if you expressed your views that way.

Senator Abetz—I have been very restrained.

Senator WONG—Mr Smythe, do you think or has the department considered whether or not an employee would understand that, despite the fact that this clause has been struck out—that is, the leave clause—because it is prohibited, they can still take leave?

Senator Abetz—That is a hypothetical question. Does an employee out of all the hundreds of thousands—indeed, millions—of employees understand? What might be in the mind of an individual employee is not something on which departmental officials can comment.

Senator WONG—Mr Smythe, is the OEA or is DEWR going to advise persons, where their agreements have had leave provisions of the type we are discussing struck out, that, in whichever jurisdictions the state legislation is in conflict with, their rights are not in fact diminished?

Senator Abetz—This would not be necessary if certain people had not been going around the countryside month after month misrepresenting the situation to the workers.

CHAIR—Be that as it may, Minister, do you have an answer to Senator Wong's question, Mr Smythe?

Mr Smythe—The only answer I can give you is that the Minister for Employment and Workplace Relations has made it clear on a number of occasions that occupational health and safety laws remain the preserve of the states. I think it is relatively well-known that, if a state law provides certain matters relating to occupational health and safety, the minister's statement's make it clear that those laws will still prevail.

Senator Abetz—It is very interesting that the minister has made this clear time and time again, so one wonders why there is the confusion in the mind of this hypothetical employee. It is because of the dishonest campaigns of the Labor Party and the unions.

CHAIR—Thank you, Minister.

Senator WONG—I have not finished my questions on this. I would have finished by 9 pm, had I not been interrupted.

Proceedings suspended from 9.00 pm to 9.16 pm

CHAIR—The committee will reconvene. I will ask Senator Wong to go on with questions.

Senator WONG—Mr Smythe, in relation to your last answers, as I understand it, the legal position is this: a clause which permits leave for training for occupational health and safety purposes, if it is described in any way as trade union training, is prohibited content—correct?—but is not effective in ousting provisions of state health and safety legislation which would allow leave for occupational health and safety purposes provided by a trade union.

Mr Smythe—That is correct.

Senator WONG—If the provision in the occupational health and safety state legislation is simply a general provision that says that an employee is entitled to leave for the purpose of occupational health and safety training, does that enable an employee to go to such training if it is provided by a trade union?

Mr Smythe—I am a little loath to give legal advice, but I suspect that is probably right.

Senator WONG—But there is an issue about to what extent this is covering the field, and whether there is a direct inconsistency there.

Mr Smythe—It looks a little bit like my giving legal advice to the committee, but I think that is probably correct.

Senator WONG—What about a provision that said that the employer must provide any training that is reasonably necessary?

Mr Smythe—If the state legislation said that?

Senator WONG—Yes, would that enable paid leave for trade union occupational health and safety training purposes?

Mr Smythe—I would not have thought so.

Senator WONG—But it is an open question legally; is that right?

Senator Abetz—Under the state legislation.

Mr Smythe—All I am able to say to you is that it is a matter for an interpretation of the state legislation. All I am saying is that the provision in the regulation only makes provision in respect of what is prohibited from being included in a federal agreement. What happens beyond that is a matter for the state law.

Senator WONG—Mr Pratt, in terms of your Work Choices hotline, what are the standard scripts in relation to this issue?

Mr Pratt—I would have to take that on notice.

Senator WONG—Are your hotline operators able to say to people, ‘Well, it depends on the scope of the right to leave for training that is included in the state legislation’?

Mr Pratt—I do not know.

Senator WONG—But the evidence from the department and from the minister is given with such certainty that people would know; surely your operators would know?

Dr Boxall—No. Mr Pratt said that he does not know whether they know.

Senator WONG—Does anybody here—Ms Connell or Mr Brennan—know what the script is in relation to occupational health and safety training in state legislation and the effect that has on the effectiveness of the prohibited content provisions to oust such a right?

Mr Pratt—We do not know. We will have to take that on notice.

Senator WONG—It is not an uncomplicated legal issue, is it?

Mr Pratt—No.

Senator WONG—Thank you. Does anybody here know what the Tasmanian legislation specifically says in relation to the requirement to provide an employee with occupational health and safety training?

Dr Boxall—We can’t give a comment on the Tasmanian legislation. It is completely outside our jurisdiction.

Senator WONG—Dr Boxall, you and your officers have been sitting at the table and saying that there is no restriction on training. One of the bases on which you assert that is the preservation of occupational health and safety legislation. I am asking, in the context of Tasmania, whether anyone in the department knows whether the provisions in the occupational health and safety legislation would override the ousting effect of the prohibited content provisions.

Senator Abetz—In relation to overriding, there is no overriding to be done. You have had it explained now a number of times. I think this has now been introduced—

Senator WONG—You’ve got it the wrong way around again.

Senator Abetz—to try to cover the embarrassment about what happened before the adjournment. The simple situation is—

Senator WONG—You are demonstrating your ignorance, Minister, about the question. I was not talking about overriding the state legislation. I am asking about it the other way; I am asking what is in the state legislation.

Senator Abetz—It's amazing how intolerant you are of interjections, yet how much you engage in them yourself. If I may continue without interruption: as I understand the evidence thus far, Work Choices does not allow for a clause to be inserted into an agreement relating to a particular type of training if it is provided by a trade union. You have heard evidence that that of itself does not in any way undermine the application of the state legislation in relation to occupational health and safety. As I understand it, it was part of the package that the relevant state laws would continue to apply in that regard. In relation to the specifics of each individual state, with respect, that is not a matter for this committee unless the suggestion is being made that we should have uniform laws in relation to that as well, and that there is somehow some defect in one of the state jurisdictions.

Senator WONG—If I could proceed with my questions: the Tasmanian state legislation states that an employer must provide any information, instruction, training and supervision reasonably necessary to ensure that each employee is safe from injury and risks to health. That is the advice that I have received. My question is: is it clear-cut that that provision would enable trade union occupational health and safety training or not?

Dr Boxall—The minister's press release of Friday, 5 May contains a table relating to state and territory OH&S law. Under the column headed 'Specific training provisions under employer duty of care provisions' the information about Tasmania is provided as follows:

Section 9—Duties of employer

(1)(c) provide any information, instruction—

Senator WONG—That is what I just read out.

Dr Boxall—I continue:

(1)(c) provide any information, instruction, training and supervision reasonably necessary to ensure that each employee is safe from injury and risks to health.

Senator STERLE—That is what she just read out.

CHAIR—Order! Dr Boxall is speaking.

Dr Boxall—Thank you, Chair.

Senator WONG—Yes, he is reading out what I read out before.

CHAIR—Order!

Dr Boxall—Thank you, Chair. (2)(d), which you did not read out, states:

(2)(d) ensure that any employee of the employer who is to undertake work of a hazardous nature, which, to the employer's knowledge, the employee has not previously performed, received proper information, instruction and training before the employee commences that work.

Senator WONG—Dr Boxall, I am interested: would the department's advice, if a Tasmanian employee rang up on this issue to the Work Choices hotline, be that section 9 of the Tasmanian act would or would not permit leave for trade union provided occupational health and safety training?

Dr Boxall—Mr Pratt just said that we are going to take it on notice. What is more, we can't give a view about what the Tasmanian legislation does or does not do.

Senator WONG—That is a very good point, Dr Boxall, and that is my point: how is an employee supposed to know? You are the department that is supposed to have the best knowledge of the application of the Work Choices act and you cannot give me tonight an indication of whether or not that would permit trade union leave for the purposes of occupational health and safety training.

Dr Boxall—I have not been asked to do that.

Senator WONG—All right, tell me.

Senator Abetz—It is the interpretation of the state legislation. I do not know what the hotline would do in relation to those circumstances, but I would have thought the best advice would have been to ring—

Dr Boxall—To refer them to the state government.

Senator Abetz—Exactly, to refer them to the state occupational health and safety—do they have a hotline or a WageLine in their particular state? They do. Refer them to that particular jurisdiction to see what is actually covered by the Tasmanian legislation. To expect us to interpret how the state legislation may be interpreted is not within the province of this committee.

Senator WONG—That is precisely my point. It is a difficult interpretation—

Senator Abetz—No—

Senator WONG—Let me finish. It is a difficult interpretation. You are not able to do it. Dr Boxall has not provided us with advice around that. And yet your defence around the potential deleterious effects on occupational health and safety training from your approach to prohibited content is: ‘We rely on state legislation.’ Yet you cannot tell this committee whether the Tasmanian state legislation would in fact permit the sorts of training we are discussing.

Senator Abetz—I have just had confirmed—just to get it right in my own mind—that this is exactly the position as it applied prior to Work Choices.

Senator WONG—No, because we did not—

Senator Abetz—Occupational health and safety was an issue administered through the state governments, through state legislation, and that is how worker safety and occupational health and safety issues were addressed. That remains, and that has been indicated by the minister. So nothing has changed.

Senator WONG—Have the prohibited content provisions changed as a result of Work Choices, Mr Smythe?

Mr Smythe—The prohibited content provisions—

Senator WONG—They have; that is right.

Senator Abetz—But not the application of state law.

Senator WONG—No, but no-one can tell me whether the Tasmanian legislation—and that is your great defence—actually would permit trade union training for the purposes of occupational health and safety.

Senator Abetz—If it were deemed—

Senator WONG—But you cannot tell me, Minister, so how is an employee supposed to know?

Senator Abetz—Because, as you might imagine, the Tasmanian legislation does not specify; what it says is—

Senator WONG—We are going to have it read for the third time, are we?

Senator Abetz—‘provide any information, instruction, training and supervision reasonably necessary’. It would depend on each individual workplace as to that which was reasonably necessary and also that which was reasonably available in any particular industry.

Senator WONG—Would that permit trade union occupational health and safety training in Tasmania?

Senator Abetz—It might do.

Senator WONG—It might not.

Senator Abetz—But it is hypothetical. It is an issue for Tasmania and the Tasmanian legislature.

Senator WONG—So you cannot tell us. All you can say is, ‘It might do; it might not.’ But what you have got is federal legislation which prohibits occupational health and safety training provided by a trade union, and your defence—

Senator Abetz—No.

Dr Boxall—No, it does not do that.

Senator WONG—I had not finished.

Senator Abetz—It is saying—

CHAIR—Order! We will have one person speaking, please. Senator Wong, proceed.

Senator WONG—Thank you, Madam Chair. You have federal legislation which prohibits trade union training for the purposes of occupational health and safety and—

Senator Abetz—No. That is wrong.

Senator WONG—Can I finish my question, Chair, or are we just going to—

CHAIR—Could you just wait a minute, please, Minister.

Senator Abetz—Yes. It is very frustrating.

Senator WONG—You have federal legislation which prohibits leave, I should say, for the purposes of trade union training about occupational health and safety. When people raise reasonable concerns about the effect on occupational health and safety training and standards as a result of that, your defence is: ‘The state deals with occupational health and safety legislation.’ Yet you cannot tell me if the Tasmanian legislation in fact would permit leave for such training to occur.

Senator Abetz—How obtuse can one individual be, Chair? This senator has been told time and time again this evening that trade union occupational health and safety training is not—underline not—prohibited.

Senator WONG—Leave for it.

Mr Smythe—No, sorry, Senator.

Senator Abetz—Or leave for it is not prohibited by Work Choices. All that is prohibited is the insertion of a clause in the agreement. That has been explained to Senator Wong prior to the adjournment, yet she deliberately continues with a mischief that has misled so many workers around this country. Then she asks: what are we doing about all these workers who have been misled? She is the architect, I would suggest, along with her colleagues, of this misinformation. So, just for the record yet again: trade union occupational health and safety training is not prohibited under Work Choices. Under the particular Tasmanian legislation the wording is ‘that which is reasonably necessary’, and it stands to reason that in certain circumstances it may well be deemed that it is reasonably necessary, given that there is potentially only one lot of training available, that it might be trade union training.

Senator WONG—I am not going to respond to the gratuitous abuse about me being obtuse—

Senator Abetz—Here we go—I even have further information to assist the senator in relation to that. The Tasmanian act also provides:

If there is a health and safety committee at a workplace, the employer must –

... ..

(f) permit members of the committee to carry out their functions under this Act and to participate in relevant courses of training relating to the health and safety of employees.

This law stands. Unions Tasmania has been accredited to provide employee safety representative training that is required under the act. I do not know what else Senator Wong needs, other than a media release of apology.

Senator STERLE—If that information was available when Senator Wong asked the question some 10 or 15 minutes ago could it not have been provided or dug out? Did we have to have this to-and-fro, the entertainment and all the chess play? Fair’s fair, Chair.

CHAIR—Thank you, Senator Sterle. We have had the discussion.

Senator STERLE—It could have been provided.

CHAIR—The minister has given his answer. I am assuming that Senator Wong feels that an explanation has been given. It may not satisfy her but nevertheless I do not know whether she needs any more explanation or whether she wants to proceed with further questions.

Senator WONG—No—just one point. We have been asking questions about this for some time and now we have a further provision of the Tasmanian act provided. As I have said, I am not going to respond to the gratuitous abuse about being obtuse. My point is that we have probably more people in the room who understand Work Choices, I would hope, than certainly any employer in the country, and yet we have only now been able to come to some understanding of what the interaction between the Tasmanian occupational health and safety

legislation and Work Choices might be. I think it is patently clear it will be extremely difficult for employees to work out precisely what their entitlements are. But I am happy to move on, Chair.

CHAIR—All right. Do you have further questions on output 2?

Senator WONG—Yes, I have not finished. I have one question. I understand the OEA indicated that DEWR had provided advice that the consent of parties to a collective agreement is required to publish the document online. Is that the case? I am sorry—Senator McEwen has indicated she has asked these questions.

Senator McEWEN—Yes, I asked the question earlier today of the OEA about whether people who wanted to access any form of industrial instrument either by phone or from the website would need to have a code for that particular instrument. The discussion was that the OEA had received advice that they would only publish legislative industrial instruments either on a website or make them available over the phone if the parties to the agreement had agreed to them being made public. I asked why the OEA had made that decision and their response was that DEWR had provided advice that they should follow that procedure. When I inquired of the OEA if they knew what the reason for that advice was, they said that that was the advice that they received from DEWR. So I guess the question is: why was that advice given to the OEA?

Ms James—Perhaps I could give some background to this. The Commonwealth has for some time published collective agreements on, I think, the Wagenet website under the old system. The AIRC would provide copies of agreements to DEWR and they were, in due course, put up on that website. The Commonwealth thinks that it is in the public interest for collective agreements to be publicly available for a range of reasons. It is consistent with the objects of the act in terms of encouraging the making of workplace agreements. The department received advice about the manner in which the Copyright Act might apply to these activities. It acted on that advice by asking the Employment Advocate, once the Work Choices system was established, to take the sorts of steps that the Employment Advocate outlined this afternoon to strengthen its position in terms of the Copyright Act and making these agreements available. Those steps include obtaining consent from the people who lodge agreements from employers prior to the publishing of those agreements.

That is the advice that we have provided the Employment Advocate. The Employment Advocate has agreed and is putting in place steps to ensure that this occurs. Unfortunately, we were not in a position to review the legal advice about the Copyright Act as against the Work Choices amendments until after the Work Choices act had been passed. It was at that point that the Employment Advocate had already finalised its forms, which is why the Employment Advocate outlined the temporary arrangement this afternoon, which involves going to employers who have lodged agreements and asking for their consent. I understand that, longer term, the idea is for this consent to be sought via the lodgment process so that it is a one-step process rather than a two-step process.

Senator McEWEN—Yes, that is consistent with the information the OEA gave today. When did you give that advice to the OEA?

Ms James—We gave that advice to the OEA earlier this year. I would need to check that.

Senator McEWEN—It was my understanding from the answers from the OEA that the matter of the Copyright Act was still subject to your further advice; that you were investigating further whether or not this procedure needed to apply—is that correct?

Ms James—I think we are finetuning the details of how the consent might be obtained and the consequences of consent not being provided.

Senator McEWEN—What is it in the Work Choices act that potentially breaches the Copyright Act?

Ms James—It is not in the Work Choices act per se; it is the act of publishing the agreements. What we had to review involved the changes to the agreement making process that came along with the Work Choices amendments. The Workplace Relations Act now and before the Work Choices amendments do not directly deal with the issue of publishing collective or certified agreements.

Senator McEWEN—The situation applied to the previous Workplace Relations Act; nevertheless, the instruments were published freely—is that correct?

Ms James—Correct.

Senator McEWEN—Who raised the issue of a breach of the Copyright Act? Was it an employer?

Ms James—The issue was the subject of consideration within the department and between the department and its legal advisers.

Senator WONG—What precipitated that?

Ms James—An examination of our internal procedures.

Senator WONG—Was there any contact from external parties which precipitated that examination?

Ms James—Not through DEWR, no.

Senator WONG—Where did it come from?

Ms James—The issue was examined as part of a broader review of copyright and agreement making.

Senator WONG—By whom?

Ms James—It was something that was noted internally.

Senator WONG—By whom?

Ms James—Within the workplace relations legal group. Mr Smythe has just suggested perhaps you are referring to a broader review of copyright that is being carried out by the Attorney-General's Department.

Senator WONG—Yes.

Ms James—This issue arose around the same time as that. DEWR, in fact, did make a submission to the committee where it canvassed these issues.

Senator McEWEN—Then the decision has been made that in the future the industrial instruments will only be published after consent of both parties to the agreement or all parties to the agreement—is that right?

Ms James—It is the person who lodged the agreement whose consent is being sought, which, under the Work Choices framework, is the employer.

Senator McEWEN—I am not sure whether Senator Campbell asked these questions earlier on today and you have referred him to OWS, so I will just check. It was on the matter of the extent to which DEWR, Workplace Services or the OEA is involved in monitoring the minimum wages and conditions of workers working in Australia on skilled migration visas.

Mr Boxall—He did ask that question, Senator McEwen. We referred him to OWS and he was satisfied with that answer.

Senator McEWEN—I just wanted to make sure. I will leave it to the OWS.

Senator WONG—Very briefly, I want to go to GEERS. There is an increase in funding in 2006-07. On what basis is that the case?

Ms Connell—The increase is due to a change to the GEERS operational arrangements, which widen the eligibility or the base for payment under GEERS. There were some changes in November last year.

Senator WONG—Can you remind me what they were?

Ms Connell—There were a number of measures that changed the operational arrangement, including recognition of underpayment of wages from, I think, a period of three months prior to the entity going into liquidation or bankruptcy. There was also the inclusion of the definitions of employers and directors to align it with the Corporations Act.

Senator WONG—Why will that aspect impose greater cost to the Commonwealth?

Ms Connell—Ostensibly it would increase the amount eligible and the number of people eligible under GEERS.

Senator WONG—I understand the amount in terms of the underpayment of wages, but why would the alignment of the definitions change the amount?

Ms Connell—One of the other provisions was that it also allowed people who were terminated or made redundant up to six months prior to the entity going into liquidation or bankruptcy. That brings more people into eligibility.

Senator WONG—What is the projected number of persons accessing that is assumed in the costing?

Ms Connell—We do not project by number of individuals. It is based on previous years' experience in terms of the number of insolvencies and bankruptcies that may approach GEERS for assistance.

Senator WONG—So you do it by the employer entity? Is that how you project costings?

Ms Connell—We base it on previous years' expenditure. It is a demand driven scheme. We try and predict whether the scheme will continue, whether there are any factors that might influence the decrease or increase in demand on GEERS.

Senator WONG—What was the demand for 2005-06 in terms of the number of companies?

Ms Connell—It is fairly consistent from the previous the year in terms of the number of claims.

Senator WONG—Do you mean for 2006-07?

Ms Connell—From 2004-05 to 2005-06 to the current year.

Senator WONG—What is the number?

Mr Pratt—To give you an idea of what happened with this financial year compared to last financial year, in 2004-05 we had just over 12,900 claims for GEERS assistance. That resulted in payments to the value of \$66.7 million. We are expecting this year that we will probably get a similar number of claims but that the amount paid will be less.

Senator WONG—So you are budgeting for around 12,900 as well?

Ms Connell—For next year?

Senator WONG—Yes, for 2006-07.

Ms Connell—We are expecting a similar demand for next year.

Senator WONG—Sorry, I am not sure what similar demand means.

Ms Connell—We are budgeting for—

Senator WONG—12,900 or thereabouts.

Ms Connell—Roughly, yes.

Senator WONG—What is the number?

Ms Connell—As I said, we do not go by the number of companies; we base it on—

Senator WONG—You go by the number of claims.

Ms Connell—On the dollar demand from previous years.

Senator WONG—Are you anticipating more claims, fewer claims, or around the same number?

Ms Connell—Around the same.

Senator WONG—Thank you. We will go to the agencies now.

Senator Abetz—Before we complete this section, on behalf of the committee, I thank Mr Smythe for his contributions to Senate estimates and wish him well at the ILO. Bon voyage.

Senator WONG—Are you leaving us, Mr Smythe?

CHAIR—I did not expect that we would see you again.

Senator Abetz—That is why when somebody asked him about ILO, I asked whether he had a conflict of interest to declare.

Senator WONG—I was trying to work out the source of that. Mr Smythe, it has been good to cross swords with you.

Mr Smythe—I have enjoyed it.

[9.47 pm]

**Australian Industrial Relations Commission
Australian Industrial Registry**

CHAIR—Welcome.

Senator McEWEN—I want to ask some questions about unlawful termination claims. How many cases have been filed in the Australian Industrial Relations Commission since the commencement of the Work Choices act on 27 March 2006?

Mr Nassios—I have some figures with me but they are not going to be extremely accurate, because when the legislation first commenced on 12 March we were not actually determining what the ground was in the termination of employment application. We are subsequently going back into those applications to get the figures.

But what I can tell you at the moment—and this is up to 19 May; but, as I say, bear in mind that I suspect the figures will be slightly higher than this—is that we had 46 applications in which ‘unlawful’ and the unfair dismissal aspect were ticked and we had eight in respect of ‘only unlawful’ termination. I am sorry; my apologies, that was for a week. There were 178 of the unlawful and unfair, and 51 of the unlawful. As I said to you, I am sure those figures will be higher once we go back into the matters that we got early on in the piece.

Senator McEWEN—So you think the figures will be higher?

Mr Nassios—Yes.

Senator McEWEN—And how many applications has DEWR received for the \$4,000 legal funding available to applicants pursuing an unlawful termination case?

Mr Nassios—I would not know.

Senator McEWEN—You would not know that?

Mr Nassios—No.

Senator STERLE—Who would know that?

Mr Nassios—The department. The applications are made to the department, not to the registry.

Senator McEWEN—So does the Industrial Relations Commission provide advice to people about where they can seek that funding?

Mr Nassios—In the course of the last two weeks we have been provided with I think it was an information sheet and the application form for that scheme, and if a certificate is issued by the commission in which the unlawful ground is the ground upon which the certificate is issued we will hand that information out to the parties—to the applicant.

Senator McEWEN—But you only got that from DEWR in the last two weeks?

Mr Nassios—That is pretty correct, yes. I cannot say exactly, but it certainly would have been over the last couple of weeks.

Senator McEWEN—Do you have any record of how many people asked about the \$4,000 legal subsidy?

Mr Nassios—No, we would not.

Senator WONG—So you refer them to DEWR, do you?

Mr Nassios—The way the scheme is operating, as I understand it—certainly in respect of the material we have got—once the commission issues a certificate in which that ground is the specified ground, it is up to the applicant to decide whether they wish to lodge an application to elect to proceed, and they have 28 days to go to the department, in theory, to seek that sort of advice.

Senator WONG—Sorry, I missed some of Senator McEwen's earlier questions, but do you advise them of that option?

Mr Nassios—Certainly, in the course of the last two weeks, if the certificate indicates that that is the ground, we will hand that material across to the applicant, yes.

Senator WONG—So how many applications which would have initiated you handing over the material would have been received prior to you actually getting the material from DEWR?

Mr Nassios—I could not say at this stage. That is another matter. We have to go back into our database to get that information. Prior to 27 March, that was not something that we kept track of in any way. So, certainly, we would have to go back into that data, and that is something we intend to do, but I do not have those figures at this stage.

Senator WONG—Okay. That is all we have for you, Mr Nassios. Thank you.

CHAIR—Thank you very much. The next agency is Comcare, including the Safety, Rehabilitation and Compensation Commission and the Seafarers Safety, Rehabilitation and Compensation Authority.

[9.55 pm]

Comcare

CHAIR—Welcome. We will start off with Senator Barnett, who has some questions for you.

Senator BARNETT—Ms Bennett, I would like to again clear the record in terms of your advice on an article in the *Sunday Examiner* on 21 May 2006 regarding the Beaconsfield mine. The heading is 'Compensation is not enough, says ACTU rep'. It says: 'A lump sum payment of almost \$200,000 available to the widow of Beaconsfield miner Larry Knight is not nearly enough, the ACTU says. However, Mr Knight's union says the compensation Jackie Knight is expected to receive in Tasmania is more than she would get from the encroaching federal system.' Are you familiar with the benefits under Comcare compared with the benefits that would be available under the Tasmanian legislation?

Ms Bennett—In broad terms. Obviously, the specific details for Mr Knight would depend on his specific circumstances. On the basis of what is publicly available, without going into individual details, Mr Knight's widow, under the SRCA, would have received \$206,251. Then, for each child that was still dependent, depending on whether they were between 16 and 25, it would have been \$68.73 and that would have continued until that child or those children were no longer dependent.

Senator Abetz—Is that per week?

Ms Bennett—Per week. That increases in July to \$70. It is indexed, so it goes up every year.

Senator WONG—Can I just check—that is under what?

Ms Bennett—Under the legislation that we administer, the SRC Act.

Senator WONG—Is that the applicable legislation?

Senator Abetz—No.

Senator WONG—So you are answering a hypothetical. Is that what you are doing?

Ms Bennett—He asked me about a particular article in the newspaper about what the Commonwealth benefits were—Comcare benefits.

Senator WONG—But you are answering a hypothetical, because, in the circumstances—

Senator BARNETT—No. Senator Wong—

Senator WONG—You are asking a public servant, the head of an agency, a hypothetical—

Senator BARNETT—I have asked a question relevant to a newspaper article.

Senator WONG—A hypothetical question—

Senator BARNETT—It is not hypothetical at all.

Senator WONG—it is—about entitlements that are not actually applicable to the person concerned.

Senator BARNETT—No. It is specifically—

Senator WONG—Are you going to rule on that, Chair?

Senator BARNETT—comparing the Tasmanian legislation—

Senator WONG—I ask for a ruling.

CHAIR—As I understand it, Ms Bennett gave a specific answer to the question that was asked by Senator Barnett. In order to do that, the question could not have been hypothetical, in my view. Do you have a follow-up to that?

Senator BARNETT—Yes, I do. I have a number of follow-up questions. Are you aware of the Tasmanian legislation and what would be applicable under it?

Ms Bennett—Again in the broadest terms, the death benefit arrangement in Tasmania, under the Workers Rehabilitation and Compensation Act, is a lump sum of \$196,116.12.

Senator BARNETT—Just to clarify, that is \$10,000 less than under Comcare?

Ms Bennett—Yes, than the lump sum.

Senator WONG—Under the legislation which is not applicable.

CHAIR—Please go on, Ms Bennett.

Senator WONG—Which legislation is applicable?

Senator Abetz—Chair, somebody was most intolerant of interjections previously. We might just rewind the tape for her to remind her.

CHAIR—I am asked—

Senator WONG—Point of order.

CHAIR—Yes.

Senator WONG—Point of order: the questioning is about entitlements under an act that the worker concerned is not entitled to. It is clearly a hypothetical question. Ms Bennett has been put in a position by Senator Barnett where she is being asked hypothetical questions about entitlements which are in fact not due, as I understand it, under that legislation for which she is responsible. So I cannot see how it can be anything other than hypothetical, and I ask you to rule the question out of order, Madam Chair, consistent with your ruling earlier tonight that hypothetical questions should not be asked and answered.

Senator Abetz—Chair, could I try to assist? I think what Senator Wong is saying—and possibly unwittingly—is that the comparison drawn in the article is an inappropriate comparison. That is really what Senator Wong is saying. Undoubtedly, she will get a call from ACTU headquarters tomorrow morning!

CHAIR—I will ask Senator Barnett to explain why—

Senator Abetz—But the ACTU has made that comparison and now Senator Wong is busily trying to suggest that no such comparison ought to be made.

Senator WONG—Chair, is this on the point of order? Can I clarify whether this is on the point of order?

CHAIR—I am about to ask Senator Barnett to explain why his question is not hypothetical.

Senator BARNETT—Thank you, Chair.

Senator WONG—On the point of order, just to clarify: it is in relation to the expertise and the jurisdiction and the responsibilities of the officer at the table. That is the only issue.

Senator BARNETT—Chair, I have referred to a newspaper article. I have referred to a claim that has been made by an ACTU official specifically comparing Comcare payments with the Tasmanian legislation and payments payable under it. I am seeking the advice of Ms Bennett with respect to the payments made to Jackie Knight and her family—her children. It is a specific question about a specific person and it is about a specific issue that Ms Bennett has responsibility for as head of Comcare.

Senator WONG—On the point of order: nothing that Senator Barnett has outlined goes to the issue I raised. I do not have an issue with him wanting to debate this politically. It is simply about doing it in this forum and utilising this officer's evidence. As I understood Ms Bennett's evidence—and, if I am wrong, I am happy to be corrected—she has indicated that the Comcare legislation or whatever the act is—I am sorry, I have forgotten the acronym—is not, as she understands it, the applicable legislation in respect of the individual concerned. Therefore, the legislation for which she has responsibility, which her agency administers, is not the applicable legislation. So I ask: how is it relevant to ask this officer about a range of

issues which are about facts not within the jurisdiction of the legislation her agency administers?

CHAIR—Nevertheless, it is not a hypothetical question and I am ruling the question in order. I think, Ms Bennett, you had given most of your answer?

Senator BARNETT—Part of the answer, I think. In terms of the Tasmanian legislation, Ms Bennett, you have mentioned the lump sum payout and you were about to refer to the weekly payments to the children.

Ms Bennett—My understanding is that, under the Tasmanian arrangements, children would receive \$53.15 per child for 13 weeks after the death of the employee.

Senator Abetz—Sorry, can I just clarify: so it is \$196,000 plus \$53.15 per child for 13 weeks, and under the SRC Act it is a \$206,000 lump sum plus \$68—and how much per week per child?

Ms Bennett—Seventy-three cents.

Senator Abetz—Is that limited to 13 weeks?

Ms Bennett—No, that is for the child who is receiving full-time education at school, college, university or other educational institution up until 25.

Senator Abetz—Up until the age of 25. So it is not limited to 13 weeks.

Senator BARNETT—Ms Bennett, based on your background and understanding of those benefits, would you say they are about the same, or is one more generous than the other?

Ms Bennett—My personal assessment is that, when you see how the rules apply, they probably pan out to be about the same. Certainly, I do not think there would be much less generosity or greater generosity in those arrangements.

Senator BARNETT—Are you aware that every state has a different system in terms of payments made under these arrangements and Tasmania is one of those states?

Ms Bennett—Yes.

Senator BARNETT—So it would be wrong to say that the Tasmanian system is more generous than Comcare, on the advice that you have?

Ms Bennett—I think in the broadest terms that would be a misleading statement to make. It depends, I think, on the individual circumstances, but in the broadest terms I think that you could not make that statement.

Senator BARNETT—I am asking you specifically in the terms I have put to you about Larry Knight's wife, Jackie, and her family. Is it wrong to say that the Tasmanian system is more generous than Comcare?

Senator WONG—Is this asking an officer for an opinion, Chair?

CHAIR—I suspect it is.

Senator WONG—You are not obliged to offer opinions, Ms Bennett, if you do not wish to.

Senator Abetz—Chances are, Chair—if I could assist—that, in circumstances such as these, I think the officer at the table has given evidence and then it is for individual senators to draw their conclusions from that, without inviting the officer to make the conclusion.

Senator BARNETT—That is fine, Chair. I am happy with that response from the minister. Ms Bennett has answered the question, I think, adequately. I think the readers of the *Hansard* and those listening could draw their own conclusions.

Senator WONG—Is this a question, Senator?

CHAIR—I think that covers it adequately.

Senator BARNETT—Thanks very much, Chair.

CHAIR—Are they all the questions you have?

Senator BARNETT—Yes.

CHAIR—Senator Sterle.

Senator STERLE—Ms Bennett, does Minister Andrews have before him any applications under section 100 of the Safety, Rehabilitation and Compensation Act 1988 seeking a declaration that the applicant corporation is eligible to be granted a self-insurance licence under the SRC Act?

Ms Bennett—Applications for declarations by the minister are dealt with by the Department of Employment and Workplace Relations. They do not come to Comcare until a declaration has been made and then only if the entity chooses to apply for a licence to the commission. So, as I said, applications do not come to us. I do not think I can answer your question. I think you would have to refer it to DEWR.

Senator STERLE—Okay. I would like to refer to the OHS and SRC Legislation Amendment Bill currently before the Senate, which enables multistate employers to self-insure under Comcare. Should this once again go to DEWR?

Ms Bennett—There is no amendment to allow multistate employers. You can certainly refer the question about the declaration process to DEWR, but it is a two-stage process. An entity applies to the minister for a declaration to be made in the terms set out in section 100 of the SRC Act which prescribes a range of issues that the minister can take into consideration. The department makes an assessment and then the minister makes a decision whether to make a declaration or not. As I explained, then what happens is that the business will make a decision to put in an application for a licence. The commission asks Comcare to make an assessment against an array of criteria for that licence and then the commission will decide to grant a licence and under what terms that licence will be.

Senator STERLE—So is Comcare expecting significant growth in self-insurance?

Ms Bennett—Two licences have been issued—technically three. One licence was to Optus and two were to Linfox in general and Linfox Armaguard. The commission meeting, which is occurring next week, has two other licences before it—KNS Freighters and the Snowy Hydro.

Senator STERLE—There is a transport flavour there, isn't there? The bill before the parliament expressly excludes state OH&S laws for those in the Comcare scheme. Are there

plans for increases in Comcare inspector numbers to ensure compliance with Commonwealth OH&S legislation?

Ms Bennett—Yes.

Senator STERLE—Do you have any numbers?

Ms Bennett—With those new licensees joining, at this stage we expect to be increasing our directly employed inspectors to 27.

Senator STERLE—From?

Ms Bennett—From 16. But, as I have pointed out in previous estimates, we also draw on a list of qualified contractors on an as-needs basis. Under MOUs with the states, we also have the capacity to use and do use state government inspectors to investigate breaches of our OH&S legislation.

Senator STERLE—How many qualified contractors do you have on your books?

Ms Bennett—We have 47.

Senator STERLE—Are they single contractors or entities?

Ms Bennett—There is a range.

Senator STERLE—So there could be a lot more than that 47. Are they now used regularly?

Ms Bennett—It depends on demand, such as with the number of incidents that occur. As I have said, we are balancing at the moment. The licensees that have been accepted recently are expanding their number of employers and employees. The assessment that we have made for this year is that we need to increase our own in-house capacity. We also have those other avenues, depending on workloads, to draw on.

Senator WONG—Can I just follow something up, please?

Senator STERLE—Certainly.

Senator WONG—The agency budget statements have your average staffing levels, which I presume are full-time equivalents, as 370 to 374. If you are increasing the number of inspectors, is there a small reduction in staff in some other area of the agency?

Ms Bennett—At the additional estimates hearing—

Senator WONG—I might have missed that bit.

Ms Bennett—during the last financial year, we reflected that for the 2005-06 year there would be an estimated 348 staff, which at that point was adjusted at AEs. Then additional staffing of four is being added here. That will make a total in this financial year of 26—spreading over the two. But the first adjustment occurred in AEs.

Senator STERLE—I would bring to your attention the minister's press release on budget day this year, in which he said:

... changes to workers' compensation arrangements ... will lead to greater uniformity and consistency across Australia ... [and] will strengthen the connection between work and eligibility for workers'

compensation, ensuring that the Commonwealth scheme is more consistent with those that operate in the states and territories ...

The announcement also stated that workers compensation coverage will 'be removed for journeys to and from work and for recess breaks where there is a lack of employer control'. How does Comcare plan to achieve the minister's stated objective of strengthening the connection between work and eligibility for workers compensation?

Ms Bennett—Can I have the question again?

Senator STERLE—How does Comcare plan to achieve the minister's stated objective of strengthening the connection between work and eligibility for workers compensation? It is all right; I have a flow-on question.

CHAIR—That is very speculative.

Ms Bennett—The legislation gets amended and we apply its terms.

Senator WONG—I do not understand what the minister's statement means; perhaps you can explain it to me.

Senator BARNETT—I did not understand the question.

Senator WONG—The minister's statement, which Senator Sterle read out, was that it would strengthen the connection between work and eligibility for workers compensation.

Senator Abetz—I think—and I will take this on notice—in recent times the states have changed their workers compensation legislation in connection with trips to and from work that some might argue are not necessarily actually related to the work. I am being given some assistance.

Senator WONG—Is this about abolishing journey claims?

Senator Abetz—As I understand it, trips to and from work have been excluded from the state jurisdictions because of the huge costs on workers compensation premiums—

Senator WONG—No, that is not right.

Senator Abetz—I think it has been excluded.

Senator WONG—No, there are a range of different legal provisions in different states around journey accidents.

Senator Abetz—If the suggestion in my answer was all states, I withdraw that. I did not mean to say that; I don't think I did. But I understand that some states have been tightening up on that. The view is that, with respect to somebody getting themselves to or from work, it is in their time and therefore it is not necessarily related to the actual employment, whilst you are in the employer's jurisdiction—I don't know what the term is.

CHAIR—Senator Sterle, you might put the question on notice.

Senator Abetz—I can take it on notice if you want more detail.

Senator STERLE—Okay. Regarding the abolition of journey claims announced by Minister Andrews, why was the decision taken to do this?

Senator Abetz—That would have been a policy decision. I will give what I think is the answer, subject to possibly being corrected either by the minister's office or later by the minister himself. As I understand it, there is a fair impost in relation to workers compensation payments for accidents that workers have to and from work, which some people would argue are not actually related to your employment whilst you are under the care and control of occupational health and safety standards of your employment in the workplace, and that it is more appropriate that those sorts of matters be covered by, in Tasmania, the Motor Accident Insurance Board premiums. I would assume that other states have similar legislation.

Senator STERLE—Minister, how do you achieve consistency by abolishing journey claims when those currently exist in some states, such as in New South Wales?

Senator Abetz—Some states have already, as I understand it, changed the law. We would like consistency in that regard, and we are pursuing it and following it up with other states. That is my hunch; I don't want to put it any more strongly than that. I will take it on notice and ask Minister Andrews to give a definitive answer.

Senator STERLE—Okay. While this decision was being made, can you tell me who was consulted?

Senator Abetz—I can take that on notice as well.

Senator STERLE—Are you taking it on notice?

Senator Abetz—Yes. I was just checking with Ms Bennett that Comcare administers rather than sets policy on things of that nature. At the end of the day that is for the government.

Senator STERLE—Would Ms Bennett know what was the range of recommendations provided by those consulted?

Ms Bennett—I would not be aware, Senator.

Senator STERLE—Could that be taken on notice?

Senator Abetz—I can ask the minister's office who was consulted in relation to this.

Senator STERLE—And the range of recommendations provided.

Senator Abetz—I will take that on notice. If it was departmental advice in relation to the range of recommendations, that would not be given in relation to an answer. But if, say, a community group had made a particular suggestion in relation to policy parameters, that may be able to be made available.

Senator STERLE—Would you say that giving up journey claims represents a lessening of the protection for employees?

Senator Abetz—That is a moot point. There is cover in any event, as I understand it, in all state jurisdictions in relation to injuries from a motor vehicle accident through, in the Tasmanian situation, the Motor Accident Insurance Board and its equivalents throughout the country. The question is whether or not travel to and from work should be something visited upon the employer, with the extra costs incurred by the employer ultimately becoming a disincentive to employment. Workers compensation premiums, unfortunately, have been cited from time to time as disincentives to employment growth. I think that is why state governments have dealt with this issue as well.

Senator STERLE—Minister, I will bring you back to my home state: there is no journey cover.

Senator Abetz—There isn't?

Senator STERLE—No. In that case—I am just talking about Western Australia where I can categorically tell you there is no journey cover—that is a lessening of protection for employees since that was abolished.

Senator Abetz—When was that abolished—do you know?

Senator STERLE—Do not quote me but it was about 1996—about the second wave.

Senator Abetz—In the 10 years since—and this is the interesting thing with these industrial reforms—people campaign against them, sometimes win government on the back of them and, when they are in government, they do not change the policies.

Senator STERLE—I think I can safely say, Minister, my question was—

Senator Abetz—Like Tony Blair and Helen Clark—

Senator STERLE—do you see it as a lessening of protection for employees?

Senator Abetz—With these things, it is a balance. If you have a range of people who, unfortunately, suffer unemployment in the community and you see a disincentive to employment being created then you have a duty to try to balance these things.

[10.21 pm]

Australian Building and Construction Commission

CHAIR—Welcome.

Senator SIEWERT—I have a number of questions, some of which I will put on notice because we are short of time. First off, I want to follow up some questions I was asking last time that you answered on notice—some you answered at the time and some on notice. One of the questions I asked was about keeping records when you contact people informally. As I understood it, you said that the ABCC does not compile statistics on these contacts. Is that right or is it that the individual ABCC inspectors do not keep records?

Mr Hadgkiss—Should an investigator make contact with a member of the public, the investigator would ordinarily make a record of that contact.

Senator SIEWERT—They do.

Mr Hadgkiss—They make a record, but we do not keep such statistics.

Senator SIEWERT—If you needed to access those records to clarify things, you could.

Mr Hadgkiss—No. It would not be unusual for an investigator on a day-to-day basis to make literally dozens of contacts. He or she would maintain a record if it was of sufficient importance. But we do not keep statistics except in matters which we call 'show cause', when we contact, for instance, workers who have taken part in unlawful industrial action. Letters are served on those people asking them to give an explanation as to why they took such unlawful action and that may be followed up with a phone call as to whether they wish to speak to the ABCC.

Senator SIEWERT—The letters would be formal contact, though, wouldn't they?

Mr Hadgkiss—They would make a telephone call, yes.

Senator SIEWERT—I am not trying to be pedantic, but if the letter was formal, would the follow-up phone call be classed as informal or formal?

Mr Hadgkiss—You would class that as formal. Certainly, where we have sent out letters we would have the numbers of those letters that have gone out on a particular investigation. I am sure that there would be records kept of follow-up phone calls, as to whether they were successful, how many people were prepared to speak, how many declined to speak, how many returned calls—those sorts of things.

Senator SIEWERT—In response to my earlier questions concerning visits by ABCC inspectors to work sites, as I understand it, you said that you do not maintain records of the time spent in inspector visits at work sites?

Mr Hadgkiss—We maintain records of what is termed a 'site visit', which is an official visit by an investigator to a site. But we do not maintain a record of the duration of each visit. The investigators would keep a record of each visit but we do not maintain a master record.

Senator SIEWERT—So they keep records. We have also talked about the phone contacts. You said at the time that you do not compromise occupational health and safety processes.

Mr Hadgkiss—That is correct.

Senator SIEWERT—And you said that you have regard for operational imperatives.

Mr Hadgkiss—And the privacy of the individual being contacted.

Senator SIEWERT—How do you monitor and evaluate performance of your inspectors?

Mr Hadgkiss—They are all subject to performance agreements. Indeed, all members of staff in the executive of the ABCC are subject to performance agreements.

Senator SIEWERT—I presume they all have KPIs.

Mr Hadgkiss—They have KPIs and they reflect the APS values.

Senator SIEWERT—Do those relate to particular outcomes relating to the number of interviews and prosecutions or convictions?

Mr Hadgkiss—They are not measured by quantity. For instance, we would not measure an investigator's performance by the number of prosecutions or the number of site visits. It would be more about the quality and the timeliness of prosecutions and how much training they have undertaken.

Senator SIEWERT—How do you check that they are not breaching your guidelines in terms of the things that I just mentioned: not comprising occupational health and safety and not comprising the workplace et cetera?

Mr Hadgkiss—Investigators are subject to supervision. There is a structure in place whereby they report to a team leader. The team leader in turn reports to a manager. In the event of a complaint being made against an investigator, that would be thoroughly investigated.

Senator SIEWERT—So if there was a complaint received because somebody was contacted about something they had done when the contact could compromise their workplace, would you investigate that complaint?

Mr Hadgkiss—In such an instance, I imagine it would be made to the investigator and they would cease making contact at the place of work or at the home. If the person—and it is not unusual—said: ‘Please do not ring me at the building site. I fear for my safety because of what other workers could do to me,’ we would respect that request. The person would then be contacted at home.

Senator SIEWERT—What happens if it is found that an inspector has breached your standards and guidelines?

Mr Hadgkiss—In a hypothetical situation?

Senator SIEWERT—Yes, I am asking hypothetically.

Mr Hadgkiss—Hypothetically, it would be investigated in accordance with the Public Service Act.

Senator SIEWERT—Have you received any formal complaints of alleged intimidation of workers’ families since we last spoke?

Mr Hadgkiss—No. Even prior to that we had received no complaints.

Senator SIEWERT—I am just asking about since then.

Mr Hadgkiss—Since then, no.

Senator SIEWERT—Are you aware there have been any other allegations besides formal complaints?

Mr Hadgkiss—I have read CFMEU publications which describe certain conduct. We have contacted on occasion the state secretary of the CFMEU to elaborate on those but have either not been replied to or had replies that would not permit an investigation.

Senator SIEWERT—Have they been the only times that you are aware of?

Mr Hadgkiss—Yes. Again, no individuals are named. It gives us little or no information to pursue these kinds of broad allegations made.

Senator SIEWERT—I appreciate if you are not given the detail.

Mr Hadgkiss—I could be more descriptive but I will maintain my politeness.

Senator SIEWERT—Thank you. I want to move on to something we were talking last time. My understanding is, from a question asked last time, that you do not have to present a formal request to an employer to gain access to employee records.

Mr Hadgkiss—Yes. We would serve a notice on an employer, for instance, asking for records pertaining to a particular employee. We would have to give the reason and which aspect of the law we suspected was in breach and we would permit 14 days for that notice to be complied with. We would return to that entity and recover the documentation. Sometimes employers are happy to comply forthwith. Others take advantage of the full 14 days, and indeed on occasions some seek an extension.

Senator SIEWERT—Are employers told that they have the right to refuse such a request when you make one?

Mr Hadgkiss—They have no right to refuse. It is compliance with the statute. Indeed, refusal has caused us to mount prosecutions or put matters before the DPP, who in turn have prosecuted employers for failing to comply with notices.

Senator SIEWERT—Has that happened?

Mr Hadgkiss—To date, once against an employer in Victoria in Heidelberg magistrates court.

Senator SIEWERT—How many times have you made an informal request and the employee has then required a formal request?

Mr Hadgkiss—We do not make informal requests.

Senator SIEWERT—You never make informal requests.

Mr Hadgkiss—No. We would ask for the records, sometimes give notice and then follow up with a notice, because with some employers we could run the risk of asking for information, them not giving it in its entirety and, only when we get to litigation and discovery, finding that they have not given us all of the information. By not complying with a notice, they suffer the consequences.

Senator SIEWERT—I have misunderstood. You may contact them initially but then you will always follow it up with a formal request.

Mr Hadgkiss—The practice would be, and again it is a bit like search warrants with banks, that we would notify the entity of our intention to give them time to perhaps prepare. Our lawyers would draft a notice and an inspector would serve that notice on the entity—be it a union, an employer or whoever—asking for the documentation sought. It would specify that documentation. They would then be permitted 14 days to comply with that notice, they would contact us and we would go and collect it.

Senator SIEWERT—How many formal requests have you made to date?

Mr Hadgkiss—Hundreds, if not thousands. There are figures. We would have to take that on notice.

Senator SIEWERT—If you could take it on notice, that would be fine. What powers do you have to investigate matters that go beyond a specific incident?

Mr Hadgkiss—If it were beyond our purview—for instance, if it were corruption, fraud, assault or robbery—we would report it to the appropriate authority, be it the state police, Federal Police or state entities. Likewise, safety issues are reported to the appropriate state authority.

Senator SIEWERT—So you just focus on what is under your—

Mr Hadgkiss—What is within our statutory remit, which of course is the Workplace Relations Act and the Building and Construction Industry Improvement Act.

Senator SIEWERT—Are you the only people who can investigate alleged breaches of the BCII Act?

Mr Hadgkiss—Yes.

Senator SIEWERT—I want to ask some specific questions about guest workers—people who are employed on 457 visas.

Mr Hadgkiss—I think it is known as a work permit.

Senator SIEWERT—I will call them guest workers so you know what I am talking about. Are they and their employers equally subject to the provisions of the act?

Mr Hadgkiss—Yes. If the thrust of your question is about breaches of that permit arrangement—of the visa—that, of course, is the domain of the department of immigration.

Senator SIEWERT—I am not asking about breaches.

Mr Hadgkiss—Their employer and all employees would be subject to both pieces of legislation.

Senator SIEWERT—I am checking that you have answered what I need to know. If there are any breaches of the BCII Act by employers that are using guest workers, do you have powers to investigate?

Mr Hadgkiss—If they were, but, if you are talking about workers' entitlements, that would be more under the Workplace Relations Act, and that would ordinarily be referred to the Office of Workplace Services, which has staff who are inspectors under the Workplace Relations Act. Likewise, if the employer were in breach of some migration matter, that would be subject to DIMA.

Senator SIEWERT—Yes, I appreciate that, and that relates to the question I asked before about only investigating issues that relate to the BCII Act. This relates to the question that I asked earlier. If during your investigations you discovered other breaches relating to guest workers, would you directly refer them to the relevant authorities?

Mr Hadgkiss—If it were to do with employee entitlements, then yes. If it were to do with a breach of migration provisions, it would go to DIMA. If it were a breach of the BCII Act or the Workplace Relations Act, we would have the potential to investigate those matters.

Senator SIEWERT—There are two questions that arise from that. Have you found any situations where there have been breaches of other acts involving guest workers?

Mr Hadgkiss—We have sought the assistance of the CFMEU on a number of occasions when allegations against the ABCC or its predecessor, the task force, were made. Such information has not been forthcoming.

Senator SIEWERT—How are people employed on ABNs treated under the act?

Mr Hadgkiss—No differently to any other employee or independent contractor.

Senator SIEWERT—So they are treated as an independent contractor?

Mr Hadgkiss—I would have to take that on notice because that is—

Senator Abetz—That might be beyond the—

Mr Dalglish—The answer is that it depends. Just because they have an ABN does not necessarily mean that they are a worker or an independent contractor.

Senator SIEWERT—Does it depend on the capacity in which they are working on the site?

Mr Hadgkiss—Yes.

Senator SIEWERT—It would depend on how they are treated?

Mr Dagleish—They could be either.

Mr Hadgkiss—And they would still be subject to the BCII Act and/or the Workplace Relations Act.

Senator SIEWERT—I have got other questions; I will put them on notice.

Senator McEWEN—Can you explain what the increase in funding in this year's budget is for? The budget has gone from \$22.3 million in the last financial year to \$32.95 million this year.

Mr Lloyd—The main reason is that, in the current year, the ABCC was operating from 1 October. Next year, of course, it will be a full-year operation.

Senator McEWEN—So it is to accommodate the fact that the budget now is for a full year?

Mr Lloyd—Yes.

Senator McEWEN—Staff numbers are set to increase from 120 to 155?

Mr Lloyd—Yes.

Senator McEWEN—What proportion of that budget increase would be as a result of the increase in staff numbers?

Mr Lloyd—I can't put an exact figure on that. I have figures which give the total salaries expenditure we expect to undertake this year.

Senator Abetz—Senator McEwen, is there going to be any follow-up to the question? If so, they should try to get the answer for you, but if there is not, could they take it on notice?

Senator McEWEN—It could probably be taken on notice. Do you know what the ABCC's total expenditure to date has been for external legal advice and representation?

Mr Lloyd—Yes. Bear with me and I will find the figure.

Senator McEWEN—Have you got which law firms provided such advice?

Mr Lloyd—Yes, I can give you that information. The expenditure for the current financial year up to 8 May is as follows: Australian Government Solicitor, \$568,000; Blake Dawson Waldron, \$285,000; Freehills, \$791,000; Minter Ellison, \$228,000; Phillips Fox, \$93,000; Clayton Utz, \$19,000; and the total figure is \$2.025 million.

Senator Abetz—Senator, they are rounded figures.

Mr Lloyd—Yes, rounded to the nearest thousand.

Senator McEWEN—I think we can cope with that. That was from 1 July 2005 to 8 May this year?

Mr Lloyd—Yes, they are for the financial year, so they would include expenditure by the ABCC and, for the period from July to October, by the previous Building Industry Task Force.

Senator McEWEN—Was any legal advice provided to the ABCC from DEWR?

Mr Lloyd—We interact with DEWR, like any portfolio agency, if we have an issue perhaps about the application of our act. We may seek a clarification about the operation of the Work Choices changes. We will discuss those matters with legal staff of DEWR.

Senator McEWEN—What would be the nature of that advice?

Mr Lloyd—They give us advice about their view of legislation and what our responsibilities might be. It depends on the issue which we ask them about.

Senator McEWEN—Are there any significant matters or investigations that you are undertaking for which you sought advice from DEWR?

Mr Lloyd—No.

Senator McEWEN—So, they were just general things.

Mr Lloyd—Yes.

Senator McEWEN—Can you tell me what the cost of the ABCC investigation into the allegation of payment of strike pay on the Hooker Cochram site in Victoria was?

Mr Lloyd—No, I do not have a figure for that.

Senator McEWEN—Can you get us a figure for that?

Mr Lloyd—I can take it on notice.

Senator WONG—Do you cost investigations separately? Do you track how much an investigation is costing?

Mr Lloyd—I will take on notice whether we can provide a figure.

Senator WONG—I did not ask that; I asked if you track cost of investigations.

Mr Lloyd—No.

Senator WONG—You do not at all. So you do not know how much an investigation cost at any point?

Mr Lloyd—No. We do not have a logging of hours by investigators or anything like that.

Senator McEWEN—How many staff of the ABCC worked or are still working on the Hooker Cochram matter?

Mr Hadgkiss—Those investigations are concluded.

Senator McEWEN—So many staff worked on it?

Mr Hadgkiss—There was one investigator involved.

Senator McEWEN—What level of investigator?

Mr Hadgkiss—She is a team member.

Senator McEWEN—How long did she work on it?

Mr Hadgkiss—From the time it was brought to our notice through the newspapers to the time that the commissioner brought down his findings on Monday of last week.

Senator WONG—When was it brought to your notice?

Mr Lloyd—The events occurred on 7 April. We commenced an investigation very shortly after 7 April.

Senator WONG—Any other staff? You said one investigator. Were there other staff involved?

Mr Hadgkiss—She would have received legal advice from internal legal people.

Senator WONG—Any others?

Mr Hadgkiss—From recollection, no external law firm was used in that instance.

Senator WONG—Where there any contractors engaged in relation to that?

Mr Hadgkiss—On that case, no.

Senator WONG—None at all? Surveillance?

Mr Hadgkiss—We do not have a surveillance capacity.

Senator WONG—I know you do not, but you can contract for one, can't you?

Mr Hadgkiss—We do not have that capability. It is not permitted by legislation.

Senator McEWEN—Is the ABCC aware of the minister's comments on 3 AW on 11 April 2006 to the effect that the action was not unlawful?

Mr Lloyd—Yes, I was aware of those comments.

Senator McEWEN—Did the ABCC provide the minister with that advice?

Mr Lloyd—No.

Senator McEWEN—Are you aware of who did provide that advice to the minister?

Mr Lloyd—No.

Senator Abetz—Let us contextualise all this. As I recall—and we would have to get the full transcript—the suggestion was put to him whether it would be illegal to take up a collection for a deceased's family, which was one aspect of it. But, of course, in this matter it was a finding by His Honour that one of the purposes for taking the action appears to have been to gain publicity for the CFMEU's views about the new workplace relations laws. I think there was something else in one of the findings, but given what the minister said it would be in relation to that which was actually put to him.

Mr Hadgkiss—The journalist's name is Neil Mitchell of 3AW.

Senator McEWEN—He provided the minister with advice?

Senator Abetz—What happens in these situations is that a minister, or indeed a parliamentarian, is given a hypothetical or only certain facts and not the totality. If Mr Andrews was told that one of the purposes for taking the action was to gain publicity about the new workplace relations laws, I think we all know what his answer would have been.

Senator McEWEN—So did the commissioner find in this matter that the CFMEU had, to quote the minister's words, 'shamelessly manipulated workers at the Hooker Cochram site'?

Mr Lloyd—No, Senator. I found that a CFMEU shop steward had engaged in unlawful industrial action and that a CFMEU organiser had aided and abetted that contravention.

Senator McEWEN—Do you disagree with the minister's statement that the workers were 'shamelessly manipulated'?

Mr Lloyd—I am not commenting on what the minister said, Senator. I think it would be inappropriate to comment.

Senator Abetz—Somebody who is required to make these sort of determinations usually uses judicious language, as one would expect, and then of course it is for parliamentarians and others who engage in the argy-bargy of political debate to use the descriptors that you have just used.

Senator McEWEN—Injudicious language, clearly.

Senator Abetz—He does not pretend to be a judge or arbitrator or commissioner but somebody who is arguing in the public arena. I would have thought that it was not stretching the language at all in circumstances where the unfortunate and sad death of a worker is then used to gain publicity for a political campaign. It has the ring of Sharan Burrow about it when she was caught on tape saying, 'All we really need is a death on a site,' or something of that nature. The description by Minister Andrews, in those circumstances, I find quite acceptable and I would endorse it—not that he needs my endorsement.

Senator WONG—What is your view about laws which might render it unlawful for workers to stop work for the purposes of getting a collection up for the partner of a deceased worker? What is your moral judgment on that, Minister?

Senator Abetz—What I would invite you to do is look at the extensive eight-page summary of the circumstances. What you have to do is take into account the length of the stoppage, the minimal disruption to work, whether it would have been authorised in writing if it had been requested, and other matters. Clearly it is a hypothetical situation that is being put and it depends on all the surrounding circumstances. But quite clearly, when the finding has been made that part of it was a stunt to get media coverage for the CFMEU's campaign against Work Choices, then I think the minister's language was quite restrained.

Senator McEWEN—I am sure the worker's widow will be thrilled to hear that you think it was a stunt that his workmates collected money to support her and her family.

Senator Abetz—That is a gross misrepresentation, Chair.

Senator McEWEN—But that is just exactly what you said.

Senator Abetz—No, and I would seek to correct the record. What the commissioner found—and allow me to quote: 'One of the purposes for taking the action appears to have been to gain publicity for the CFMEU's views about the new workplace relations laws.' In other words, under the pretext of having a whip-around for a widow, the media just happened to have been invited.

Senator WONG—Pretext?

Senator Abetz—It would be interesting to see what the CFMEU's explanation would be to the workers that there could be a media presence at the site—

CHAIR—Minister, I do not like to interrupt you, but this is developing into a commentary by both sides rather than question and answer.

Senator Abetz—I am happy to disengage.

CHAIR—Senator McEwen, do you have any further questions?

Senator McEWEN—Of the 155 staff, can you advise in which states they are employed?

Mr Lloyd—They will be employed in every state capital.

Senator McEWEN—Do you have records of how many in each state?

Mr Lloyd—We still have not recruited the whole 155. We are in the process of recruiting the staff. I can give you a break-up, on notice, of where staff are located now.

Senator McEWEN—So you are recruiting the staff, but there are 120, I presume, at least.

Mr Lloyd—At the moment, we have fewer than 100.

Senator McEWEN—Can you advise us where they are located?

Mr Lloyd—Yes, I can.

Senator McEWEN—When do you expect the rest of the vacant positions—the other 55 positions—to be filled?

Mr Lloyd—I would hope they are filled by the last quarter of this year—about November.

Senator McEWEN—Of the 155 staff that you anticipate employing eventually, how many are inspectors?

Mr Lloyd—We project that there will be about 88 to 90 inspectors.

Senator McEWEN—What will the rest be?

Mr Lloyd—There will be legal, corporate, administrative, communications, IT and finance staff.

Senator WONG—Are your decisions on your website?

Mr Lloyd—I have issued one finding and that is on the website.

Senator WONG—Under what? I have the website open. I looked under 'Legal' and 'Before the courts' and I could not find it. Would it be under 'Media and public affairs'?

Mr Lloyd—I thought it might have been under 'Before the courts'.

Senator WONG—I have found it. It is under 'Media and public affairs'. I do not think we have anything further for the ABCC.

CHAIR—Thank you very much, gentlemen.

[10.58 pm]

Australian Fair Pay Commission

CHAIR—Welcome, Ms Taylor.

Senator McEWEN—How many staff does the AFPC expect to employ?

Ms Taylor—We expect to have around 20 staff in a full year.

Senator McEWEN—What occupations?

Ms Taylor—They will be in three areas: our research and analysis area, our communications and consultation area and our corporate and administrative area. They will have a range of skills and backgrounds.

Senator McEWEN—I presume the research and analysis people will be doing the legwork for the wage case.

Ms Taylor—For the wage review, yes, and that is probably where the bulk of the staff will be.

Senator McEWEN—Given the extended deadline for the recommendations from the award review task force, is it still expected that the AFPC will bring down its first wage decision in spring this year?

Ms Taylor—Yes. The commission has not made any alteration to that.

Senator McEWEN—Is it expected that the rationalisation and simplification of the Australian pay and classification scales will occur prior to that first wage decision?

Ms Taylor—The report will come from the award review task force to the Fair Pay Commission and it depends on the recommendations contained in that report and when that arrives at the commission.

Senator McEWEN—So they will not necessarily be determined.

Ms Taylor—I cannot speculate on whether they will or they will not. It depends on what is in the report of the task force and when it is received by the commission.

Senator WONG—Is it intended though or is it a prerequisite for the AFPC making its first wage decision that the rationalisation that the ART is undertaking of the pay and classification scales will be finalised?

Ms Taylor—I do not think it is a prerequisite as such. I think the legislation says that the Australian Fair Pay Commission has to have regard to the recommendations that are made by the award review task force, but I do not think it is spelt out that it is a prerequisite that the rationalisation task, as such, is completed before the determination is made.

Senator WONG—What is the current position of the commission? Is it going to await the classifications recommendations of the ART before it proceeds to determine the first minimum wage?

Ms Taylor—The commission has not made a decision on that as yet.

Senator WONG—Has there been discussion between the commission and the task force?

Ms Taylor—There has been some discussion between the commission and the task force about the process and the timing.

Senator WONG—Have you been involved in that?

Ms Taylor—I have been involved in one meeting with the task force.

Senator WONG—What is the process and timing that was discussed?

Ms Taylor—As outlined earlier by the department, the report is due to the commission in July and that time frame, as I understand it, is unchanged.

Senator McEWEN—When is the AFPC convening to make its first pay decision?

Ms Taylor—The commission will make its determination in spring. It has not set an actual date as yet.

Senator McEWEN—So a lot of people are involved who have to come together to make that decision. Has a date been set for that meeting?

Ms Taylor—The commission has a series of meetings. It is not just holding one meeting.

Senator McEWEN—So it has not actually set a deadline.

Ms Taylor—A final deadline, no.

Senator McEWEN—Just spring?

Ms Taylor—Spring.

Senator McEWEN—A three-month window of opportunity. That is comforting.

Senator WONG—I am a little confused. I am just trying to recall what occurred in the Work Choices bill. My recollection is that the AFPC will have to look at what happens to the pay and classification scales in order to consider what the minimum wage increase should be. That was the intention in the legislation.

Ms Taylor—The legislation says that the commission has to have regard to any relevant recommendations that the task force may make, but it does not say that it has to rationalise the awards, the pay and classification scales to enable its first determination to be made.

Senator WONG—What information do you have from your meetings with the task force as to their time line?

Ms Taylor—As I said, as outlined by the department earlier, the report will be available at the end of July, or some time in July.

Senator WONG—July?

Ms Taylor—Yes.

Senator McEWEN—With the five members of the AFPC, what will the protocol be if there is a difference of opinion between them about what the appropriate amount is to award to the minimum wage?

Ms Taylor—I think the act says that the decision of the commission is expressed as a decision of the commission as a whole. It will be up to the commission to make its rules about how it goes about making that decision.

Senator McEWEN—But what if there is a split decision?

Senator Abetz—I think that happens these days potentially in relation to when you have a bench or a full bench—more than one person sitting on it—that you have the possibility of split decisions. They come out of the High Court virtually all the time. It is very rare that we get seven-nil.

Senator McEWEN—So it will be a majority decision?

Senator Abetz—It is expressed, as I understand it, as a decision of the commission.

Ms Taylor—As a whole.

Senator Abetz—But where somebody gives a dissenting view, I do not know what the procedure there would be.

Ms Taylor—It will be up to the commission to determine, but I understand that the commission intend to express a view as a commission.

Senator McEWEN—How could you ensure that the process will be fair and that some of the five might not be pressured into accepting a decision that they do not necessarily agree with?

Senator Abetz—That is exactly the same with the High Court of Australia, the full bench.

Senator McEWEN—Yes, but they publish dissenting decisions. Will that happen in this case?

Ms Taylor—It is for the commission to determine, but the act requires that it is expressed as a view and I am sure that, in its operating discussions, the commission will ensure that the appropriate regard is given to each of the five members' views.

Senator Abetz—The commission, as I understand it, is required to publish its reasons for decision.

Ms Taylor—It is required to publish reasons for decision, yes.

Senator McEWEN—Can you give me some information, Ms Taylor, about the research that the commission reportedly has funded to identify the low paid and the relationship between minimum wages and employment?

Ms Taylor—Certainly. The commission at this point in time has commissioned one piece of research, which is a literature review into the impact of the minimum wage. That is due in June. There is a select tender process, which commenced on 22 May, which has not concluded as yet, looking into research into the extent of the coverage of the minimum wage. Other research will be commissioned in due course.

Senator McEWEN—So you have put out a tender for research into the extent of the application of the minimum wage?

Ms Taylor—The extent of coverage of the minimum wage, yes.

Senator McEWEN—And you have not even commenced that research, but there will be a decision made in spring about what that minimum wage is.

Ms Taylor—Yes, that is right.

Senator McEWEN—And you have done a literature review that is due in June?

Ms Taylor—Yes, the literature review and—

Senator McEWEN—What research will be available to enable the commission to make an informed decision? I am just curious about what research has been completed that the commission will take into account in making the first decision about what the new minimum wage will be.

Ms Taylor—The commission will take into account the research that is currently available that it has identified through certainly the literature review. It will also take into account the information that is contained in submissions—the commission has called for submissions—and it will take into account information it receives through various stakeholder meetings. The first of those stakeholder meetings has already commenced and some of the stakeholders have identified that they will also be providing the commission with research. As I say, it will be a combination of those things on which the commission will make its determination.

Senator McEWEN—Do you know how much funding has been spent so far on research?

Ms Taylor—So far we have not paid any funding for research, because we have not received the final report of the first research project as yet.

Senator McEWEN—So you are just using existing research. Do you have any lists of what current research you are using, what current literature, that you could make available to the committee?

Ms Taylor—The first research project is a literature review and it is the policy of the commission that that research will be published.

Senator McEWEN—As part of your research, is the AFPC investigating what impact a cut in real wages would have on the economy?

Ms Taylor—No, we are not investigating that. We have not commissioned any research on that at the moment.

Senator Abetz—But is it possible that the literature review might contain some literature of the cut in real wages that occurred during the Hawke-Keating era?

Ms Taylor—It may.

Senator STERLE—Enlightening.

Senator Abetz—Yes.

Senator WONG—I might be digging into the recesses of my memory, but didn't the previous Workplace Relations Act, prior to Work Choices, actually set out procedures for majority decisions and so forth?

Ms Taylor—I am not sure. I am not familiar with that level of detail.

Senator WONG—For example, on the bench you would have the senior officer, the senior vice-president, vice-president, deputy president or a president. Is there something similar under Work Choices, or is it just consensus?

Ms Taylor—The legislation says that the decision will be published as a decision of the commission.

Senator WONG—That was not quite what I was asking. I am just making the point that the former act, the pre Work Choices act, set out procedures where there was disagreement on the bench on particular decisions. As Senator McEwen pointed out, you might have dissenting decisions. I do not recall the Work Choices bill actually going to this issue. If it is silent on this issue—I could be wrong, but I do not recall that—how is disagreement amongst the five members dealt with?

Ms Taylor—It would be a matter for the commission to determine a process to do that.

Senator Abetz—The decision of the High Court in any case includes the dissenting decisions as well.

Senator WONG—If they are supposed to have a dissenting decision under the act, which I think is questionable. Thank you, that is all we have for the AFPC.

[11.15 pm]

Office of Workplace Services

CHAIR—Welcome. I call for questions.

Senator WONG—Mr Wilson, not only have you an increase in funding, obviously, but you are established as a separate agency now. Can you tell me of the budget allocation for your office over the budget estimates period? I would like to disaggregate the \$97 million over four years. Firstly, how much is for renovations and fit-outs for the OWS offices?

Mr Bongi—We are still establishing our office—

Senator WONG—We have not got very long, so I will try to be reasonably specific. I am not asking what you have done; I am asking, in terms of the money that has been appropriated, how much is intended to be spent on each of the areas that I will put to you. Are you able to break down the costing a little more?

Mr Bongi—I have some rough estimates, because these figures are still being worked up, but only for next year.

Senator WONG—Do you want to give me the rough estimates for next year? That might be easiest.

Mr Bongi—The fit-out costs will be of the order of \$20 million, but that is not part of OWS funding that sits within DEWR.

Senator WONG—I am confused about that, because I asked this question of DEWR today. They indicated that the component of their funding which had previously been for OWS when it was within the department had been transferred to the agency as part of the budget appropriation.

Mr Bongi—They have transferred some departmental funds for the costs of OWS, as it existed in the department, together with the new allocation.

Senator WONG—You are saying they will give you \$20 million to fit out over and above the \$97 million? Does DEWR know that?

Senator Abetz—I do not think you can ask the officer whether DEWR knows that. It is a rhetorical question for the record, which is fine.

Mr Bongi—We have no capital funding within our base, so it has to come from somewhere.

Senator WONG—So there is no capital funding in your OWS budget measure, is there?

Mr Bongi—That is correct.

Senator WONG—So you are getting \$20 million in capital funding, and then what?

Mr Bongi—On page 280 of the portfolio budget statement there is an indication of employee and supplier expenses. I expect the supplier expenses will be higher for next year, closer to \$20 million. We will have \$3.1 million or thereabouts for supplier costs. Within that component are legal expenses, travel, vehicle costs and recruitment.

Senator WONG—Of the \$32 million appropriated for 2006-07, because you are only dealing with that year, how much is on communications and advertising?

Mr Bongi—I do not have a specific item. That is included in—

Senator WONG—That is included in what?

Mr Bongi—Within the supplier costs and within the staffing costs.

Senator WONG—So communications and advertising is included in the suppliers line item with the amendment that you just outlined. Is that right?

Mr Bongi—That is correct.

Senator WONG—Do you have compliance measures broadly? Do you have any allocation for that?

Mr Bongi—We do not have a separate allocation for that. The way we do our compliance is to turn people to the exercise. We do not have it separately identifiable.

Senator WONG—Perhaps the best way of dealing with this, given the time, Mr Bongi, would be if you could you provide us with the breakdown that you have. That would be useful.

Mr Bongi—Sure. I am happy to do that.

Senator WONG—How many inspectors are you going to employ?

Mr Wilson—In respect of the number of inspectors, we will be, once we have completed our recruitment, heading towards about 200 inspectors. That compares with a total staffing number which we expect to be about 260.

Senator WONG—I want to clarify your understanding of the legislation that you are enforcing: under the Work Choices act, is it permissible for an employer with over 100 employees to terminate employees on the grounds of operational requirements?

Mr Wilson—That is our understanding.

Senator WONG—In those circumstances, the employee could then offer under Work Choices employment on an AWA or another industrial instrument with different, including reduced, conditions to those previously enjoyed.

Mr Wilson—If that were to occur—and, of course, that is hypothetical—there would then be, I suppose, some difficulty as to whether or not that was a termination for prohibited reasons on the basis that the person has been entitled to the benefit of an industrial instrument.

Senator WONG—If it were to the same employee, you say the employment would have been terminated for a prohibited reason—if they were offered reduced conditions.

Mr Wilson—I suppose the complicating factor that you are bringing into the hypothetical is that the person has been dismissed from their employment and then offered employment on the basis of another set of conditions. The fact that that occurs, at least on our broad understanding and ex the facts, would be that that would be a prohibitive reason termination.

Senator WONG—Unless the employer could establish that in fact the real reason was operational requirements and that operational requirements also require an offer on an AWA.

Mr Wilson—I think that is getting too far into the realm of hypotheticality.

Senator WONG—I am interested in what your view is about that.

Mr Wilson—Sure. I am uncomfortable going down that path because these, as you are aware, are fairly new and somewhat complex provisions and we need to think them through very carefully based upon the facts and the legal advice we obtain.

Senator WONG—I want to understand your position clearly: you agree that operational requirements enable or empower an employer to dismiss even if they have over 100 employees if the reason for dismissal is the grounds of operational requirements.

Mr Wilson—Yes, that is what the legislation says.

Senator WONG—But you say post-dismissal conduct such as offering an AWA on inferior conditions may infringe a provision of Work Choices.

Mr Wilson—You refer to it as post-dismissal conduct; I imagine there could also be circumstances that are pre-dismissal—in other words, where the person—

Senator WONG—I am asking post-dismissal.

Mr Wilson—In that circumstance, I would need to see the facts, I think, to work through—

Senator WONG—I need to understand your second answer, then; I might not have understood you.

Mr Wilson—I am getting lost as to which were the first and second answers.

Senator WONG—The circumstance is operational requirement dismissal, re-engagement of the same employee on an AWA with inferior conditions. You said that it might—I need to understand why you say that.

Mr Wilson—In the instance where a person has been terminated and offered re-employment on the basis of different conditions, then it may—and I am not saying always—may well be the case that the person has been terminated because of prohibited reasons which, as you are aware, are dealt with within the legislation.

Senator WONG—In this circumstance which prohibited reason would arguably be infringed?

Mr Wilson—Arguably, yes.

Senator WONG—Which prohibited reason would arguably be infringed?

Mr Wilson—Oh, I see.

Senator Abetz—Just so we are clear: this is still in your hypothetical of somebody—

Senator WONG—I am clarifying Mr Wilson's answer.

Senator Abetz—with more than 100 employees.

Senator WONG—Yes.

Senator Abetz—Because they would then still have available to them the right to make an unfair dismissal application, wouldn't they?

Mr Wilson—Sorry, I need to call on another person. I had overlooked the section. Okay. The particular provision that Mr Kibble from my office has just referred me to is the conjunction of sections 792 and 793 of the Workplace Relations Act. Section 793(1) says:

Conduct referred to in subsection 792(1) or (5) is for a *prohibited reason* if it is carried out because the employee, independent contractor or other person concerned:

... ..

- (i) is entitled to the benefit of an industrial instrument, an order of an industrial body or the Australian Fair Pay and Conditions Standard ...

Senator WONG—Okay. Would that occur if the job was then offered to a different person? Obviously, in the factual situation where you have the same employee being dismissed and then re-engaged, the *prima facie* case about the prohibited reason might be stronger there than if it is another person who is employed.

Mr Wilson—That chain of hypotheticals, I think, is going a little bit too far. We would really need to see the facts and the circumstances concerned.

Senator WONG—What about a decision to engage independent contractors instead of employees?

Mr Wilson—On the face of it, the provision that I just read out refers to independent contractors as well.

Senator Abetz—As I understand it, before Work Choices, genuine redundancies or operational requirements were part of the—

Senator WONG—There are a whole range of things I could say about that, but I am not going to respond.

Senator Abetz—overall provision, as was unfair dismissal. After Work Choices, with 100 or more employees, the unfair dismissal provision still applies.

CHAIR—We do need to explore this to some extent. I do understand that it is a totally new concept and, therefore, you do not have many cases on which to base this, but I am unwilling to let it go too far into the realms of 'what if' and 'what if' and 'what if'. So I will allow Senator Wong to go on as she is, but I do want to keep this reasonably short.

Senator WONG—I will try to do that. Mr Wilson, I understand you are talking hypotheticals, but your organisation is the enforcer, supposedly, so I am interested in whether

or not you believe there are prohibited reasons. Protection, for want of a better term, is available in circumstances where the employer chooses to move to an independent contractor based workforce.

Mr Wilson—First of all, as I am sure you recall, I am not a lawyer, so I need to be careful in that respect.

Senator WONG—I did not necessarily remember that, Mr Wilson.

Mr Wilson—But that qualification, I think, needs to be made. The point that I would put forward is that section 792(8) of the act brings in the test that the prohibited reason needs to be the ‘sole or dominant reason’ for the person doing the things which are then listed in section 793. Now, for the sake of going down the path that we are, I would say with some degree of comfort that, if the agency can establish that the sole or dominant reason was that the person was entitled to the protection of an award or industrial implement then, all things being equal, that would be sufficient for us to progress. But, obviously, how we progressed it in a particular matter would be subject to the facts and the legal advice that we applied to the circumstance.

Senator WONG—And ‘sole or dominant reason’ is a reasonably onerous fact to establish.

Mr Wilson—It is certainly a significant factor, yes.

Senator WONG—Is OWS still conducting an investigation into the events at Cowra abattoir?

Mr Wilson—The OWS has not yet determined its final position in relation to those matters. There has been work by the inspector and others over a period of time, but we are still conducting that work.

Senator WONG—Has the OWS provided advice to government as to its preliminary views regarding whether there were any breaches of the act?

Mr Wilson—Can I have the question again.

Senator WONG—You said you have not finally determined your investigation. Have you provided advice to government as to your view regarding whether the act has been breached?

Mr Wilson—We have not provided a concluded view. We have certainly had discussions with the department and others about some preliminary views, but we have not put our concluded view yet.

Senator WONG—What is your preliminary view?

Mr Wilson—I would prefer not to discuss that here because the matter is still ongoing.

Senator WONG—What sections of the act are you considering in terms of your determination as to whether there has been any breach?

Mr Wilson—There were, I suppose, two different areas that we were considering for potential breaches. The first is section 719, which relates to a breach of an applicable provision term, which is the way it is put. It is effectively a breach of the award or agreement which may apply. There is another section which we are considering, which is the one that we

have just been talking about: whether or not the people may have been terminated because they were entitled to the benefit of an award or industrial instrument.

Senator WONG—When do you anticipate your investigation will be concluded?

Mr Wilson—We have asked that the work be concluded within about a month of now. Obviously, you would be aware that these kinds of things are not definite processes, but we think it appropriate to conclude it within that period.

Senator WONG—As a result of these investigations, have you recommended any alterations to the act to DEWR?

Mr Wilson—Not as a result of these investigations.

Senator WONG—Have you recommended any suggested amendments or consideration of amendments of the act to DEWR?

Mr Wilson—Not to the act, no.

Senator WONG—To anything?

Mr Wilson—You are asking me if I have recommended any amendments to the act and I am saying I have not.

Senator WONG—Any to regulations?

Mr Wilson—There is one area in respect of the regulations in which we have identified an ambiguity. Because of the fact that it applies to particular investigations, it is probably not appropriate that I refer to that.

Senator WONG—Does that relate to this investigation?

Mr Wilson—No, it is not related to this investigation.

Senator WONG—What contact, if any, with the minister's office was there prior to your investigation into the terminations at Cowra abattoir?

Mr Wilson—Commencement of the Cowra investigation predated my engagement by OWS. My understanding is that there is a fairly fast sequence of events. In the fairly strict linear sense, I believe the first public awareness of the matter was from an article in the *Canberra Times* and very shortly after that there were conversations with all manner of people, I understand.

Senator WONG—Was there a discussion with the minister's office?

Mr Wilson—There certainly have been discussions with the minister's office. If you are getting to the point of asking whether there was a direction to attend at the request of the minister, my understanding is that there was not.

Senator WONG—What is the usual procedure for the commencement of OWS investigations? Can you investigate of your own motion or does it generally need to be referred or requested by either one of the industrial parties—the employer or the employee?

Mr Wilson—The answer to that is all those things. The policy which we have adopted, and obviously will be refining, is to investigate, for all manner of reasons: there may well be some public or parliamentary comment about a matter; there might be some media comment; or

there may well be a complaint from an employee, their family or from any number of people—a union. The way that we approach those sorts of matters is to consider, on the merits of each particular case, whether we should be conducting an investigation.

Senator WONG—Was there any request or referral by the employer or any employee to OWS prior to the commencement of the investigation?

Mr Bongi—The answer is no.

Senator WONG—I presume someone in the department would have some record of contact with the minister's office in relation to this investigation.

Mr Wilson—I do not think we keep that level of records.

Senator WONG—How many times has the minister's office been in contact with OWS regarding Cowra abattoirs?

Mr Wilson—I am not able to give you an indication. As is normal between agencies and the minister's office, I do not think we would be able to hazard a guess at the number of occasions of our infrequent conversations about matters of the work of the agency.

Senator WONG—Would the majority of contact in the last, say, month with the minister's office have been in relation to Cowra abattoirs?

Mr Wilson—No.

Senator WONG—You indicated that you became aware of the media reports. Did the minister's office contact you prior to the media reports or shortly after the media reports?

Mr Bongi—They contacted me in the evening or late afternoon of the day that it appeared in the *Canberra Times*. I had already spotted it in the *Canberra Times* and had certainly made a mental note to send someone out there.

Senator WONG—And you indicated that to the minister's office?

Mr Bongi—Yes.

Senator WONG—Was it an adviser that contacted you?

Mr Bongi—Yes, it was.

Senator WONG—So it was not a departmental liaison officer or ministerial liaison officer? I am not sure what they are called in the Commonwealth but I mean a political adviser.

Mr Bongi—Yes.

Senator WONG—Was it in your office or on your mobile phone?

Mr Bongi—I do work on weekends, but it was on the mobile phone.

Senator WONG—Was that the first time you had been contacted by a political adviser from the minister's office on your mobile?

Mr Bongi—No, I have been contacted through the years on my mobile.

Senator WONG—What was the purpose of the contact from the minister's office?

Mr Bongi—To make me aware of it.

Senator WONG—Did they ask whether or not an investigation would be undertaken?

Mr Bongi—They asked me if I had noted it in the papers and whether I was going to do something about it. I indicated that I had an investigator that I would send out there.

Senator WONG—So they rang to check that you were going to do something about it?

Mr Bongi—Yes, in the broadest of terms.

Senator WONG—Have you or any other officer had requests about any specific aspect of the investigation, such as a request that certain interviews occur?

Mr Bongi—No.

Senator WONG—Were you advised or are you aware of any direct contact between the employer, the management of Cowra abattoirs, and the minister's office?

Mr Bongi—No.

Senator WONG—Have you had contact with the employer?

Mr Bongi—I tried to contact the employer but they would not return my call. So I had an investigator there first thing on the Monday morning.

Senator WONG—And that is the same investigator as is still working on the case?

Mr Bongi—Yes.

Senator WONG—How many investigators are there on this case? Is there just the one or many?

Mr Bongi—At the moment there is just one. There are a few matters that we wish to continue with in terms of quality reviews. There are other investigators who will review the file.

Senator WONG—Were you with OWS when it was in the department?

Mr Bongi—For a very short time. Only since 10 January.

Senator WONG—Is it usual for political advisers to give you a call to ask whether or not you are going to investigate a particular matter?

Senator Abetz—Just be careful. The evidence was that he was contacted. It was not about whether something had been investigated, I understood, but whether or not he had seen an article in the *Canberra Times*. His evidence was that he had seen it, and he had already made a note to investigate it.

Senator WONG—I think his evidence was that he was asked whether he was going to do something about it.

Mr Bongi—I was a brand new CEO of this organisation, and perhaps there was a bit of hand holding.

Senator WONG—By the minister's office of you? I am not quite clear about what you are saying.

Mr Bongi—OWS was established on 27 March. For the first two weeks I was its acting head. So I still had my training wheels.

Senator WONG—So the minister's office was assisting you. That is what you meant by 'hand holding'?

Mr Bongi—In a sense, yes.

Senator WONG—I am trying to be fair to you, Mr Bongi. I am just trying to be clear about what you meant by that.

Mr Bongi—That is how I took it.

Senator BARNETT—Did you have assistance from the department?

CHAIR—Senator Wong has the floor.

Senator WONG—Thank you.

Senator Abetz—Chair, what was in the mind of the minister's office and the adviser who rang as to whether they thought they had to hold this official's hand—

CHAIR—Minister, that is for Senator Wong to ask and for Mr Bongi to answer, with due respect.

Senator WONG—I am actually moving on. Mr Wilson, when did you start in this position?

Mr Wilson—From recollection, 10 April.

Senator Abetz—It has been a long time!

Senator WONG—Therefore I cannot ask you; I will have to ask Mr Bongi. Mr Bongi, I think on 4 April there was a public announcement by the minister that the management of Cowra abattoir had withdrawn the letters of termination. Was that something the OWS was aware of before the announcement?

Mr Bongi—Yes.

Senator WONG—How did you become aware of it?

Mr Bongi—Our inspector talked to the employer and got that advice. The employer later confirmed that advice in writing to us.

Senator WONG—Did you want to add anything, Mr Kibble? I just want to give you the opportunity to give Mr Bongi some advice.

Mr Kibble—That is fine.

Senator WONG—Did you advise the minister's advice of this?

Mr Bongi—I cannot recall.

Senator WONG—I am trying to work out whether the minister's announcement was the result of your providing advice of the information you received or whether it came through some other source.

Mr Bongi—I am informed yes, we did.

Senator WONG—You advised the minister's office?

Mr Bongi—I cannot recall.

Senator WONG—What was the answer, ‘Yes, I did,’ in response to?

Mr Kibble—We did inform the minister’s office that the manager at Cowra had advised us in writing that he was intending to withdraw the termination letters next day.

Senator WONG—And that was prior to the minister’s announcement?

Mr Kibble—Yes.

Senator WONG—To your knowledge, was the minister’s office aware of that they had withdrawn the notices before you advised them?

Mr Kibble—I am not aware.

Senator WONG—I just want to know, when you advised them were they already aware of it?

Mr Kibble—No.

Senator WONG—No, what?

Mr Kibble—That is the problem. If you can clarify the question—they only became aware that the employer was going to withdraw when we informed them.

CHAIR—Senator Wong, we have about five minutes.

Senator WONG—I am really trying to work through. At the time you advised them, did you already have the letter to which you referred, Mr Bongi?

Mr Bongi—It was an email, yes.

Senator WONG—An email from the manager?

Mr Bongi—Yes.

Senator WONG—When you advised the minister’s office or subsequent to receiving this email, did you provide this information to the employees concerned?

Mr Kibble—I am not aware that we did, no.

Senator WONG—Can I ask why that was the case?

Mr Kibble—Because the employer indicated that he was going to withdraw the letters. The next day he was meeting with the employees and the employees’ representatives, and that is what we indicated to the minister’s office.

Senator WONG—Presumably you did not advise the union either.

Mr Kibble—No.

Senator WONG—So at any point prior to the minister’s announcement OWS did not take it upon itself to advise the employees of management’s decision.

Mr Kibble—I am not aware of whether we did that, no. We are also not aware of whether the employer may have mentioned it to the union or the employees prior to the formal meeting the next morning.

Senator WONG—By which stage was the matter already public as a result of the minister’s announcement?

Mr Kibble—The minister had made his announcement that the employer intended to withdraw the termination letters. Of course, it was a matter for the employees whether they accepted the withdrawal.

Senator WONG—I am sorry?

Mr Kibble—It was a matter for the employees as to whether they wished to accept the withdrawal of the termination letters.

Senator WONG—Was the action of the withdrawal of that as a termination something that OWS suggested to the manager or the employer as a resolution to the dispute?

Mr Kibble—I am not aware that that specific advice was provided by the inspector, no.

Senator WONG—Did the employer in its email to you indicate the reasons why it had chosen to withdraw the termination notices?

Mr Kibble—I cannot recall the contents of the email and I do not have it with me either.

Senator WONG—Have there been any other matters where prosecutions or investigations have been referred to you by the minister's office?

Senator Abetz—Chair, just in case there is a suggestion that a matter has been referred for prosecution, I think the evidence has already been that it was to draw their attention to an article. As fisheries minister, can I indicate that every now and then there is a story in the *Cairns Post* or on ABC radio that an illegal fishing boat has been spotted. Then my office rings up AFMA or Coastwatch and says, 'Are you guys on to it? Are you aware of it? Can you undertake an investigation?'

Senator WONG—Have there been other occasions where you have had such contact from the minister's office?

Senator Abetz—And there is nothing wrong with that. State police ministers do it.

Senator WONG—If there is nothing wrong with it then you will not mind me asking the question and him answering.

Senator Abetz—I just do not want any implications being made; that is all.

Senator WONG—Have there been other occasions since the inception or introduction of Work Choices on which the minister's office has contacted you regarding either media articles or to discuss whether or not an investigation will occur?

Mr Wilson—Can I take you back to some earlier evidence, which was along the lines of how we become involved with matters. The view that I put forward at that time—

Senator WONG—Mr Wilson, you were not there.

Mr Wilson—No, but you are asking since the commencement of Work Choices.

Senator WONG—Yes.

Senator Abetz—Can he finish his answer?

Senator WONG—I am sorry; I thought you were answering about the Cowra issue.

Mr Wilson—No, I am not answering about Cowra. I saw you as asking a question more generally.

Senator WONG—Yes, I was.

Mr Wilson—In relation to that question the answer succinctly is yes, but that is in the context that we will take the inquiries from wherever they come, whether they are from the media, from a parliamentary question, from a minister or from a worker.

Senator WONG—I accept that. I just want to know on how many occasions there has been contact from the minister's office in relation to an investigation—in relation to how many investigations or how many issues.

Mr Wilson—We do not have that information with us and I am not sure that we could ascertain it, to be honest.

Senator Abetz—While the senator is thinking, if there is a spate of burglaries somewhere and the media beats that up, often a state police minister will say, 'I have contacted the commissioner of police to investigate these complaints.' It is normal practice in all sorts of areas.

Senator WONG—Are you able to provide to us a copy of the email?

Mr Wilson—You are talking about the email from the employer to OWS? I think we should take that on notice, but I am not sure that we should be providing things for matters which are still on foot.

Senator WONG—Subsequent to the determination; you said it would be about a month?

Mr Wilson—Correct.

Senator WONG—Will that be made public?

Mr Wilson—The short answer is yes. Whether that is a policy for all matters, we will have to determine how we actually do publicise or provide information. Obviously, you need to bear in mind that many investigations don't lead to a litigation determination. In those instances we could not.

Senator WONG—Is it your intention that your determination on the Cowra investigation be made public?

Mr Wilson—I think it would be impossible for us to avoid that.

CHAIR—That completes today's hearing. Thank you, gentlemen, very much indeed. Thank you, Minister.

Committee adjourned at 11.50 pm