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SENATE

STANDING COMMITTEE ON EDUCATION, EMPLOYMENT AND
WORKPLACE RELATIONS

ESTIMATES

(Additional Budget Estimates)

THURSDAY, 21 FEBRUARY 2008

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**SENATE STANDING COMMITTEE ON
EDUCATION, EMPLOYMENT AND WORKPLACE RELATIONS
Thursday, 21 February 2008**

Members: Senator Marshall (*Chair*), Senator Watson (*Deputy Chair*), Senators Boyce, Campbell, Fisher, Sterle, Stott Despoja and Wortley

Senators in attendance: Senators Abetz, Boswell, Boyce, Campbell, Fielding, Fisher, Heffernan, Humphries, Marshall, McEwen, Parry, Ronaldson, Sterle and Wortley

Committee met at 9.02 am

EMPLOYMENT AND WORKPLACE RELATIONS PORTFOLIO

In Attendance

Senator Wong, Minister for Climate Change and Water

Department of Education, Employment and Workplace Relations

Portfolio overview and major corporate issues

Cross portfolio

Ms Lisa Paul, Secretary

Mr Finn Pratt, Acting Associate Secretary

Dr Wendy Jarvie, Deputy Secretary

Mr Grahame Cook, Deputy Secretary

Mr Bill Burmester, Deputy Secretary

Mr Jim Davidson, Deputy Secretary

Ms Malisa Golightly, Deputy Secretary

Mr Graham Carters, Deputy Secretary

Mr John Kovacic, Acting Deputy Secretary

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

Mr George Kriz, Chief Lawyer and Group Manager, Procurement, Assurance and Legal Group

Mr Jeremy O'Sullivan, General Counsel and Group Manager, Legal Group

Mr Simon Gotzinger, Branch Manager, Legal Branch, Legal Group

Mr Brien Armstrong, Branch Manager, Internal Audit

Ms Kylie Emery, Branch Manager, Internal Audit

Mr Bernard O'Donnell, Investigations

Mr Glen Archer, Chief Information Officer and Group Manager, Information Services Group

Mr John Burston, Chief Information Officer and Group Manager, IT Services Group

Ms Kerrie Reyn, Branch Manager, IT Applications, IT Services Group

Mr Vipin Mahajan, Branch Manager, IT Business, IT Services Group

Mr David Durry, Branch Manager, IT Facilities, IT Services Group

Mr Ian Rose, Acting Branch Manager, IT Support, IT Services Group

Ms Margaret Pearce, Group Manager, People, Communications and Network Group

Ms Chris Silk, Branch Manager, People Management, People, Communications and Network Group

Ms Kristina Hopkins, Branch Manager, Human Resources, People, Communications and Network Group

Ms Meredith Fairweather, Principal Advisor, Communications, People, Communications and Network Group

Employment

Ms Lisa Paul, Secretary

Ms Malisa Golightly, Deputy Secretary

Ms Margaret Kidd, Group Manager, Employment Business Services Group

Mr Stephen Moore, Group Manager, Employment Systems Group

Ms Debbie Mitchell, Acting Group Manager, Income Support Payments Group

Ms Jo Caldwell, Group Manager, Intensive Support Group

Dr Alison Morehead, Group Manager, Job Search Support Group

Mr Tony Waslin, Group Manager, Specialist Services Group

Ms Sharon Stuart, Assistant Secretary, Disability Employment Services Branch

Mr Ali Jalayer, Assistant Secretary, Employment Pathways Branch

Mr Des Kiran, Acting Assistant Secretary, Income Support Program Branch

Ms Sue Beitz, Assistant Secretary, Payment Initiatives Branch

Mr Greg Watson, Acting Assistant Secretary, Payment Integrity and Assurance Branch

Mr Michael Hynes, Director, VRS Performance and Finance, Vocational Rehabilitation Taskforce, Specialist Services Group

Workplace Relations

Ms Lisa Paul, Secretary

Mr Finn Pratt, Acting Associate Secretary

Mr John Kovacic, Acting Deputy Secretary

Ms Sandra Parker, Group Manager, Workplace Relations Policy Group

Mr Ted Cole, Principal Advisor, Workplace Relations Policy Group

Ms Natalie James, Chief Counsel, Workplace Relations Legal Group

Mr David De Silva, Assistant Secretary, Legal Policy Branch

Mr David Bohn, Assistant Secretary, Legal Policy Branch

Mr Bob Bennett, Assistant Secretary, Legal Policy Branch

Mr Peter Cully, Assistant Secretary, Legal Policy Branch

Ms Elen Perdikogiannis, Assistant Secretary, Legal Policy Branch

Mr Michael Maynard, Group Manager, Workplace Relations Implementation Group

Mr Derren Gillespie, Assistant Secretary, Remuneration Tribunal Secretariat, Workplace Relations Implementation Group

Mr Tom Fisher, Group Manager, Office of the Australian Safety and Compensation

Council; and Federal Safety Commissioner, Office of the Federal Safety Commissioner

Ms Helen Marshall, Assistant Secretary, Office of the Federal Safety Commissioner

Workforce Participation

Ms Lisa Paul, Secretary

Mr Graham Carters, Deputy Secretary

Mr Barry Sandison, Group Manager, Working Age Policy Group

Ms Sharon Rose, Assistant Secretary, Disability and Mature Age Policy Branch
Ms Robyn Shannon, Assistant Secretary, Parent and Youth Policy Branch
Ms Stephanie Bennett, Assistant Secretary, Employment Policy Branch
Mr Bob Harvey, Group Manager, Indigenous Employment and Business Group
Mr Michael Manthorpe, Group Manager, Labour Market Strategies Group
Mr Bruce Whittingham, Group Manager, Research and Evaluation Group
Dr Paul Volker, Assistant Secretary, Evaluation and Program Performance Branch
Mr Scott Matheson, Assistant Secretary, Research and Data Analysis Branch

Workplace Authority

Ms Barbara Bennett, Director
Ms, Penny Weir, Head of Corporate
Ms Jo Major, General Manager, Fairness Test (Assessment and Strategy)
Ms Helen Bull, General Manager, Fairness Test (Policy and Assessment)
Ms Lily Viertmann, Chief Financial Officer

Workplace Ombudsman

Mr Nicholas Wilson, Workplace Ombudsman
Mr Alfred Bongi, Deputy Workplace Ombudsman
Mr Michael Campbell, Executive Director—External Affairs Branch
Mr Leigh Johns, Chief Counsel
Ms Anya Moore, Executive Director—People Development
Mr Mark Scully, Chief Financial Officer
Mr Bill Loizides, Executive Director—Field Operations
Ms Sherry Pullen, Executive Director—Policy

Australian Industrial Registry

Mr Doug Williams, Industrial Registrar and Chief Executive
Mr Terry Nassios, General Manager, Statutory Services
Mr Dennis Mihelyi, Chief Financial Officer

Australian Fair Pay Commission

Ms Jennifer Taylor, Director

Comcare

Mr Martin Dolan, Acting Chief Executive Officer
Mr Steve Kibble, Acting Deputy Chief Executive Officer

Australian Building and Construction Commission

Mr John Lloyd, Australian Building and Construction Commissioner
Mr Nigel Hadgkiss, Deputy Commissioner, Operations
Mr Ross Dalglish, Deputy Commissioner, Legal
Ms Heather Hausler, Assistant Commissioner Corporate
Mr John Casey, Chief Financial Officer

CHAIR (Senator Marshall)—The committee is continuing the examination of the Education, Employment and Workplace Relations Portfolio, beginning with outcomes 7 and 8. Copies of yesterday's opening statement setting out the procedural requirements of the estimates process are available from the secretariat. I remind the department that the committee has fixed Friday, 11 April 2008 as the date for the return of answers to questions on notice. Today's proceedings will be suspended for breaks as indicated on the agenda. I ask

witnesses called upon for the first time to answer a question to state clearly their name and capacity in which they appear for the *Hansard* record. I remind participants that oral evidence and documents in estimates proceedings are part of the public record.

I welcome the minister representing the Minister for Education, Employment and Workplace Relations, Senator Penny Wong, the Secretary to the Department of Education, Employment and Workplace Relations, Mr Lisa Paul, and other departmental officials as well as observers to this public meeting. Minister, do you want to start with an opening statement?

Senator Wong—No, thank you.

CHAIR—Ms Paul?

Ms Paul—No, thank you.

[9.03 am]

CHAIR—We will move to questions on outcome 7, Efficient and effective labour.

Senator BOYCE—I have some questions on the Work for the Dole program. Could we run through the statistics for the last 12 months for how many people have been involved in Work for the Dole?

Dr Morehead—There were 37,700 total commencements for the financial year 2007-08 up until 31 December 2007.

Senator BOYCE—So, for the half-year basically we have 37,000?

Dr Morehead—Yes.

Senator BOYCE—What was the rest of the figure? Could you characterise these people for me? Can you give me some sense of their ages?

Ms Golightly—If you need age breakdown we would need to go back and analyse those figures, but we could do that.

Senator BOYCE—I am not wanting the exact figures for the age breakdown but a general overview of what those 37,700 consist of.

Dr Morehead—Those people are made up of job seekers on Newstart allowance and parenting payment and other activity tested income support payments, who have an obligation with their payment to undertake activities in return for receiving their income support. It includes people who do Work for the Dole after six months of being unemployed, when they enter into a mutual obligation period. There is a range of activities that they can do in that period. One of them is Work for the Dole. It is the default activity if there is not another activity.

Senator BOYCE—Sorry, I am having trouble hearing you. The acoustics in this room are awful and my ears are probably getting old, too.

Dr Morehead—When a job seeker enters a mutual obligation period, after being unemployed for six months, there is a range of activities that they can choose to do to meet their participation requirements.

Senator BOYCE—Which includes volunteer work of particular sorts as well as Work—

Dr Morehead—That is right.

Senator BOYCE—Could you now tell me how many people are in a job in the Work for the Dole scheme and how many were undertaking other activities?

Ms Golightly—It does not work that way. They are not in a job while they are on Work for the Dole. They may be doing work, but it is—

Senator BOYCE—But it is training?

Ms Golightly—Yes.

Senator BOYCE—Perhaps it is more about people who are becoming work ready as opposed to people who are undertaking voluntary community activities?

Dr Morehead—The aim of the Work for the Dole program is to provide the job seeker with skills development in terms of work habits. It is about getting some experience in turning up at a certain place at a certain time, having a supervisor and working in a scheme.

Ms Golightly—You may be looking for a breakdown between those activities which may have been more community based versus other activities? If that is the question I think that will be difficult because most of these things are community based and it would be a bit hard to disaggregate whether it was totally work for the community versus simply skills acquisition. Each activity is supposed to have a combination of both.

Senator BOYCE—So, volunteering at the school tuckshop and having to be there at 8.30 is part of training?

Ms Golightly—That is right. But you could also consider that to be a community—

Dr Morehead—Yes.

Ms Golightly—I am not sure whether this goes to your question, but we can certainly give you a breakdown of people who are in Work for the Dole versus those who separately volunteer to do other activities in the community sector. Is that something that would help you?

Senator BOYCE—And who are doing so because of mutual obligation requirements?

Ms Golightly—Yes, we can get that.

Senator BOYCE—That would be very helpful. One of the key aspects of Work for the Dole was, as you said, the idea of developing work habits; this builds self-esteem, to be required in an activity, which to me feeds into the social inclusion aspects that we are talking about. I am trying to characterise what has happened up to December the 31st around that individual capacity building. As to outcomes from Work for the Dole, how are we measuring those and what are they?

Dr Morehead—Three months after someone has finished a Work for the Dole placement we do follow-up sample surveys. What we found for that work for the dole is that it certainly is not one of our better performing labour market programs. The results there are that 59.8 per cent were not employed or in education and training three months after exiting Work for the Dole.

Senator BOYCE—Are you saying this is based on a sample?

Dr Morehead—Yes. It is called our post program monitoring survey, which we do after people exit labour market programs.

Senator BOYCE—So, 59 per cent are not employed or in training?

Dr Morehead—Or in education three months after finishing their Work for the Dole placement.

Senator BOYCE—And then what? What does the department do about that?

Dr Morehead—Then they are back into searching for jobs and working with their Job Network member and possibly then being placed into more targeted programs that are about actually ending up with an employment outcome rather than just teaching someone work habits, which is what the Work for the Dole program does.

Senator BOYCE—So, you are doing this as a step-by-step program at the moment?

Dr Morehead—Yes, the Work for the Dole program is the default. As I said, it is not the best labour market program if you are trying to get someone into an employment outcome. It is for teaching people how to have work habits.

Senator BOYCE—People become eligible for Work for the Dole programs for technical reasons/personal development reasons?

Dr Morehead—They become eligible for technical reasons. People can also volunteer to do Work for the Dole if they so desire when they are unemployed.

Senator BOYCE—What number of volunteers would you have and what number of people would go there because the box got ticked?

Ms Golightly—We would have to get you the exact percentage. We could do that during the day. I think it is a very low number volunteering. Most of them would be because they hit a particular length of time in being unemployed and have to go to it.

Senator BOYCE—Could you discuss at all why there is a low number of volunteers for Work for the Dole?

Dr Morehead—The reason that there is a low number of volunteers for work for the dole is that it would not be something that many people would think was going to produce a very quick job outcome. If someone is unemployed and looking for a quick job outcome they would probably focus on wanting to do something that was more skills related and more directly related perhaps to a vocational skill they were trying to pick up in order to get employed.

Ms Golightly—And also if they are going to volunteer, they may take other opportunities to just do volunteer work. They do not have to go to work for the dole.

Senator BOYCE—I wanted to talk a little about the welfare to work aspect of it. Can you give me the figures for the welfare to work people who are encapsulated in that?

Ms Golightly—The parents mainly.

Senator BOYCE—It is primarily single mothers that we are talking about, is it not?

Ms Golightly—Single parents, yes.

Dr Morehead—Parents have a part-time participation requirement as to, say, an unemployed single person on Newstart Allowance. The amount of hours that they do in work for the dole is lower than someone with full-time participation requirements. Parents, for example, are only expected to get part-time work and other people are expected to get full-time work when they are on the dole. So, they do 150 hours of work for the dole in total over a 26-week period, which usually works out at about six hours a week if you are a parent.

Senator BOYCE—How many parents are involved in that program on the same six-month basis presumably?

Ms Golightly—We will get that figure for you and have it here.

Senator BOYCE—I was also looking for some age breakdowns and some descriptive information about the characterisation of that group. Minister Shorten announced a reform to Welfare to Work programs last week. Did anyone from this group attend that Mental Health Council meeting? Were you at that?

Ms Rose—Yes, I was.

Senator BOYCE—It seems that some work is going on around how we better relate Welfare to Work to the needs of parents. Could you talk through that?

Ms Rose—The focus which probably could be related to the parent issue is that there was discussion about the job capacity assessment, which is the mechanism to go on to different income support payments. Certainly, the government announced its intention to review that job capacity assessment. In addition, Minister O'Connor and Parliamentary Secretary Shorten jointly released the terms of reference for the National Mental Health and Disability Employment Strategy. It is anticipated that many of the issues raised on Friday will be the subject of consultation and submissions to that inquiry.

Senator BOYCE—I did want to talk a little bit about job capacity assessment. The impression I came away with was that Welfare to Work had been a start and needed refining and reforming to achieve its objectives. Can you talk about what sort of reforming you think would make Welfare to Work a more useful program?

Senator Wong—I think the senator is asking Ms Rose to give an opinion about public policy matters. If she has questions about what reforms are in place or what the agenda is—

Senator BOYCE—I will refer that to you, Minister.

Senator Wong—Are you asking what reforms are required of your government's Welfare to Work policy to make it work?

Senator BOYCE—No, I am asking you what refining you thought was required with Welfare to Work?

Senator Wong—As I recall, I made some statements in opposition about your government's approach to Welfare to Work. I understand Minister O'Connor has announced a review of a range of programs. I am sure the results of that review will result in the government addressing this issue in a more comprehensive way.

Senator BOYCE—How are you proposing to conduct this review?

Senator Wong—I would refer that to the relevant officer.

Ms Paul—Perhaps we can talk through the timetable for the review, which Minister O'Connor and Mr Shorten announced.

Mr Carters—When we are talking about the review, there are two reviews that are relevant to the Welfare to Work agenda. The first one is the Mental Health and Disability Employment Strategy, which is being done as part of the social inclusion agenda of the government, which is what Ms Rose was referring to. The second one, which does relate more to the parents but also to people with disabilities, is the broader review of Job Network, which Minister O'Connor is conducting. He sought submissions on that broader review of Job Network and related employment services. What that broader review will do will be to allow the government to decide how the new employment services model will operate, particularly from July 2009. It is a very broad-ranging review. There have been calls for submissions. Many submissions have been received. There is a lot of analysis to be done of those submissions to enable the department to inform the government of what sorts of proposals are being made and to provide recommendations on that. That does very much go to the heart of what had previously been the Welfare to Work client group and how they will be serviced into the future.

Senator BOYCE—I must admit that I am having some difficulty understanding the separation between the two in that it all comes back together in the end, does it not?

Mr Carters—The Welfare to Work groups are all serviced through our employment services. The employment services basically service everybody who is on income support. In that context that review is really what will determine where the government goes in terms of a new model from July 2009.

Ms Paul—So, you can see the Job Network review, the employment services review that Minister O'Connor has announced, as an overarching review about the whole system that supports these people, and the inquiry Minister O'Connor and Parliamentary Secretary Shorten announced being focused on particular people, particularly people with particular needs around mental health and disability.

Senator BOYCE—So, we have an administrative review as well as a service review, so to speak?

Ms Paul—That is a way of putting it, yes.

Senator BOYCE—So, there are two looking at services and one looking at administration; is that a fair summation?

Ms Paul—That is a fair summation.

Senator BOYCE—I think Mr Rose is the appropriate person to direct this to. Could we talk now a little about the aspect of the Welfare to Work system for people with disabilities and mental health issues? That is a separate review?

Ms Rose—What was announced is that there will be a National Mental Health and Disability Employment Strategy, which will take submissions from individuals and organisations for them to have the opportunity to address some of the terms of reference, which look at all aspects of how they can be assisted into employment. It is not specifically

relating to Welfare to Work per se, it is just seeking people's advice on how those particular groups can be best helped.

Senator BOYCE—I think it is being characterised as a reform of Welfare to Work.

Ms Rose—I do not think that is the intention of the review, as was announced on Friday. The Mental Health Council's function last Friday happened to coincide with the release of the terms of reference for this review. But their event was certainly the opportunity to speak to ministers about what they had identified as particular issues with Welfare to Work. But I think it is fair to say that this review is not in any way an attempt to address those issues as they were identified.

Senator BOYCE—Do you have figures or does anyone have figures for the number of people with disability who were placed in positions, say, in the last six months? Let's keep the figures standard.

Ms Paul—Can I note that the disability support pension responsibility has moved to a different portfolio, the Families, Housing and Community Services portfolio. We may be able to answer the question, but I do need to put on the record that that is no longer with this portfolio.

Mr Carters—We can speak to employment services.

Senator BOYCE—You would know how many people there are with disability who got a job in the last six months through Welfare to Work, would you not?

Mr Carters—With the Welfare to Work changes that started on 1 July 2006, people who could work 15 to 29 hours a week went on to unemployment benefits, Newstart allowance, after six months, rather than the disability support pension, and therefore they had a requirement to look for part-time work. Of that group, 12 per cent were off income support six months after they went on to payment.

Senator BOYCE—Are we talking about 2006-07?

Mr Carters—Yes.

Senator BOYCE—So, 12 per cent had stopped getting income support?

Mr Carters—That is correct. That is compared with previous years where people were on the disability support pension, and the comparable figure is five per cent. There is definitely an increase in those who obtained employment as a result of that service.

Senator BOYCE—I do not think we can get too excited about it more than doubling at those sorts of levels. Do we actually have numbers? When you say 12 per cent—was that a number?

Mr Carters—We do have numbers. The annual report of the previous Department of Employment and Workplace Relations on page 167 shows that the number of Newstart or youth allowance partial capacity to work group recipients was 24,957. That is by the end of June, so that is the first year of Welfare to Work, and 3,710 had moved off income support.

Senator BOYCE—Are we right in assuming that 99 per cent of those people moved off income support because they got jobs? Are there any other reasons?

Mr Carters—No, it is certainly not 99 per cent. There are other reasons for moving off income support. For example, it could be that the income of a partner of the recipient may have precluded their receiving payment. All sorts of other things could have happened as well. They could have left the work force and so on. There is actually a longitudinal survey conducted as part of the Welfare to Work evaluation. In particular we interviewed people after they had left income support to see what the circumstances were. In terms of people with disabilities, about three-quarters of those who went off income support went into employment.

Senator BOYCE—Are people with mental health issues separate or included within the disabilities package here?

Mr Carters—They are part of the group of people with disabilities.

Senator BOYCE—Do you at any stage have differing statistics for people with disabilities and people with mental health concerns? Do you split the two in any way?

Mr Carters—Not in terms of employment outcomes, no.

Senator BOYCE—Or in terms of inputs?

Mr Carters—There are figures that give estimates of the number of people on, say, disability support pension who have mental health issues. About 27 per cent of that population fall into that category.

Senator BOYCE—So 27 per cent of what you would characterise as people with disabilities are people with mental health issues?

Mr Carters—It is actually people on the disability support pension. It is a defined group. Yes.

Senator BOYCE—So, you are just measuring who is on a disability support pension?

Mr Carters—In that context, yes. And that is their primary medical condition.

Senator BOYCE—Can we talk a little about the Job Capacity Assessment program. I certainly have gained the impression that there is a need for refinement there. Could you talk me through what are considered by the department are the issues with job capacity assessment?

Mr Carters—The Job Capacity Assessment program is actually owned by the Department of Human Services.

Ms Paul—It is actually not the responsibility of this portfolio.

Senator BOYCE—So, you contract them to undertake—

Mr Carters—No, the Department of Human Services contracts providers to deliver that service. We do not contract.

Senator BOYCE—I understood from Ms—

Ms Rose—It is hard for us to answer those.

Senator BOYCE—Ms Paul that she had a responsibility for job capacity assessment? Is that not right?

Mr Carters—No. Ms Rose has responsibility for disability employment services and policy. The Job Capacity Assessment program is obviously important to us because it determines what employment service people go to. But ownership of that assessment process is not ours.

Senator BOYCE—Again, there is possibly a need for more coordination; is that the case?

Ms Paul—No. It is just that that is how the responsibility lies, and has done for some time. We work closely with the Department of Human Services, naturally, and they with us in this area. It is a key tool obviously for the customers that we are interested in.

Senator BOYCE—Do you administer the Utilities Allowance? That seems to be covered in Outcome 7. I must admit I am still feeling my way in terms of who does what.

Ms Golightly—There is an appropriation for utilities announced for some of our income support recipients. The overall policy—

Senator BOYCE—So, it is not a global effort?

Ms Golightly—It is with FaCSIA, yes.

Senator BOYCE—The same would apply with CDEP? It is just a peripheral for you; is that right?

Ms Paul—CDEP was with this portfolio. With our new government, the responsibility for delivery of CDEP rests with the FaCSIA portfolio. However, we retain an interest obviously in the employment outcomes for Indigenous people broadly and in the specific in terms of job outcomes for Indigenous people on CDEP. It really depends where you want to go. But in terms of the overall payment, we are not responsible for that.

Senator BOYCE—You do not administer it?

Ms Paul—That is correct.

Senator BOYCE—I was more interested in the administration. I am happy to hand over to Senator Parry.

Senator PARRY—I missed the first couple of minutes of the opening of today. As to the general change in the distribution of responsibility—I know Senate Boyce went through that—I wanted to get an overview on what has changed and what has moved. Was that covered before?

Ms Paul—Not in the broad. We have probably got there by default but, as an overview, Jenny Macklin's portfolio—that is, Families, Housing, Community Services and Indigenous Affairs—has taken responsibility for the disability support pension and CDEP. Those are the main changes in the area that this committee is interested in today. On the outcomes, which were covered yesterday, this department has gained responsibility for child care and early childhood learning from FaCSIA. Those are the main changes, unless I have missed something.

Senator PARRY—What was the effective date for the changes or has there been a rolling series of dates?

Ms Paul—The administrative arrangements orders were made on 3 or 4 December.

Senator PARRY—That is fairly soon after the new government commenced.

Ms Paul—That is required, of course, because that is machinery of government, and the administrative arrangements orders are the legal basis for us operating.

Senator PARRY—Was there a displacement or a change of staff in relation to this?

CHAIR—I was happy for the overview and I am happy to chop around on the agenda today, but I am not particularly interested in going back to things that were supposed to have been dealt with yesterday.

Senator PARRY—That is fine. I accept that.

CHAIR—If you are going to cross-portfolio issues, really, that was yesterday. I would rather keep within outcomes 7 and 8.

Senator PARRY—That is fine. I will move on.

CHAIR—You can put all of those questions on notice, of course.

Senator PARRY—Who is the responsible person for the Green Corps? Are there any plans to continue, extend or decrease the activity of the Green Corps?

Ms Golightly—The minister has announced a review of employment services, and that review is under way. We will not be able to comment on the outcomes of that review.

Ms Paul—That is a review that Mr Carters described a few minutes ago in terms of Minister O'Connor having sought submissions and so on. We described that in its broad terms.

Senator WATSON—Do you have a copy of those terms, the scope? I think we would be interested in that.

Senator BOYCE—That is an administered item under outcome 7 that is being reviewed; is that the case?

Ms Golightly—I am sorry?

Senator BOYCE—The administered items listed under outcome 7 are all subject to a review; is that the case?

Ms Golightly—The minister did use the term 'employment services'. I am just trying to find my list.

Ms Paul—The way I would characterise it—and I think this will be clearer when we give you the terms of reference and so on for the review—some of these things are payments themselves: parenting payment, Newstart Allowance and so on. Those payments as such are not under review, and nor is Indigenous employment. But the programs delivered through Job Network and related providers, the employment services side of things, is what Minister O'Connor seeks to review. But when we give you the terms of reference I think that will be—

Senator BOYCE—So, the mature age allowance will not change, the Newstart allowance will not change, the parenting payment will not change, sickness and youth allowances and mobility allowance will not change?

Ms Golightly—They are income support payments. What we are saying is that they are not subject to this review, the employment services review. The employment services review is covering programs that, as Ms Paul just said, cover things like the Job Network program, work for the dole program, Green Corps program, and not income support.

Senator BOYCE—This is probably a fairly ineffective way to be trying to work out what is in and what is out.

Ms Golightly—That list is a list of all of the administered items.

Senator BOYCE—And you have that list?

Ms Golightly—We can get you a copy of the letter, which included the terms of review.

Senator WATSON—When is that review to be completed and reported to the minister?

Ms Golightly—The deadlines and timetables for the review have not been set.

Senator WATSON—You realise this will cause tremendous uncertainty in developing programs within work for the dole and Green Corps type activities? I think there is some need for reassurance here, because Green Corps, for example, is being described by most people as one of the most successful of the youth programs. To suddenly tell the community and those running these sorts of programs that the whole thing is under review could lead to a degree of uncertainty and insecurity.

Ms Paul—The review is being welcomed by providers. It is particularly responsive to the organisations that provide these services. They have been quite keen to be heard about issues such as red tape, for example, and the next contract for employment contracts is to begin on 1 July 2009, which makes it timely and important to hear from providers. That is exactly what is happening now. There was a call for submissions. Providers have made their submissions. That has already closed. Currently, the department is analysing those submissions to advise the minister. Certainly the minister is well aware that the timing is such that these reviews, which do not go to in any way threatening providers but rather supporting them and indeed responding to many of their concerns—

Senator WATSON—You can give an assurance of that, can you?

Ms Paul—Yes, I think so. The minister has held a number of relevant meetings. He is talking with providers and will, I know, pay close attention to these submissions. It is basically part of the lead-up process for a new tender to be let.

Senator Wong—If I could add to Ms Paul's very comprehensive answer to you, there was quite significant criticism from a range of employment services providers about the previous government's approach, certainly in relation to the amount of what people described as red tape. Prior to the election we did indicate that we would be looking at employment services contracts. As Ms Paul said, these contracts are due to be retendered 1 July next year.

Ms Golightly—2009.

Senator Wong—The government is doing what it said it would prior to the election, which is reviewing these services prior to making a decision about that tender process.

Ms Paul—So, this has no effect on funding between now and then at all. It is just that providers, as the minister says, have sought to have input about the shape and nature of the programs which they are delivering on behalf of the government.

Senator WATSON—In any program of a Job Network nature there will always be good, moderate and poor providers. But we need an assurance around that framework of, for example, solid support to provide high-quality services in the difficult areas that face people, particularly people who have disadvantages, disabled people, and the unskilled and unemployed. These are critical areas. You have to have a certain culture in terms of almost handling some of these cases. Some providers are better than others. I am not denying your suggestion that you should not be looking at better ways of getting the best providers. But in terms of providing a framework, we do not want to see any substantial change in terms of the framework. We welcome changes to eliminate red tape. But if the framework or support base for these sorts of quality programs is going to be changed or reviewed, then I think as an opposition we would be very concerned.

Ms Paul—Certainly, the minister is receiving the widest range of views. I am sure some of those views will accord with yours. There will be a range of views, I am sure, and we will diligently analyse all of those and put them in front of government for their consideration.

Senator WATSON—When will we know the date for completion of this review?

Ms Paul—It will be in the timeline that is required for us to go out for tender for the next round, which will be some time during the second half of this year. It will not take too long. The government will have to make a consideration and then we will need to come out into the marketplace with the tender.

Senator WATSON—Can you give me a copy of the letters that have been sent to the providers?

Ms Paul—We did offer that. We will find that for you.

Mr Manthorpe—Minister O'Connor has written to all senators and members inviting views in a manner consistent with the letter that he sent.

Senator WATSON—I know that. What I want is copies of letters sent to the service providers that give them a level of assurance that the reviews are limited to red tape, developing programs for enhanced delivery of services and that sort of thing. That is what we are interested in. You said they have supported the concept. We want to know the basis of the letter or the basis of the communication that brought forward that support.

Senator Wong—I am advised by my officers that it is the same letter as has been sent to you. But if you would like another copy of it I am sure we can facilitate that.

Senator WATSON—What was sent to me was offering an opportunity of a submission, was it not?

Senator Wong—And that is the letter that we are talking about that was sent to the providers.

Senator WATSON—So it was a straight—

Senator Wong—Yes. Mr Carters has a copy. It states that, ‘I would welcome your suggestions on how we might achieve the objectives identified in the government’s social inclusions skills policies,’ and there is a range of dot points and an invitation for submissions to be received.

Senator WATSON—Could that be tabled, please?

Senator Wong—It is the same letter as you have received. It can be tabled. It also says ‘Dear CEO’ as opposed to ‘Dear Senator’. I am happy to do that.

CHAIR—The department is happy to table that. Are there any further questions?

Senator BOYCE—Is this the time to ask about the evaluation—‘accreditation’ is too strong a word—evaluation of service providers? How do you do that? Talk me through it, please.

Ms Golightly—We have a number of layers of ways that we monitor and evaluate performance. At the highest level the providers are subject to a rating, a star rating system, which is a regression analysis of their performance across the country in a way that makes that performance able to be compared like with like. It is to do with how many outcomes they have achieved, given the difficulty of the case load comparative, other weightings like locational disadvantage, that sort of thing.

Senator BOYCE—This gives you a history?

Ms Golightly—Yes, it is performance in the past period. That is at the highest level. We also have in our day-to-day management of the providers contract managers who are constantly talking with providers about issues or questions or sometimes problems that might come up, and the providers call us as much as we call them. We also have a formal arrangement of contract monitoring whereby our contract managers visit provider sites and do certain checks to look at areas that we might be particularly interested in.

Senator BOYCE—Is that unannounced monitoring?

Ms Golightly—It is a regular visit. The provider does get a number of days’ warning, yes. There is also a fourth layer, which is we use techniques such as data mining and trend analysis across the whole network to look for any positive trends and also any trends that we might want to follow up. We do so as a separate exercise. That is a bit of an overview of the four main areas that we use to monitor our providers. We use intelligence of course from our customer service line also. Any feedback that Centrelink might give us or other letters and complaints that we might get.

Senator BOYCE—When you say ‘feedback from Centrelink’, how do you capture that feedback?

Ms Golightly—We have regular meetings with Centrelink, both at the local level, our DEEWOR officers would meet with Centrelink officers, but right up to regular meetings, for example, between me and my counterpart at Centrelink.

Senator BOYCE—Is information from clients volunteered information or do you actually seek out clients and ask them how it is going?

Ms Golightly—We do both. The customer service line obviously is people volunteering to ring up and tell us about something.

Senator BOYCE—Generally they are going to be a bit miffed by the time they are doing that one?

Ms Golightly—Sometimes it is just a query about how things work rather than a particular complaint. Similarly, if someone has a query or complaint that they provide to Centrelink, it passes that on as well. In addition, as Dr Morehead mentioned before, we also do what we call post program monitoring, which is a survey of job seekers three months after they finish with one of our services, and that is where we directly ask them for feedback.

Senator BOYCE—And that is every person who has done a program?

Ms Golightly—No, that is a sample.

Senator BOYCE—Yes, of course, sorry. What are the performance criteria for service providers? What do those look like?

Ms Golightly—At the highest level in the contract there are three KPIs. The first two are to do with performance in terms of outcomes, job outcomes for education outcomes. The third criterion is to do with the quality of the service delivered. There is a service guarantee and a code of conduct that the providers sign up to as part of the contract, and through our monitoring we have a look at how they are going against that quality guarantee.

Senator BOYCE—Presumably there is some sort of quantitative—

Ms Golightly—The first two criteria are totally quantitative. That is the star ratings system, which is all about numbers of people on the case load, their characteristics, the location where they are, type of labour market, that sort of thing. It is compared to how many outcomes particular providers got for those people. That is quantitative, yes.

Senator BOYCE—And there is a formal complaints system around service provision?

Ms Golightly—Yes. We have one. That is our customer service line that I mentioned before. The system is outlined. The job seeker is encouraged, if they can, to raise any concerns they have with their provider in the first instance, in case there is some misunderstanding and it can be sorted out amicably at a local level. But if the customer is not happy with that, then they can ring our customer service line and we will investigate their complaint.

Senator BOYCE—How many complaints have you received in the last six months, say?

Ms Golightly—I will get the figure for you.

Ms Kidd—For the first six months of the 2007-08 financial year there has been a total of 17,664 inquiries to the customer service line. Of those, about 9,700 were registered as actual complaints. The rest were compliments, suggestions, requests for information.

Senator BOYCE—I am trying to follow these complaints through. How many of those complaints were resolved, for instance, within a week? Do you keep that data?

Ms Kidd—A large number of the complaints are resolved on the phone with the customer service officer. And others may require the customer service officer going back to the Job

Network, for example, or the relevant employment service provider and talking through and resolving it that way. There is an escalation process so that if it cannot be resolved at that level it might go to the contract manager and might require more intensive follow-up and involvement.

Senator BOYCE—Do we have a figure on how many of those would go to a contract manager?

Ms Kidd—No, I do not.

Ms Golightly—We could take that on notice.

Senator BOYCE—We know there were 9,700 complaints in that six-month period. We do not know how many of them have been resolved?

Ms Kidd—The vast majority of the complaints would have been resolved. But, no, I do not have a figure or a percentage.

Ms Golightly—We can take that on notice.

Senator BOYCE—I am just trying to work out what happens with the person who has an intractable problem or complaint.

Ms Golightly—Under this Job Network system the job seeker can ask or indeed the provider can ask—but it is usually the job seeker—to be moved to another provider if they feel that the relationship has broken down to that extent. If they request that, we will look into it and agree to the transfer if that indeed is the case.

Senator BOYCE—How do you handle complaints from the other side, the service provider side? I complain about service provider A. What happens to service provider A?

Ms Golightly—Certainly, if we found that there was some validity in that complaint we would be following up with that service provider about their practice or behaviour in that scenario. We may, depending on the seriousness of the issue, do some further monitoring or investigation to see if it was a widespread practice, and we would go from there.

Senator BOYCE—How many service providers would you have monitored, for instance, as a result of complaints in the past six or 12 months?

Ms Golightly—I am not sure we could get you that figure, because it would become part of our normal monitoring, which is very regular anyway. It depends on the seriousness of the issue at hand. For example, the contract manager may have already been going out to that provider the following day for a different reason. But we would add this on. I am not sure that I could disaggregate the figures that way for you.

Senator BOYCE—You must have problem children in amongst the service provision providers?

Ms Golightly—I think it is true to say that there are good providers and there are other providers who perform not as highly. But I would not suggest that we have some sort of list of problem children.

Senator BOYCE—Your methods of dealing with poor service provision would be counselling?

Ms Golightly—It again depends on the seriousness of the issue. It could be a discussion. If it was an extremely serious breach of the contract the contract allows us actually to remove 100 per cent of their business. But obviously they are two ends of an extreme.

Senator BOYCE—Has that happened in the last three years?

Ms Golightly—I will check this, but my recollection is that we have not removed 100 per cent of the business due to a breach of the contract. We certainly have removed business from some providers who have had serious breaches, but whether we have moved the whole contract I would have to check.

Senator BOYCE—What you are saying is that perhaps they have overstretched themselves or something? You might say, sorry, you can only have 50 per cent of that work into the future?

Ms Golightly—Sorry, I should go back one step. The contract allows for any number of actions to be taken, scaled against the seriousness of the issue. That is one thing. The other thing is the way Job Network works is that people tender for a certain share of the business in a particular area. If there are three tenderers, one might have 10 per cent of the business, one 30 per cent and the third one might have 60 per cent. If provider A has 60 per cent of the business and there is some sort of really serious breach that cannot be remedied under the contract, we would consider removing part or all of that provider's business share. So, they would no longer have 60 per cent, they would have some lesser figure. The contract allows us to take that to zero per cent if we feel that that is warranted.

Senator BOYCE—But you are saying that in your recollection that has not happened?

Ms Golightly—I am reminded that there is one case where that has happened. But that is subject to court proceedings at the moment, so I do not think I should discuss that.

Senator BOYCE—Can you give me some sense of how recently that happened?

Ms Golightly—I am reminded it was around two years ago, yes.

Senator BOYCE—I am assuming that the most serious breaches that a service provider can commit is fraudulent activity; is that the case?

Ms Golightly—Certainly that would be extremely serious, yes. But it may be serious contract non-compliance, but not necessarily through fraud. It is not just fraud, is what I am saying. It could be seriously non-complying with the contract without necessarily being fraud.

Senator BOYCE—Can you give me an example of what that might be?

Ms Golightly—If someone was delivering an extremely poor level of service, treated job seekers extremely badly, made false claims on the department that were not necessarily fraudulent but still nevertheless false, probably for it to be that serious it would be a combination of those sorts of factors plus a few more. That is not an exhaustive list but an example.

Senator BOSWELL—I would like to ask a question about the tools of trade program.

Ms Paul—Tools for Your Trade program?

Senator BOSWELL—Yes.

Ms Paul—We actually dealt with that yesterday, I am afraid, under Outcome 4. That is Vocational Education and Training. Perhaps I could take your questions on notice for you?

Senator BOSWELL—Maybe you could just tell me: is that program continuing, tools of trade program?

Ms Paul—I believe so. Perhaps I can take that on notice and get you some more information about that.

Senator BOSWELL—Were there any questions asked on that yesterday?

Ms Paul—No, there were no questions asked yesterday.

CHAIR—I thought the first question was all right, but I thought you were then going to go on to more detail. As I made the point earlier, I am happy to be flexible about today's agenda but I do not want to go back into what was dealt with yesterday.

Senator BOSWELL—Newstart?

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

Senator BOSWELL—Are the eligibility criteria for Newstart under review?

Mr Carters—Not that I am aware.

Senator BOSWELL—Are the assets test and incomes test under review?

Ms Paul—Not that it has been raised with us.

Senator BOYCE—The hardship provisions provided under Newstart is not under review, either?

Ms Paul—It has not been raised with me, no.

Senator BOSWELL—Thank you for that.

Senator PARRY—On the question of review, thank you for getting this out to us very promptly. Is this the review document that you were referring to earlier?

Ms Paul—Yes, we were talking about a letter to providers and members and senators which spelled out the issues about which submissions were sought for employment services.

Senator PARRY—That is this document here. For the purposes of *Hansard*, it is the one from Minister O'Connor prepared on 18 January?

Ms Paul—That is right.

Senator PARRY—So, this is the only document that highlights or purports to indicate a review; this is the only one?

Senator PARRY—That is right. The minister did media at the time, which Mr Carters can advise I am sure, but arising from that I think we have so far received well over 100 submissions.

Mr Manthorpe—As of Sunday we had received 206 submissions. A few more came in over the course of this week as well.

Senator PARRY—In response to Senator Boswell a moment ago, Mr Carters said that Newstart was not up for review.

Senator Wong—There is a distinction between payments, whether they be Newstart Allowance or another form of payment, and the provision of services. Your government, when in government, contracted out employment service provision, and there is a range of contracts to which the Commonwealth is party for the provision of employment services. As I understand the officers' evidence—and I am sure Ms Paul will stop me or correct me if I am incorrect—as we announced prior to the election, the government is currently reviewing those employment services contracts, which are due to be retendered by government on 1 July 2009. Minister O'Connor has written to service providers to ask for their input. Can I just interpolate there that the context of that is a significant amount of criticism prior to the election about aspects of the administration of those services, aspects of those contracts. He has also, as I understand it, as I am advised, written to senators and members to invite their input. That is a review of services. It is not a review of payments such as the Newstart allowance.

Senator PARRY—Is this letter that was copied the one that members and senators received? I must admit that I probably have received it but I have not viewed it. Is this the identical letter?

Mr Carters—That is the equivalent letter. The members and senators had a different response date. Their response was not close of business Wednesday, 13 February. It was a later date.

Mr Manthorpe—That is right, 27 February.

Senator BOSWELL—I am confused. I am getting two different responses, one from the minister and one from the officers.

CHAIR—I do not think you are, actually. They are the same responses.

Senator BOSWELL—The officers are telling me there is no review and the minister is saying there will be a review.

Ms Paul—No, it is on a different matter. You asked us about whether the government was reviewing Newstart.

Senator BOSWELL—Yes.

Ms Paul—The government is not reviewing currently Newstart, the payment. Perhaps I misunderstood you. A review of Newstart in my mind would be a review of the payment itself, of the payment levels, of the rules around the payment, the eligibility criteria for the payment and so on. That is not under review. What is under review, which this letter goes to and which the minister has just also spelled out the differences, is reviewing the way services are provided to Newstart customers. So, a person receiving Newstart goes along to Job Network and does certain things with Job Network. What is being reviewed is the Job Network end, not the NewStart person end.

Senator PARRY—The letter says it is to review the current range of employment services.

Ms Paul—That is right.

Senator PARRY—Are you defining 'employment services' as everything except payment?

Ms Paul—That is right. It is the way the services are provided to those people who receive those payments.

Senator PARRY—That is not eliminating the potential of removing programs, but we are not talking about changing payments.

Ms Paul—That is right.

Senator PARRY—Have any programs been identified as being eligible for removal at this point in time?

Ms Paul—No.

Senator PARRY—The third paragraph of the letter indicates there have been contributions last year with the previous government. Were those submissions or those reports taken into account in the review?

Mr Manthorpe—Yes. In summary form we have briefed the minister on the nature of commentary that was provided there, but overwhelmingly the major input at this point is the submissions that have been made to this government in response to this invitation.

Senator PARRY—How significant were the submissions last year, as in volume and time and effort placed into doing those?

Mr Manthorpe—I would have to take on notice the question of the number of submissions. There were fewer than in response to this request.

Senator PARRY—Did any of last year's submissions indicate the need for further submissions or review?

Mr Manthorpe—Many of the submissions at that time argued the case for change and reform in a manner that the minister has indicated.

Senator PARRY—Would that be a typical thing that submissions do seek change and reform every time they are made, irrespective of government.

Ms Paul—You would have to expect service providers in this large network to be interested in improvements from their point of view. We have not yet analysed these submissions. I would imagine that will be some of the themes. We do know, for example, that some service providers feel that there is too much red tape for them and that is something that we need to look at. That is the sort of range of issues that I would expect would be covered.

Senator BOSWELL—Can I ask some questions about CDEP programs?

Ms Paul—Yes. We were saying before that the responsibility for the payment itself of CDEP has now transferred to the Family, Housing, Community Services and Indigenous Affairs portfolio, but we of course remain vitally interested in Indigenous employment, so if you could ask your questions in that context.

Senator BOSWELL—In the Torres Strait the local councils of 17 inhabited islands were charged with the responsibility of administering the program. Now these councils will cease to exist. My question is: who will administer the CDEP program?

Ms Paul—It was previously the responsibility of this portfolio but is now handled by Family, Housing, Community Services and Indigenous Affairs. It is not listed under this outcome 7, so it is in the other committee, which is going on next door as we speak.

Senator BOSWELL—Thank you.

CHAIR—Senator Watson.

Senator WATSON—You put a lot of emphasis on red tape but at the same time can you give an assurance that the discharge of these programs is going to be fully accountable? Sometimes people call red tape eliminating accountability, but I think we need a nice balance to ensure that the parliament and the taxpayers are satisfied that the discharge of these programs is carried out in an efficient manner. If you cut too much so-called red tape, one of the easiest areas is reducing the amount of accountability. So I think that is matter that the department would need to watch very closely because, after all, accountability is important.

Ms Paul—Yes, you are absolutely right.

Senator BOYCE—I would like to ask about financial case management cases. Does Centrelink provide the money and you provide the policy?

Mr Carters—We provide the policy advice on financial case management and the contracting of those services is through Centrelink through to the welfare agencies that deliver those payments on the ground.

Senator BOYCE—Are you aware of outcomes in terms of the policy on financial case management?

Mr Carters—We are aware of numbers assisted.

Senator BOYCE—I would like to talk about the numbers assisted and what the outcome is.

Dr Morehead—As of 28 December 2007, 1,682 job seekers had accepted the offer of financial case management.

Senator BOYCE—Is that for six months?

Dr Morehead—Yes.

Senator BOYCE—Are these services provided by people contracted by Centrelink who have been contracted by you?

Ms Golightly—Under an MOU with us Centrelink does provide these services and they contract people to help them provide those service.

Senator BOYCE—We have 1,682 job seekers seeking financial case management. What are the outcomes from that? How long do people tend to have their cases managed and what is achieved?

Mr Sandison—The financial case management is intended to cover the no-payment period of eight weeks and the servicing of the contract is done with a policy owned by the department, but Centrelink had responsibility for provision of financial case management and that was done under contract through service providers with Centrelink taking up where there

were no service providers. They do the majority of financial case management but other providers also do it, but under contract to Centrelink, not to us.

Senator BOYCE—Would it be the case that people who are doing the case management would in fact be Centrelink employees?

Mr Sandison—I would say the majority are, but there are other providers. The nature of the case management is really around the financial management of their income support up to a level equivalent of what they would have got on payment if they had been on payment for that eight-week period. The design is to make sure that where there are people at risk in the family, normally it is based on children but it is also linked the mental health and if people had to purchase medication funds were made available through those financial case management providers to purchase various items.

Senator BOYCE—This figure is a global figure. Does it include people living in Indigenous communities who are covered by financial case management?

Mr Sandison—It includes all people—

Mr Carters—It includes people covered by financial case management. It is different to the income management which operates in the Northern Territory.

Senator BOYCE—Thank you.

CHAIR—Senator Parry.

Senator PARRY—Has any work been done by the department on a Social Inclusion Board? Is that something that has been mooted?

Ms Paul—The Social Inclusion Board and its creation is the responsibility of the Department of the Prime Minister and Cabinet. Of course our minister, the Deputy Prime Minister, is the minister responsible for social inclusion but in this matter the Department of Prime Minister and Cabinet is advising her on this board.

Senator PARRY—How will it impact upon your section?

Ms Paul—In the broad we are now really introducing the focus into the department on social inclusion and what it means. We are starting to identify the right data and the right sets of priorities. For example, one of the focuses of social inclusion broadly is often what I might call a place-based consideration. So we will now look at our programs in terms of what impact the program is having on people in a certain region. It is not as if we did not do that before but, to the extent that we can enhance that, if it is useful we will look at that sort of thing. It is a broad consideration.

Senator PARRY—I presume under this outcome the board would have a fairly significant role in the labour market and certainly in the provision of assistance in that regard?

Ms Paul—Unfortunately I cannot answer that because we are not advising on the board itself?

Senator PARRY—So it is not constructed?

Ms Paul—No.

Senator PARRY—Do you feel that it is appropriate to have people within the department on the board or do you think that it should be completely external?

Ms Paul—I do not think that is a matter for me. That will be a matter for advice from the Department of Prime Minister and Cabinet. They may seek our advice. That would be the nature of advice, and I could not go there either.

Senator PARRY—Do you have a view, Minister?

Senator Wong—The secretary has answered that question.

CHAIR—Any other questions on Outcome 7 and 8?

Senator BOYCE—I would like to talk through the very long-term unemployed figures. Can you give me the numbers as at 31 December?

Mr Carters—There are two concepts here. When you talk about very long-term unemployed there is the ABS measure of very long-term unemployment, which is the ILO recognised measure; there is also a figure which looks at the number of people on unemployment benefits who have been on payments for more than two years. Can you clarify which one you are referring to?

Senator BOYCE—I am presuming that you measure the people who have been on unemployment for more than two years. But do you measure both?

Mr Carters—The ABS measures the official very long-term unemployment statistics and we obviously use those.

Senator BOYCE—How do you use those figures?

Mr Carters—Basically they are used for any analysis that we do in terms of the structure of the labour force. We can use it for costings and modelling projections as well. There are lots of reasons that we use the ABS figures.

Senator BOYCE—How do these figures differ?

Mr Carters—There is a significant difference. The very long-term unemployment beneficiaries is a higher figure. The reason for that is that the way in which we measure very long-term unemployment beneficiaries is quite different.

Senator BOYCE—I meant the ABS and your two year figure. What is the ILO? How does the ILO measure—

Mr Carters—The ILO definition is the international definition. Essentially, it is a labour force survey which is conducted every month. In terms of defining if somebody is unemployed, there are a number of criteria in terms of whether they have looked for work in the last month and so on. But the key measure is whether they have worked for one hour or more in the last fortnight. Whereas measuring very long-term unemployment beneficiaries is a very different measure because the duration of receipt of unemployment benefit can continue to increase even if they have been off payment for let us say 13 weeks. The reason that measure occurs is that it is in terms of servicing people who are unemployed. The general view is that if they just go off unemployment benefit for a short-term casual job they should not have to go back to zero duration of unemployment in terms of eligibility for services. That

is why over the years that quite generous approach has been developed whereby they get at least 13 weeks before they go off payment if they are long-term unemployed.

Senator BOYCE—The Department of Employment would define very long-term unemployed people as people who have been on benefits for more than two years but with the occasional break. Is that correct?

Mr Carters—We would not define them as very long-term unemployed people, we would define them as very long-term unemployment beneficiary recipients. We do not have a different definition of very long-term unemployed to what the ABS has. A lot of people who are on unemployment benefits are also earning income as they are doing that and, under the ABS measure, they would not be deemed to be unemployed but they are still in receipt of unemployment benefits, so they get counted there.

Senator BOYCE—In your system that are still in the very long-term unemployed beneficiaries bracket?

Mr Carters—Yes.

Senator BOYCE—Despite the fact that they are earning income?

Mr Carters—Yes.

Senator BOYCE—Is that because it is only supplementary income?

Mr Carters—Yes. Technically they are not very long-term unemployed by they are still in receipt of unemployment benefits. There is quite a difference in the definition.

Senator BOYCE—Are you saying that they have not had a meaningful job for two years?

Mr Carters—No. I am not saying that at all. They have had a job that could well be for two years or more or it could be less, but it is a different definition.

Senator BOYCE—Let us use the very long-term unemployed beneficiaries measure. Can you tell me how many people are currently such beneficiaries?

Mr Carters—We will have to see if we have got that information.

CHAIR—While you are finding the answer to that question, can you explain to me how you can be in receipt of unemployment benefits and have a job?

Mr Carters—There are two ways. One is if it is just a part-time job. Obviously there is a free area where you can earn a certain amount of money while you are on unemployment benefits and then there is a taper rate where every extra dollar you earn the benefit tapers out. So until you get to the bottom of that taper you can continue to receive some partial unemployment benefits but also you can actually be working part-time forever really and still be entitled to some residual unemployment benefit.

CHAIR—Is it about the hours worked? You could not be working full time.

Mr Carters—That is the other thing.

CHAIR—Can you tell me about that?

Mr Carters—If you are long-term unemployed, get a job and go off income support completely for let us say up to 13 weeks, when you reclaim with Centrelink for your NewStart

allowance the system will say that you have not been off for more than 13 weeks and therefore your duration of unemployment benefit receipt continues. So if you have been off for 12 months and you got a job for 13 weeks and then came back on, that would say that you have been unemployed still for more than 12 months; it would not send you back to day zero.

Senator PARRY—Of course there could be fraud with full-time employment and claiming benefits.

Senator BOYCE—I do not think they are in the definition.

Mr Carters—I am sorry?

Senator PARRY—You could be working full time and claiming benefits, but it would be fraudulent. That is the other matter.

Mr Carters—There is a very small contingent of people who would actually be eligible. If you are talking about the case where they are not declaring, that is a very different story, and illegal.

Senator BOYCE—There are almost two cohorts within this group of very long-term unemployed. Do we have a group who are quite happily working fairly part-time jobs and another group who have episodic periods of full-time employment?

Mr Carters—Yes, they are two examples of people.

Senator BOYCE—Are they examples of minor groups within this or have we encapsulated most people?

Mr Carters—There is a sizeable number of very long-term unemployed people who have had a substantial amount of casual and/or part-time work.

Mr Manthorpe—I can give you a figure on the question you asked a moment ago about how many long-term benefit recipients there are. At December 2008 there were 270,231 NewStart recipients. Long-term is defined as 12 months or more.

Senator BOYCE—Is it 12 months and not two years?

Mr Manthorpe—There are several different measures here, the LTU and VLTU. We normally talk about the VLTU, very long-term unemployment, as two years plus and LTU, long-term unemployment, as one year plus. This is a measure of one year plus long-term benefit recipients.

Senator BOYCE—Do we have a VLTU benefit recipient figure too?

Mr Carters—We can get that figure for you. We do not have it here in front of us. We will take that on notice.

Senator BOYCE—Is it correct that the VLTU is over two years?

Mr Manthorpe—That is right.

Mr Carters—Going back to your question about groups that may be in part-time work and continuing to receive some NewStart allowance, the welfare-to-work group in particular—for example, the parents of school aged children—only have to look for work of 15 hours or more a week. By definition they are able to meet their Job Search requirements of say a 15-hour job and are likely to still have some residual entitlement to NewStart allowance.

Senator BOYCE—Do they come into this long-term beneficiary recipient figures?

Mr Carters—They would.

Senator BOYCE—Despite the fact that they are working 15 hours a week, or if they do not work?

Mr Carters—If they were working part-time over a long period of time and they continued to receive unemployment benefits for beyond two years, they would be deemed as being very long-term unemployment benefit recipients.

Mr Manthorpe—Just before you move off that, I should have said 2007 and not 2008 when I used the date of December.

Senator BOYCE—Is this the calendar year that we are talking about or the financial year?

Mr Manthorpe—It was a point in time date as at December 2007.

Senator BOYCE—There are 270,000 people?

Mr Manthorpe—That is right, at that point in time.

Senator BOYCE—I would like to talk about the trends that have gotten us to 270,231. Is the trend up or down?

Mr Manthorpe—I do not have trend data with me today.

Ms Golightly—We can take that on notice.

Ms Paul—We will take that on notice.

Mr Carters—Can we be clear about what you want there? When you say the trends, do you want to look at the very long-term unemployment beneficiary recipient figures on a year-by-year basis?

Senator BOYCE—I would like to see them for the last three years. I am not so much interested in the quantity as some quality of the information around why has it changed: what were the figures, why have they changed and what programs have been best suited at doing that?

Senator Wong—There are a range of requests there and some of them call for policy—

Senator BOYCE—That is why I was hoping that I could get the quantities here and then talk about the quality behind it.

Senator Wong—Obviously the officers are not able to give opinions about policy matters. So questions about were there views about effectiveness of policy measures is really not appropriate.

Senator BOYCE—I will rephrase that. Could you give me examples of policies that have been used at various times that have affected the figures?

Senator Wong—Again, that is a judgement about what is affected.

Senator BOYCE—What on earth can we measure if we do not put a program and a policy in place and say it was effective or ineffective by looking at the quality of the result?

CHAIR—You are putting the officers in a difficult position. They are not allowed to comment or give opinion.

Senator Wong—I am not trying to be difficult, Senator Boyce. We need to be clear with what you are seeking from officers. I understood you were seeking very long-term unemployment beneficiaries point-in-time data over the last three years.

Senator BOYCE—Yes.

Senator Wong—Then you were seeking something in relation to your government's programs over that period.

Senator BOYCE—I am presuming that the figure will not be the same each time, so what I am looking for is some commentary relating to the changes in the figure. If you could just give me the figures and then we will work the rest of it out later.

Senator Wong—No. I am sure officers can give you what programs were in place at the time.

Ms Paul—We can spell out the various program rules at the time and point out the moments in time at which there were changes.

Senator BOYCE—If you could point out moments in time when change occurred in the program.

Ms Paul—That is what we can do.

Senator BOYCE—That would be more than satisfactory. Thank you.

CHAIR—Senator Watson.

Senator WATSON—Earlier the minister gave us an assurance that payments in the form of entitlements for disability job placements et cetera would not be affected.

Senator Wong—I would like to be clear. You were asking about the purview of the reviews which have been announced by Minister O'Connor and I made it clear that those reviews related to employment services and not to payments.

Senator WATSON—Can you give us the same assurance in terms of the utilities allowance? Is that utilities allowance covered in that assurance?

Ms Paul—The utilities allowance policy is the responsibility of the Families, Housing, Community Services and Indigenous Affairs portfolio, so you would need to direct your question to that portfolio. I would say in general terms the point that we were making is that it is not the payments that are the responsibility of this portfolio that are under review, it is the method of supporting recipients through Job Network and other providers. But the specifics of a utilities allowance would need to be directed to the other committee, which I believe is meeting next door.

Senator WATSON—Why have you got it listed under Outcome 7 if it is administered by another department? It is presented in the program presented to the Senate in the form of portfolio budget statements.

Ms Paul—We can explain that.

Ms Golightly—We had the question earlier and I explained that we do have utilities allowance paid to some of our recipients but the policy for the utilities allowance is the responsibility of the Department of Family, Housing, Community and Indigenous Services. There is an appropriation in our PAS simply because some of our recipients happen to receive that allowance but the responsibility for the policies governing that allowance is with the other department.

Senator WATSON—It is paid out of your budget?

Ms Golightly—No, not all of it. Some of our recipients happen to be eligible for utilities allowance as well, so we get part of an appropriation to enable that payment to be made.

Ms Paul—What happens is that any of these allowances which are additional go to a whole range of different payments. I do not know all of them, but this utilities allowance might go to NewStart and might even go to aged pensioners, for all I know; I am just not sure. For those recipients of payments for which we are responsible, like NewStart, that amount of money for utilities allowance gets appropriated into this portfolio for those people. But there would be more funding for utilities allowance which would go to other portfolios for the payments for which they are responsible. We basically receive the appropriation. We do not hold the policy responsibility for that payment in the way that we do for NewStart, so that is why it is showing up in our PPS but why we cannot answer the question of is it under review is that that is a policy matter.

Senator WATSON—So it is outside the scope of your review?

Ms Paul—That is right. It certainly is.

Mr Carters—I can clarify it for you. There are three payments that the utility allowance goes to. It is the mature age allowance, the partner allowance and the widow allowance. They are all allowances which have been closed to new entrants for quite some time. They tend to be available for mature age people and the previous government made a call in the 2006-07 budget to extend the utilities allowance to those payments.

Ms Golightly—Those are the three that are in our portfolio. The utilities allowance is also paid to aged pensioners and veterans. So the three that Mr Carters has just mentioned are the only three that are in our portfolio.

Senator MASON—Are aged pensioners the largest portion of those?

Ms Golightly—As we have been saying, the overall payment is with FaCSIA. I would imagine that is the case but you would have to check with them.

Ms Paul—If that is the set-off, there are five of them with aged pensioners and veterans being the largest two; there are more aged pensioners than veterans. The three in our portfolio are quite small.

Ms Golightly—Yes.

CHAIR—If there are no more questions we will go to the break and reconvene at 10 to 11.

Proceedings suspended from 10.33 am to 10.50 am

CHAIR—The committee will resume. We are still in outcomes 7 and 8. Do we have any further questions in either of these outcome areas? Senator Parry?

Senator PARRY—I turn to the Labor government's commitment to give the child protection authorities in the states and territories the power to recommend to Centrelink to quarantine part of their family and welfare payments if they are found to be neglecting their children or not sending them to school, for example. Firstly, will that continue?

Senator Wong—I will check with officers, but I think that might be in Ms Macklin's portfolio.

Ms Paul—If you are interested in school attendance, we can answer questions on that. All the other aspects of keeping back payments and so on, as you say, are the responsibility of FaCSIA. If you would like us to try to answer some questions on school attendance, we can do that. Your question sounded a bit broader than that.

Senator PARRY—Why does it not come up under outcome 7? It is a payment and it is withholding of a payment. Do you not administer that?

Ms Paul—We can talk about withholding a payment for school attendance. If there is anything we cannot answer, we will let you know.

Senator PARRY—Just to get this very clear, the issue of holding payments for any form of neglect does not come under this section?

Ms Paul—That is correct. That would be FaCSIA's matter. FaCSIA has overall responsibility—

Senator PARRY—Even though you administer the payment? Even though your organisation is responsible for the payment?

Ms Paul—FaCSIA has responsibility for the Northern Territory Emergency Response overall.

Senator PARRY—So, the neglect issue would only be in the Northern Territory, not Australia-wide?

Ms Paul—That is my understanding. I am happy to go through your questions and see what we can answer.

Senator PARRY—The same principles will apply for the education issue, for the non-attendance at schools, so that is something we can deal with here.

Senator Wong—My recollection is that we did make commitments in relation to the engagement of state authorities in this matter, as you alluded to. My recollection is that the responsibility for that was with Ms Macklin's portfolio. I can take that question on notice to confirm that. As I understand officers at the table, those are not matters that would be dealt with in this portfolio. Mr Carters might be able to assist you.

Senator PARRY—The issue of non-school attendance cannot be dealt with here, is what you are saying?

Mr Carters—The non-school attendance component can be dealt with here. The link into the broader child neglect component is something on which FaCSIA has the lead.

Senator PARRY—I will restrict my questions to non-school attendance, because I want to know how you will administer the program. Firstly, with respect to non-school attendance,

what is the trigger to stop payment? It is obviously not attending school, but what actually happens? How does that physically transpose?

Mr Sandison—Just now that is under consideration by the government. A range of education issues is being done to support the Northern Territory, most of which are picked up formally under the Education part of the department. The linkage to the actual school enrolment attendance is under consideration by government.

Senator PARRY—So, the program has not commenced: is that what you are saying?

Mr Sandison—The groundwork is being done around data matching and liaison with the Northern Territory government. There is an MOU between the department and the Northern Territory Department of Education. Certainly steps are being taken, but the detail is under consideration by government.

Senator PARRY—That leads in to another question. It will be a memorandum of understanding; it will not be by legislation?

Mr Sandison—Just now it is about the operation of the liaison between the Commonwealth and the Northern Territory government. That MOU has been in place for some time now, five or six months.

Senator PARRY—Have any payments been withheld at this point?

Mr Sandison—In relation to school enrolment attendance?

Senator PARRY—Yes.

Mr Sandison—No.

Senator PARRY—I notice that you restricted all of your remarks to the Northern Territory intervention. Is it planned to do this Australia-wide, for every state and territory?

Mr Sandison—The consideration is whether to have a national school enrolment and attendance measure, as was suggested by the previous government, and that is what is under consideration by the government now.

Senator PARRY—Is there any risk that that may not continue?

Senator Wong—That is a matter for government consideration. At this stage nothing has been decided. I think Mr Sandison has indicated the status of this issue: it is currently under consideration.

Senator PARRY—You have no advice as to whether this will continue, will only apply to the Northern Territory, or be rolled out in all states?

Senator Wong—I could take that question on notice.

Senator PARRY—I would appreciate that. If it goes ahead and assuming it goes ahead in every state and territory, how will the payments be stopped? What is the physical process, and what percentage—

Mr Sandison—That would depend on the decisions of government. There are many and varied options in terms of how a government might want to implement its policies, and that is under consideration by government.

Senator PARRY—Has a suggested model been put forward?

Ms Paul—We will not go to our advice to government, but I am sure government will consider a range of different options.

Senator PARRY—If the payment is stopped or part of the payment is retained or quarantined, I think is the terminology used, what would be the criteria for reaccessing that? Will it be lost or retained?

Ms Paul—Once again, that is a matter for consideration. It is part of the whole range of considerations.

Senator PARRY—When do you believe that this matter will be finalised?

Mr Carters—That is a matter for government.

Senator PARRY—Minister, do you have any idea as to when this matter might be finalised?

Senator Wong—The matter is under consideration, as you have been told.

Senator PARRY—So, there is no expected date that this matter will be finalised and implemented?

Senator Wong—I did not say that. Nothing that I am announcing in an estimates hearing to you.

Senator PARRY—So, you cannot see it happening in the next couple of months?

Senator Wong—I answered the question. If you want further information on that, I will pass that to the minister I am representing.

Senator PARRY—Thank you; I would appreciate that. Is the concept of the quarantine payment accepted by the department?

Senator Wong—That is not an appropriate question to ask an officer, and you know that.

CHAIR—You cannot ask the officers to give opinions on government policy.

Senator PARRY—Thank you.

CHAIR—Are there anymore questions in outcome 7 or 8? Outcome 8 is Increased Workforce Participation.

Senator PARRY—Yes, I think there are.

CHAIR—We will now formally move to outcome 8. Senator Parry?

Outcome 8-Increased Workforce Participation

Senator PARRY—Will this cover the Structured Training and Employment Program, employment related services? Is this in outcome 8 or is it back in 7?

Ms Golightly—It is in 7.

CHAIR—I am happy to go back to 7.

Mr Carters—Just for clarity, we tend to run 7 and 8 together, because there is so much overlap between them.

CHAIR—Thank you.

Senator PARRY—What is the commencement rate for Indigenous people into STEP?

Ms Golightly—Within STEP there is something called STEPERS, which is a panel, but it is basically all the same thing. These are individual projects. They could be with individual employers or brokered with an individual employment broker. One project might have one person in it, another project might have hundreds of people in it. So, it is a little different from perhaps another program where there is a particular number of places appropriated by government, say, a personal support program, a new measurement commencement rate. But we would have numbers of people undertaking a STEP-type program at a point in time, which my colleague is probably getting for you.

Senator PARRY—Are you addressing the part of my question in relation to Indigenous people?

Ms Golightly—This program is only for Indigenous people.

Senator PARRY—Do you have some figures there?

Ms Caldwell—In the STEPERS, Structured Training and Employment Projects Employment Related Services, from March 2007 until 31 December 2007 there have been 4,856 commencements in STEPERS.

Senator PARRY—Is that when the program commenced or is that just the figures available? Did it commence in March?

Ms Caldwell—As Ms Golightly was indicating, we had the STEP overarching program, and we established a panel of services under that, being the STEPERS, and that subcomponent of STEP was started in March 2007.

Senator PARRY—How successful has the program been rated?

Ms Caldwell—I will see if I can give you some placement outcome figures. I do not have them broken between the parent program and the related services subcomponent of it.

Senator PARRY—Have there been any issues or complaints with the program?

Ms Golightly—Not that I am aware of, but I will check for you.

Ms Caldwell—It has been a new program, but it built on the established program of the Structured Training and Employment Project, so it was a fairly well tested model before we moved to the new panel arrangements by competitive tender to become a STEPERS provider.

Senator PARRY—Are you still researching data there?

Ms Golightly—Yes, we are.

Senator PARRY—I will pause while you access that.

Mr Carters—Can I just jump in and provide some information that Senator Boyce had asked for, while there is a pause for other data? We have the figure now on the very long-term unemployment beneficiaries, which is 221,087, and that was as at December 2007. The other figure that we have for you is that, when the previous government sought submissions for the employment services review, it received 106 submissions.

Senator BOYCE—So, 106 last year and 206 this year or something?

Ms Paul—That was the data we received, 221, I think, or thereabouts.

Senator BOYCE—I thought the figure of 206 was used earlier.

Mr Carters—Yes, I think it changes each day.

Mr Manthorpe—The figure I put on the record was 206 as at Sunday, and a few more have been trickling in. I do not have a precise figure with me today.

Senator BOYCE—Are those submissions to be made public?

Mr Manthorpe—That has not been decided.

Ms Paul—No, that has not been decided. Government will consider that and, at any rate, if government were disposed to making them public we would of course need to ask the submitter whether they were comfortable.

Senator BOYCE—I was going to ask that question. Had people made their submissions in anticipation of their being made public?

Mr Carters—There was no advice either way, so that is why we would definitely need to ask them if that is what is decided.

Senator BOYCE—They got the letter; that is the basis on which people have submitted?

Mr Carters—Yes, that is correct.

Ms Caldwell—In answer to Senator Parry, I do not have the three- and the six-month post-program monitoring data on outcomes for STEPERS, it being a new arrangement starting from last year. I do not have those figures with me. I could take that on notice.

Senator PARRY—Yes, that would be fine. Thank you very much for that. This probably fits within 7, but it is 7-8; who is looking after the Personal Support Program? What is the extent of the wait list for job seekers who have been referred to this program? Do you have any data on the wait list?

Ms Golightly—I am sure we do. I will just get those figures.

Mr Waslin—At the end of December, there were 26,703 people on the PSP wait list.

Senator PARRY—Are there any plans to increase or decrease that, but an increase in particular?

Mr Waslin—It is a capped program, which means there is only a finite number of places available. If someone has been identified for referral to that program, they will sit on the wait list until they get a place.

Senator PARRY—Is the actual capped program itself part of the general review?

Ms Golightly—Yes. We talked about that earlier.

Senator PARRY—That is all I have. It is a very difficult area to ask questions when so much is under review, and the response has been that there are so many things that we cannot really delve into because they are under review, which is causing a bit of difficulty for us as a committee to inquire into a lot of these programs. I just place on record the difficulty of being

able to delve into these areas because the response will be, 'The matter is under review; it is part of the overall review.'

CHAIR—I understand the difficulty you have in that respect as a senator on this committee, but I make the point that the rules have not changed. These are the problems that have faced the estimates since we have been doing them. There has been no change in that respect. I do not want you to think that there is any—

Senator PARRY—I have no intention to take it any further. That was just a comment and observation.

CHAIR—Did you want to say something, Minister?

Senator Wong—There has been a change of government. As a government we have a range of different policy emphases. Social inclusion was clearly given far greater emphasis by this government in its pre-election platform than by your previous government, and reviewing the way in which taxpayers' funds are applied to achieve policy outcomes, I would have thought, is a very normal process upon a change of government.

CHAIR—Are there any further questions?

Senator BOYCE—What will be made public out of this review? You are not sure about the submissions. Who can tell me what will be public and when in terms of the review?

Ms Paul—As I discussed a bit before, this review is feeding into the government's consideration about the shape of employment services towards the next tender, because new employment services contracts are due to start on 1 July 2009. Basically, any change to structures or processes and so on will be public, and it will be made public by the minister or the government in a timely way to let providers know if there are any changes before they need to tender.

Senator BOYCE—So, all we can have a sense of being public is the decision sometime in the next 18 months?

Ms Paul—The government may choose to make the submissions public. That will be a matter for it. We have just mentioned that as well. The providers are being involved closely now. The minister is meeting with them and so on, so I think the widest range of views is being heard.

Senator BOYCE—The process for coming to a decision with this review will be that the department would make recommendations to the ministers based on the submissions? What is the process?

Ms Paul—We will offer advice to government, and government will make its consideration. That is correct.

CHAIR—If there are no further questions for officers in respect of outcomes 7 and 8, we will now move to outcome 9.

Outcome 9-Increased Workforce Participation

Senator FISHER—I have some questions about workers' entitlements. In particular, a recent insolvency appears to be in process—National Parts, a company based at Dandenong. Is the department aware of that case? If so, can you give us an update as to its status?

Mr Maynard—Yes, the department is aware of the National Parts Pty Limited insolvency, which includes six distribution centres and 170 auto part retail franchise stores. The organisation is currently in solvency and has an insolvency practitioner, KordaMentha, looking after it. As I understand it, it is to have a creditors' meeting tomorrow to consider the future of the business. We are liaising closely with that particular insolvency practitioner to determine whether or not they wish to call upon GEERS assistance.

Senator FISHER—At this stage, what do you know about the entitlements of the workers?

Mr Maynard—At this stage I understand that the outstanding entitlements are in the order of between \$2.5 million and \$5 million. The details at this point are vague, but the insolvency practitioner, having recently been appointed, is working their way through the records to determine greater clarity.

Senator FISHER—Do you know what comprises that \$2 million to \$2.5 million?

Mr Maynard—No, unfortunately I do not.

Senator FISHER—Do you know what sort of industrial instrument regulates the workplace entitlements of the National Parts workers?

Mr Maynard—I am advised that at this point we do not, but we are meeting with the insolvency practitioner today to obtain more information.

Senator FISHER—If they were to be covered by a union negotiated certified agreement, in your experience dealing with issues of this nature, might you expect that there would be entitlements to wages, perhaps redundancy payments and superannuation entitlements? Do you have a view on that?

Mr Maynard—It is normal practice that GEERS would provide assistance in any unpaid or underpaid wages from the last three months prior to insolvency. All unpaid annual leave, all unpaid long service leave, all unpaid employee superannuation contributions, all pay in lieu of notice, and up to 16 weeks' redundancy entitlement in accordance with whatever legislative instrument applies to the individuals who have been made redundant because of insolvency.

Senator FISHER—If the matter were to proceed and be eligible for assistance under the scheme to which you are referring, in that scenario would 100 per cent of all the workers' entitlements at National Parts be paid?

Mr Maynard—We would need to know more about the particular instrument to determine whether or not it would be 100 per cent of their entitlements. As I have mentioned, there is a cap in the scheme in relation to the redundancy entitlement, which is capped at 16 weeks. If they had that entitlement, greater than 16 weeks, then the answer would be, no, we would not be paying all of their entitlements. Similarly, there is a limit in the scheme that provides for assistance to a level for persons who earn up to \$101,300, and if a person earns more than that they would have their assistance provided as if they had earned that amount.

Senator FISHER—From what you have outlined, clearly there could be some potential gaps?

Mr Maynard—There may be; it depends upon the industrial instrument and an individual's entitlements.

Senator FISHER—To the extent that the workers may be eligible for payments under the scheme, would the scheme provide payments to the workers for their entitlements before the liquidators were paid their fees?

Mr Maynard—The assistance provided under GEERS is that it is an advance to the insolvency practitioner solely to be passed on to the employees. The liquidator's fees would be taken from the assets of the company in accordance with section 556 of the Corporations Act, and that would have a higher priority than employee entitlements. However, our advance under 560 cannot be used for any purpose other than to advance directly to the employees. We would then stand as a creditor and seek to get a return in accordance with the priorities outlined in section 556 of the Corporations Act.

Senator FISHER—I am just trying to work through this. Correct me if I am wrong, but the money paid under the government scheme can only be used for workers' entitlements?

Mr Maynard—That is correct.

Senator FISHER—However, to the extent that money is claimable under the scheme, that amount claimable will be potentially increased by any shortfall that the company is able to afford? So, from what you are saying, if liquidator's fees have priority, then the liquidator's fees would be one of the first grabs potentially escalating the amounts that would otherwise be left unpaid towards the workers?

Mr Maynard—No. The assets of the company would be distributed to all creditors in accordance with priority order. All of the GEERS advance would go directly to the employees. We would then stand in the queue with everybody else. Liquidator's fees would go first priority, secured creditors would come next, then the priority creditors, which would include the employees, would receive pro rata payments in accordance with whatever funds are available within the insolvency. That would include potentially repaying some of the GEERS advances.

Senator FISHER—Perhaps I have misunderstood. If I can put it another way: if the workers were entitled to in excess of the capped redundancy payment, for example, under your scheme, the potential underpayment of the workers in respect of redundancy would stand in queue after the liquidator's fees?

Mr Maynard—Yes, that is how the Corporations Act is written.

Senator FISHER—So, in that respect, in particular, essentially liquidators can get their grab before workers are paid all of their entitlements in a general sense?

Mr Maynard—In the scenario you have outlined, yes, that would be the case. The liquidator would be paid for their services prior to any of the other creditors receiving any return from the assets of the company.

CHAIR—Does the GEERS scheme stand in line before employees for the makeup of any shortfall of their 100 per cent entitlement?

Mr Maynard—No, we would stand in line equal with the employees.

CHAIR—Do you toss a coin?

Mr Maynard—If the employee was entitled to arguably 32 weeks' redundancy, and we had already advanced them 16 weeks, then we would receive exactly the same return on our advance as they would get for their additional 16 weeks, dollar-for-dollar payment in the same rate.

Senator FISHER—Merely by way of setting context, I suppose, I am referring to an article that was in the *Australian Financial Review* on 19 February, page 9, headed 'Bid to boost protection of worker entitlements'. Included in that article is reference to a union push of the federal government to lift payouts to employees that compensates workers made redundant by business insolvency. Particular reference is made to the CFMEU, the AMWU and the NUW. The article also says in respect of this campaign that 'this bit could embarrass the government because it has not adopted a key element of Labor's national platform that calls for protection of all workers' entitlements if their employer is bankrupt'. This may more appropriately be a question of the minister. What measures does the government have, if any, to guarantee that workers in this situation will get 100 per cent of their entitlements?

Senator Wong—There is a number of responses. Firstly, there has been no change to the criteria associated, as I understand it, with the GEERS scheme from those your government put in place.

Senator FISHER—This was the first entitlement scheme of this nature.

Senator Wong—We know the context of that was that it was for Mr Howard's brother, so do you want to go there?

CHAIR—So, it was not actually the first; it was a poor second. Minister?

Senator Wong—Thank you, Senator Marshall.

CHAIR—I am having flashbacks to several years of estimates on this particular question. Please continue.

Senator Wong—Secondly—and you have a legal background too—Senator Fisher would know the provisions of insolvency in the Corporations Law regarding what you called the grab for liquidators. These have been in place for some time. I think Senator Watson has been on a committee with me where we have looked at that. It is certainly a very difficult situation when a company is made insolvent, particularly in the circumstances, which unfortunately occurs far too often for the families of workers, contractors, employees and others involved, where the assets of a company simply do not come anywhere near meeting the liabilities, including employee entitlements. That is a difficult area, and it is not an area that is simply fixed by waving a wand over particular provisions of the Corporations Law, as you know.

Senator FISHER—Has the department advised the government on, for example, changing the order of priorities?

Senator Wong—I could be corrected, but this department does not administer the Corporations Law. This portfolio is not responsible for the Corporations Law. That question should be directed to Treasury.

Senator FISHER—Given the interfaces that would exist and the experience of the department in dealing with the GEERS scheme, has the department worked with Treasury on a proposition of this nature since November last year?

Ms Paul—You are going to a question of advice, and of course we cannot answer your questions about the nature of any advice that we might give.

Senator FISHER—I understand that you can indicate to me whether you have provided advice on that topic. I do not need to ask what it is.

CHAIR—Yes, I think that is a fair enough question, as long as you are not asking what the advice was. I think it is fair enough for the senator to ask whether you have been—

Ms Paul—It just sounded like you were going towards what the advice was. I am sorry.

Senator FISHER—We will see where we go.

Mr Maynard—Perhaps I might address that question by referring you to the *Australian Financial Review* of today, page 13, an article entitled ‘Call to give workers industry-specific protection’, written by the same journalist who prepared the article you were referring to. It includes a quote from the Deputy Prime Minister’s spokeswoman that there ‘are currently no plans to reform GEERS’.

Senator FISHER—That is a comment, if reported correctly, with respect to GEERS—the scheme set up by the former government. It is silent as to the prospect of any other measures that might be taken to ensure that workers get 100 per cent of their entitlements upon insolvency. Minister Wong has referred to some of the possibilities; for example, changing the order of priorities.

Senator Wong—I have indicated that this is an issue that has exercised certainly the Senate committee’s minds on a number of occasions, and a joint committee, as I said, I sat on with Senator Watson, and certainly an issue that is of concern for people in the situation. But it is not an easy situation to resolve, is it?

Senator FISHER—Certainly. I appreciate that. Is the government considering what else the government might do in these situations to provide workers with 100 per cent of their entitlements?

Senator Wong—In relation to GEERS, I think Mr Maynard has indicated his response on that. If the question relates to the order of priority under the Corporations Law, which your questions went to, that really should be referred to a different portfolio.

Senator FISHER—I take it, then—and correct me if I am wrong—that Minister Gillard seems happy with the GEERS scheme as set up by the previous government—

Senator Wong—I do not think you should be putting a proposition as to somebody’s state of mind.

Senator FISHER—That is fair enough. Let me rephrase that. Essentially, Minister Gillard has said that the government at this stage does not propose to change the GEERS that was set up by the previous government.

Ms Paul—Did the quote—

Mr Pratt—Senator, if we could go back to the quote in the—

Senator FISHER—Minister Wong, is the quote correct? Is that the situation?

Senator Wong—It is reported.

Mr Pratt—It is my understanding that that quote is correct.

Senator Wong—And the quote is as Mr Maynard read it.

Senator FISHER—So at this stage the GEERS that has been in existence for some years under the previous government is the last resort of employees in this situation in terms of government assistance? Let me put that another way. The government is not proposing to change the GEERS?

Ms Paul—I think the media report said the minister is not looking at it at the moment. That does not, of course—

Mr Pratt—I will quote that again.

CHAIR—I would rather not have a debate whether a media report is right or wrong. No one here is capable of saying that, so maybe the minister could simply take that question on notice, whether or not the minister is considering a change and, if it can be answered, it will in due course. I am not sure that this is leading—

Senator FISHER—If we are to handle it that way, and I appreciate your guidance, Mr Chair, then I would add this further question on notice: is the government considering any other measures to achieve the guarantee of 100 per cent of workers' entitlements upon the insolvency of their employer?

Ms Paul—I think the minister said before that most of those considerations were likely to come into another portfolio, so we just would not know the answer. You may wish to refer some of those questions—

Senator Wong—We will take that on notice insofar as this portfolio is responsibly concerned.

Senator FISHER—Thank you.

Senator FIELDING—I want to ask some questions about the National Employment Standards and the paper put out either last week or the week before. It includes 10 items. I take it that these National Employment Standards are fairly important; they would not be put forward unless they were very important. Who is not covered by awards?

Mr Kovacic—At the moment awards apply to cited respondents. For instance, a number of organisations or businesses may have been established post the commencement of the Work Choices system that would not be respondent to federal awards by virtue of the operation of the Workplace Relations Act. There would be traditional categories of employees who have not been covered by awards, and in the main they would be managerial sort of professional employees. In addition, there are some emerging areas of sectors or industry that have not been covered by awards; for instance, some areas of the information technology industry may not be covered by awards. It is largely those sorts of categories that at this stage are not covered by awards in the federal system.

Senator FIELDING—How many, do you think?

Mr Kovacic—In terms of numbers, the most recent sort of data, which goes back to 2006, indicates that about 19 per cent of employees are covered by awards only. In terms of award-free employees, those numbers do not give us a sense as to how many would be award-free, but I would imagine that it would be, at a guess, probably less than 10 per cent in very broad terms, very much less than 10 per cent.

Senator FIELDING—So, 10 per cent of a workforce of approximately 11 million; is that right?

Mr Kovacic—I think it is about 10 million at the moment. For instance, you would have proprietors of businesses that would not be covered by a federal award, and self-employed persons may not be covered by federal awards, either.

Senator FIELDING—To try to paint a picture in people's minds, and I am always mindful of naming particular companies, but I could probably at least name this one: many of the OneTel staff were not covered by an award. There were reports in the newspapers. There are some nods at the table there. It was a new industry, and a lot of awards were formed basically when IT was not around.

Mr Kovacic—I do not know about OneTel specifically as to whether they were or were not covered.

Senator FIELDING—The National Employment Standards cover 10 items; is that right?

Mr Kovacic—That is correct.

Senator FIELDING—There are weekly hours of work, working arrangements, flexible, parental leave, annual leave, personal carer's leave, community service leave, long service leave, public holidays, notice of termination, redundancy pay, and a fair work information statement. I do not see meal breaks or penalty rates. A lot of families rely on these. If 10 per cent of people are not covered by awards where these matters would be covered, it seems to me that there will be some exposure of people not being covered by penalty rates and meal breaks.

Mr Pratt—Those people would not be covered by penalty rates and meal breaks under awards currently.

Senator FIELDING—Under *Forward with Fairness* I would think it would be reasonably fair to assume that, as a bare minimum, there would be something about penalty rates and meal breaks. The National Employment Standards are 'to establish a fair and flexible productive workplace relations system for Australia ... that protects fair minimum wages and conditions for all working Australians'. Ten per cent I know already are not covered. Some of those will be managerial staff, but there are still a lot of people who are not covered. Meal breaks and penalty rates are fairly basic items.

Mr Kovacic—In terms of issues such as penalty rates, the point that Mr Pratt has made is that employees who are currently award free do not enjoy any sort of entitlements in that regard. Certainly the discussion paper around the proposed National Employment Standards invites comments around how to deal with machinery provisions, if I can put it that way. In terms of the proposed new workplace relations system that the government is looking to have

fully operational by January 2010, there are two components to the safety net. One is the legislated National Employment Standards; the other component is modern awards. In terms of the entitlement around the legislated standards, the legislation will largely provide for the entitlement and any sort of key machinery provisions that relate to that. But the bulk of the machinery provisions will be dealt with in modern awards. Part of the discussion or the consultation process is to identify how machinery provisions relating to the elements in the National Employment Standards might be dealt with, and in particular how those sorts of provisions might be dealt with for award free employees or employees earning more than \$100,000 in the new workplace relations system. Certainly those issues are yet to be settled by government, and indeed the consultation process is an opportunity for stakeholders to submit a range of views on those sorts of issues.

Senator Wong—The standards that have been put out for consultation are consistent with the matters that we committed to in *Forward with Fairness*. As you may recall, there were the 10 National Employment Standards; then there were a further 10 minimum employment standards that would be included in awards and that included penalty rates and overtime. I understand the point you are making, but the point I am making is that the government is being entirely consistent with its policy commitments as outlined prior to the election.

Senator FIELDING—I was going to make a point on that consistency. Just for the record, Family First voted against Work Choices because it left Australians vulnerable. Family First is being consistent. We are looking at what is being proposed by the government of the day, such as *Forward with Fairness*. The document states that the National Employment Standards are really important. It covers 10 items, and other items are covered in awards. We have already determined that there will always be some people not covered by awards. Why would you not, as a bare minimum, have something on meal breaks and penalty rates? People should not have to bargain for a meal break.

Senator Wong—The officers can interrupt me if I am incorrect, but our policy commitment in *Forward with Fairness* was that meal breaks and penalty rates would be dealt with as minimum standards in awards. They would not be matters that you had to try to get; you would get them by virtue of your entitlement under the award.

Senator FIELDING—I fully understand that. My first question is: why should they be in awards when clearly not everybody will be covered by awards? Secondly, why would you leave it to another process? The National Employment Standards are about guaranteeing for all Australians, rather than leaving it to awards to sort out issues of some fairly basic conditions such as meal breaks and penalty rates as a bare minimum.

Mr Kovacic—The intention of including those provisions in modern awards is to enable scope for industry specific requirements to be taken into consideration in terms of developing modern awards as opposed to applying a one-size-fits-all approach with respect to everybody. There are differences in terms of different industry sectors in terms of their needs. So, dealing with these sorts of issues in modern awards provides the scope for them to be developed to the particular needs of industries and the employees working in those industries.

Senator FIELDING—But some of those 10 National Employment Standards may be upgraded in awards anyway; therefore, you could have a bare basic minimum meal break

criteria in the National Employment Standards and penalty rates that could be upgraded in awards for those who go through the award process. But why would you not have those two in the National Employment Standards so that everybody has those, so we are not treating 2 am like 2 pm? If the awards will cover everything then let the awards cover it. But these are included as a real bare basic safety net. That is what the National Employment Standards are for. If they are not that important, you would not have them.

Senator Wong—The safety net that we outlined in Forward with Fairness comprises a number of parts, including the National Employment Standards and the minimum standards set out in awards. I understand that essentially your questions go to the effect on a range of non-award employees, in which you and I would be included, on issues such as penalty rates and meal breaks. I am not sure that we can take this further unless Mr Pratt has something he wishes to say. I am happy to say I can communicate to the minister I represent your concern about that group of employees.

CHAIR—Your earlier evidence was that 10 per cent of people are not covered by awards; is that right?

Mr Kovacic—I think it would be up to that; it would not any more.

CHAIR—If you exclude senators and managerial type classifications, about whom are we actually talking? Which people who have real jobs, as opposed to us, do not actually have award coverage?

Mr Kovacic—I think it would be very small. It would just be small pockets, and I think it would be largely in emerging areas such as information technology where there might not be existing award coverage. Beyond that it is very difficult to see what areas there would be. In the federal award system, most industry sectors would have award coverage. Call centres would be covered by awards now.

CHAIR—I think the committee would like to know. That goes to the crux of what Senator Fielding is asking. We are not really worried about our conditions, but we are concerned about people who do not have the bargaining power and who may not be covered by awards and who may also fall outside of the minimum safety net. Could you take it on notice to provide the committee with the sorts of people whom I have described may not be covered by an award under the new legislation?

Ms Paul—I might point out the award modernisation process does not preclude emerging industries from being covered.

Senator FIELDING—No. I appreciate the extra input to the question. I have asked this question, and no-one seems to know the answer. I thought the department would have a fairly good handle on those who are covered by awards and those who are not. For example, shopping trolley collectors currently are not covered by an award. I know that has been picked up and it is being looked at. I have read articles, and I have read this document quite well. I understand that in Forward with Fairness you are being consistent with your document. Family First are being consistent, too, because we have always argued that Australians should not have to bargain for basic things such as meal breaks and penalty rates. Some people will be exposed. You may say that the awards over time will pick them up, but until the awards pick them up, people will be exposed.

If the National Employment Standards are not needed and they are covered by awards, you would not have National Employment Standards. Do you understand what I am saying? You would not have National Employment Standards if awards picked up all of this stuff. Awards do not cover everybody, and the National Employment Standards are to make sure we have a bare basic parameter for working conditions in Australia. I would think most Australians would expect that meal breaks would be covered in the National Employment Standards, as well as a minimum penalty rate, to make sure that working at 2 am is not treated like working at 2 pm. I am happy for you to argue back and say that the National Employment Standards are not needed and all the awards will take care of everybody, but that is not true.

Senator Wong—No-one in this government is arguing that 2 am and 2 pm should be treated the same. I think we have been very clear in our view about the previous government's Work Choices legislation, and we are doing all we can to amend that and remove AWAs that we regard as unfair. I understand the issue that you raise. Your concern is with non-award employees, presumably not, as Senator Marshall said—and I will not repeat the description he used—people such as senators and members, who may not be covered by an award for a period. It is a situation that I would emphasise has been part of the industrial relations framework for a number of years. That is why awards did have to be extended under various governments to deal with emerging occupations.

Senator FIELDING—Could I turn the question around a bit? I have to reiterate that I hear the government when it says it argued against Work Choices, as did Family First. But we are being consistent on this idea of meal breaks, public holidays and penalty rates. The new government has included public holidays, and it is a very good and sound move to make sure that public holidays are guaranteed for all Australians in the National Employment Standards. My question goes to why the government continues to exclude a bare minimum of meal breaks and penalty rates so that 2 am is definitely treated the same as 2 pm in a working day, with employees who work from 2 am to 3 am being treated the same as those who work from 2 pm to 3 pm. Why would you allow any Australian to be exposed to not having those two provisions covered? You have covered public holidays, for which I applaud you. Previously we had five minimum standards—the bare bones of five—and we are all aware of those issues. But you have upped it from five to 10, and I just question why not include meal breaks and penalty rates?

Senator Wong—To be fair—

CHAIR—Hang on; it is a question to the minister, but it is very similar to the question you have just asked, so I will ask the minister to respond and then we probably need to move on. This is not the place to debate policy; it is a place to ask questions and obtain answers.

Senator Wong—There are two points. The previous government did not only have five. It also had a system where a great many award conditions could be stripped away without full compensation. It is a very different industrial relations system. I think in fairness you would accept that. Secondly, we are being absolutely consistent with the policy that was outlined prior to the election, and I think fairly extensively looked at by many people in the community. Finally—and this is possibly an issue on which an officer might comment—generally you would put issues such as meal breaks, et cetera, in awards because different industries obviously would have different times at which you would take meal breaks, rest

breaks and the like. So, you would have industry and/or enterprise specific arrangements around those things.

Senator FIELDING—We are being consistent as well about meal breaks and penalty rates. I do not think most Australians know that meal breaks are not covered for all Australians under the National Employment Standards. I do not think they really know that. Even though you can say that *Forward with Fairness* is out there, they knew that Work Choices was a dud.

Senator Wong—We agree on that.

Senator FIELDING—They would vote for anyone who had something different from that. I am saying that I do not think most Australians know that meal breaks and a bare minimum penalty rate is not guaranteed for all Australians. I do not think they know that at all.

Ms Paul—I think most people are aware of awards. That is a well accepted and longstanding major component of our industrial relations landscape. As the minister has pointed out—and I think Mr Kovacic went to before—it makes sense to enable meal breaks and penalty rates to be industry specific, which means you really have to have them in something that is a mechanism that can relate to that particular industry. The National Employment Standards, which are new and perhaps not as well understood yet in the community broadly as awards, go to the broader scope of nationally consistent issues. That is why it is easier to deal with holidays, for example, in there than it would be for things that are more industry specific. We do understand your point, and the minister has undertaken to take that up with the Deputy Prime Minister, but I am just spelling out the differences between the two mechanisms.

Senator FIELDING—You could add a meal break provision in the National Employment Standards. You could add a bare minimum penalty rate in the National Employment Standards. The awards could have those modified for specific industries. I am saying that you could actually achieve what you want to achieve and what I think most Australians would want to see there, which is meal breaks being guaranteed for all, even if it were on a minimum basis, and the awards could come on top and adjust those for those industries as needed. The industries could also adjust the penalty rates through awards. Therefore, you have a distinct message going out that all Australians are covered with fairness through the National Employment Standards. That is my proposal. I think the answer would have to be, yes, you could do that. I am not saying that you would want to do that. For some reason the government is saying you would not want to do that, but you could do it.

Senator Wong—No, we are saying that.

CHAIR—Hang on; while I am enjoying this, and I would love to join this debate, the appropriate place to have this sort of debate is in fact in the Senate chamber. Unless you have some more specific questions, I would ask that we move on.

Senator FIELDING—Could I have my proposition put on the record? I do not want to repeat it. In the National Employment Standards, you could add penalty rates and meal breaks with the awards also adding to those items? Yes or no?

Senator Wong—We have noted your views and I think we have said we will pass on those views. I understand the position you are putting, but again, to put some context around this, given that we are putting things on the record, if we want to talk about fairness—and I do not have figures in front of me—there would be many people on fairly high incomes who would not be covered by awards. I assume your concern would be with low income employees who were award free. My advice from the department is that its view is that would not be a very high figure. I understand that is the group you are concerned about particularly; is that correct?

Senator FIELDING—That is correct.

Senator Wong—It is not the executives of banks or people like that who are award free and earn quite a lot of money, correct?

Senator FIELDING—Yes.

Ms Paul—In the exposure draft of the National Employment Standards, which is a discussion paper, there is a public invitation for people to offer feedback about the impact of the employment standards on those who are award free. You have offered us a fair bit of that now, but these are not yet settled. This is out for exposure.

Senator FIELDING—Submissions close on 4 April 2008. I will help you promote it. I am obviously aware of the document.

Ms Paul—Thank you.

CHAIR—I do now want to move on.

Mr Pratt—Sorry, but—

CHAIR—You are not helping me at all, Mr Pratt.

Mr Pratt—My apologies, but just a final word on this. As to the minister's point, once you exclude high-paid managerial people, once you exclude IT professionals and the like, the vast majority of people will be covered by an award and therefore will be subject to meal breaks and penalty rate arrangements. When you look at what the award modernisation request will seek of the Industrial Relations Commission in modernising awards, we see it states as follows. The creation of modern awards is not intended to:

(a) extend award coverage beyond those classes of employees, such as managerial employees, who, because of the nature or seniority of their role, have traditionally been award free. This does not preclude the extension of modern award coverage to new industries or new occupations where the work performed by employees in those industries or occupations is of a similar nature to work that has historically been regulated by awards (including State awards) in Australia ...

I suspect—and I am speculating here—that the employees with whom you are concerned ultimately may get picked up through this final process.

Senator FIELDING—This will be my final question on notice. I have estimated that 100,000 Australians—but I could be wrong, because you do not have the figures, either; we said 10 per cent of 10 million, which is one million—who are not in the managerial class or senior manager class who are workers who may have to bargain their way through and who will not have meal breaks or penalty rates guaranteed. That is from my own analysis.

CHAIR—That question has been taken on notice, and the department will come back to us.

Mr Kovacic—I want to foreshadow that there is a difficulty in terms of data, so we will do our best to come up with an accurate number in terms of the question we have taken on notice.

CHAIR—I am sure you have always done your best in responding to questions on notice, Mr Kovacic.

Senator FIELDING—Thank you for your leniency.

CHAIR—Senator Campbell?

Senator GEORGE CAMPBELL—Can anyone give a detailed report on the status of the Ansett employees' scheme, where that is up to, and whether or not there is any likelihood in the short to medium term of it finally paying out the Ansett employees and the scheme being terminated?

Mr Maynard—The Ansett scheme continues inasmuch as funds have been advanced to former Ansett employees as they have been terminated by the Ansett administrator as recently as January this year. The department is currently working with the Department of Transport to determine the completion of the scheme. We are working also with the Ansett administrators, who are continuing to make dividend payments to the former employees and for the amounts advanced under SEESA for the direct benefit of the employees. At this point, the Ansett administrators continue to owe employees in the order of \$75 million, and continue to owe SEESA returns in the order of \$50 million. My understanding is that all employees have received all of their SEESA entitlements. There are no more Ansett employees who are waiting for any further assistance from SEESA.

Senator GEORGE CAMPBELL—Did you say that there is \$75 million still available to be distributed?

Mr Maynard—My understanding is that that is the unpaid element of the employees' entitlements, solely in the area of redundancy entitlements.

Senator GEORGE CAMPBELL—Do you have a figure for how many employees would benefit by the distribution of that money?

Mr Maynard—My understanding is that, as a percentage of the 13,057 former employees, 26.8 per cent have received 100 per cent of their entitlements.

CHAIR—The entitlement you are talking about is their—

Mr Maynard—Their total entitlements owed by the Ansett Group.

CHAIR—So, that was their employee instrument entitlement?

Mr Maynard—That is correct. That has all been advanced solely through SEESA. An additional 41.8 per cent have received in excess of 90 per cent of their employee entitlements owed by the Ansett Group, bringing a cumulative total to 69 per cent, and a further 31 per cent have received in excess of 80 per cent of their total entitlements owed by the Ansett Group, all through the advances made by SEESA.

Senator GEORGE CAMPBELL—What is the difficulty in finalising these payments to these employees?

Mr Maynard—There is no money owed to these employees through the government's SEESA scheme. The money that is owed is now moneys owed in excess of the amounts being paid through SEESA, and it is being distributed by the Ansett administrators as and when they realise the existing assets of the company.

Senator GEORGE CAMPBELL—So, it is a question of when the assets are realised?

Mr Maynard—That is correct.

Senator GEORGE CAMPBELL—So, this \$75 million is not actually cash in hand, if I can use that term?

Mr Maynard—No.

Senator GEORGE CAMPBELL—Is there a formula for distributing it as they realise the assets?

Mr Maynard—They would distribute it to all creditors in the priority order in accordance with the Corporations Act that we discussed before in relation to previous questions.

Senator GEORGE CAMPBELL—So, they would apply it to all employees proportionately across-the-board?

Mr Maynard—That is correct.

Senator GEORGE CAMPBELL—Is there any sort of time frame on the likelihood of all of this being realised and distributed?

Mr Maynard—No, it is entirely dependent upon the timeframe under which the Ansett administrators are able to realise the assets to provide the best possible return to the creditors, namely, the employees.

Senator GEORGE CAMPBELL—We could be talking well into the future before this—

Mr Maynard—I would hope not.

Senator GEORGE CAMPBELL—I did not ask you what you hoped. The reality is that we could be. How long has it been now?

Mr Maynard—Ansett collapsed in September 2001.

Senator GEORGE CAMPBELL—So, that is seven years virtually. We could be looking at another seven years?

Mr Maynard—I would suggest that, based on the amount of assets that is available left to the company, it is unlikely to be that length of time, but I do not have a detailed knowledge of the Ansett administrators' strategy or ability to move the remaining assets.

Senator GEORGE CAMPBELL—Are you aware of what happens or what may happen to any of those employees who might pass on in the interim period while moneys are still outstanding? Would those moneys be paid to their family or children?

Mr Maynard—I do not know. That would be a question for the Ansett administrators.

Senator GEORGE CAMPBELL—Could you take that on notice and see if you could find that out?

Mr Maynard—I will.

Senator FISHER—If I may follow on with a question about the entitlements of Ansett workers. If you were to combine the payments made to Ansett workers under the SEESA scheme with payments made to Ansett workers by the staged payments from realisation of assets, do you have the figures on what percentage of workers would have received what percentage of their total entitlements by now?

Mr Maynard—Yes, they were the numbers that I went through previously.

Senator FISHER—Sorry, I misunderstood. I thought your figures were percentages based on SEESA payments as opposed to—

Mr Maynard—Sorry, my advice to you was that the 100 per cent received was due to the SEESA entitlements, and then we went through over 90 per cent and over 80 per cent, and they would have included persons who had redundancy entitlements in excess of the amounts provided by SEESA and who subsequently would have received some of the return directly from the Ansett creditors in addition to the SEESA amount.

Senator FISHER—Yes, but do you have the percentages that would have been achieved through that process when you combine the two, or some data as to that?

Mr Maynard—Sorry, I am not sure that I understand you, other than to say that 99.8 per cent of all former employees have received in excess of 80 per cent of their outstanding entitlements, both through a contribution from SEESA and any returns by the Ansett administrators.

Senator FISHER—Despite there being some percentage outstanding at the moment, I guess it can nonetheless be said that, in the absence of the SEESA scheme, those workers would have waited much longer to get some of their payments, and they would have received much less. That is a statement, not a question.

CHAIR—It is simply your statement, so it carries no more weight than that. Is the scheme being wound up? Has it finished and made all of its payments?

Mr Pratt—Not at this stage.

Mr Maynard—The scheme has not made all of the advances that there are to make. It is now in the process of finalising the recoveries and working with the Ansett administrators through that process. Under the relevant act, we are obliged to report to parliament on an annual basis, and our next report is due after 31 March, which will provide a full coverage of activities and expenditure.

CHAIR—Is the recovery of this scheme similar to GEERS whereby, with respect to the money that is still to be recovered from the assets, you will be standing in equal line with the employees?

Mr Maynard—That is correct.

CHAIR—So, the payments they have received actually in effect subsidise the potential for them to get 100 per cent, does it not? If you take \$1 out, that is \$1 less for them. They just pay for what they have already been paid for.

Mr Maynard—The dollar that we get back is in relation to the amounts that we have already advanced, which has solely been for the benefit of the employees.

Mr Pratt—If I may mention that the official from the Remuneration Tribunal secretariat is now here.

CHAIR—Are there any other questions on the GEERS or the Ansett scheme? Okay, we will go to the Remuneration Tribunal and keep working our way through Outcome 9.

Remuneration Tribunal

Senator FISHER—Can you explain how the Remuneration Tribunal makes its decisions generally, and in respect of whom it makes its decisions?

Mr Gillespie—It has, let us say, two principal roles. It determines some things and provides advice on other things. On the basis of that advice, others can determine or not. It covers a variety of groups in a determinative way, what we would call full-time office holders, part-time office holders, the federal judiciary, some entitlements of parliamentarians, and it determines a framework for principal executive officers as well. They are the four broad categories.

Senator FISHER—You make determinations and you advise in respect of four or so categories of people. How do your determinations and advice interrelate? Or put it this way: is what you determine or advise in respect of one category interlinked with what you determine or advise in respect of another category?

Mr Gillespie—I would not say necessarily interlinked in a formal sense. The tribunal—and I am certainly not a member of the tribunal—generally makes a decision each year on an annual review outcome, and it applies that annual review outcome generally to the groups for whom it determines remuneration, and generally it will also advise the relevant parties about that outcome when they are providing advice, for example, to ministers.

Senator FISHER—If you were to make a determination and provide advise in respect of category A—

Mr Gillespie—It is either one or the other. We determine or advise, and the categories in which we advise or determine are fairly clear.

Senator FISHER—Would you explain those?

Mr Gillespie—The tribunal determines for full-time office holders and part-time office holders; it determines a framework for principal executive holders, but the employing body determines their remuneration directly. The tribunal determines the remuneration for parliamentary office holders, it provides advice or a report in relation to ministers of state, but it has no direct role in the remuneration of members of parliament. In relation to departmental secretaries, it provides advice, as it does in relation to the heads of executive agencies. However, it does not determine their remuneration.

Senator FISHER—With respect to parliamentary members and staff, can you explain that again?

Mr Gillespie—With respect to parliamentary staff, the tribunal has no role at all. From the legislative framework within which the tribunal operates, the Remuneration Tribunal Act 1973, it is called upon to report about the additional salaries of ministers of state. It determines the remuneration of parliamentary office holders, the Presiding Officers of the parliament being one example. It has no direct role in relation to the remuneration of members of parliament. That role was removed from the tribunal in 1990 by the Remuneration and Allowances Act 1990, but an indirect role exists through a link that has been established under another piece of legislation for which the tribunal is not responsible, which picks up a pay point in the tribunal's jurisdiction, if I can put it that way. Do you want me to expand on that?

Senator FISHER—That sounds rather complex. In essence, are you saying the Remuneration Tribunal is not responsible for the pay of members of parliament?

Mr Gillespie—I can put it this way: it does not determine directly the remuneration of members of parliament. It determines some allowances—for example, travel allowance and a range of other things. But if we limit the discussion for the present purposes to what you might call base salary, it does not determine that. However, it does determine the principal executive officer framework, a classification structure, which has a particular pay point in it. By regulation made under the Remuneration and Allowances Act, Remuneration and Allowances Regulations 2005 I think it is, that regulation, which is not within the tribunal's gift, picks up that pay point.

Senator PARRY—How will Prime Minister Rudd's salary freeze for parliamentarians be affected? I understand that advice was to be sought from the Remuneration Tribunal. How will that take effect if you do not actually determine it?

Mr Gillespie—I cannot answer that question directly. The tribunal has had no request, to the best of my knowledge. The tribunal is aware of the likelihood of a request.

Senator PARRY—If such a request were received, and publicly it appears that it will be, how do you enact a change if you do not have the authority to do that?

Senator Wong—I think Mr Pratt can assist in terms of the mechanism that the government has announced it will utilise in order to effect the wage freeze for members of parliament.

Mr Pratt—As Mr Gillespie pointed out, parliamentarians' base salary is set by a regulation issued under the Remunerations and Allowances Act 1990. The Prime Minister has indicated that, in terms of parliamentarians' pay, 'The government has decided to propose to the parliament a regulation which will have the effect of not increasing MPs' salaries through until the middle of next year.' So, it will be done by regulation and will be considered by parliament.

Senator PARRY—In effect bypassing the Remuneration Tribunal?

Mr Pratt—No, as Mr Gillespie has described, the Remuneration Tribunal does not have a role in setting parliamentarians' base pay. That is done through the regulation. It is up to the parliament.

Senator FISHER—Presumably that is a regulation that would be treated as a regulation in any parliamentary process, so it can be disallowed?

Mr Pratt—That is correct.

Senator FISHER—How does that work?

Ms Paul—It is just like a normal regulation.

Senator PARRY—Who makes the regulation?

Mr Maynard—It is consistent with the arrangement that has been in place since December 1999, when the then government determined that, through regulations under the Remuneration and Allowances Act, it would remove the role of the Remuneration Tribunal to independently set parliamentarians' pay and take that role upon itself. It determined at that point in time that reference salary A within the principal executive officer classification would be a suitable point to which to link parliamentarians' pay, and the regulation that had been put in place effectively said that parliamentarians' base pay would be equal to 100 per cent of reference salary A.

Senator PARRY—Which the Remuneration Tribunal sets?

Mr Maynard—Which the Remuneration Tribunal sets without any consideration for parliamentarians. It sets it in relation to principal executive officers.

Senator PARRY—So, the Prime Minister proposes to change the regulations, and you will keep setting your band?

Mr Gillespie—That is correct, because the tribunal—

Senator PARRY—We just will not use it. In effect, we are taking it out of an independent handling agent.

Mr Pratt—Without wanting to confuse the picture, also the Remuneration Tribunal's determinations in this area are actually disallowable instruments, anyway.

Mr Gillespie—The tribunal's direct role in relation to parliamentarians' pay ceased in 1990. Since that time there has been a variety of links.

Senator PARRY—But there is a very strong indirect link by setting that reference to salary?

Mr Gillespie—Through that regulation to which Mr Maynard has referred, yes.

Senator PARRY—So, if we disallowed an instrument from the Remuneration Tribunal, it would affect everyone, not just parliamentarians; that is why it cannot be done that way.

Mr Gillespie—Slightly more accurately, it would affect the group covered by that determination.

Ms Paul—The instrument has been the same. In other words, it has been by way of regulation for a long time.

Senator PARRY—I now strongly endorse the comments that in the annual report state, 'It is not clear to the tribunal that the current means of setting parliamentarians' base salary is well understood.' That is absolutely correct. It is not well understood, not even by us.

Senator WATSON—Who signs off on that regulation?

Ms Paul—It is a regulation made by parliament.

Senator WATSON—Who signs off on it?

Mr Maynard—I believe it is the Minister for Employment and Workplace Relations.

Mr Pratt—We will clarify that for you.

Senator Wong—We may have to take that on notice.

Senator PARRY—In effect it is a minister who has responsibility for that regulation drafting?

Mr Pratt—The minister submits the regulation to the Governor-General, and the Governor-General makes the regulation.

Ms Paul—It would be the Deputy Prime Minister in this case.

Senator WATSON—Which minister makes the recommendation to the Governor-General?

Ms Paul—The Deputy Prime Minister, the Minister responsible for Employment and Workplace Relations in this instance.

Senator PARRY—What will happen if there is a freeze and you keep lifting your band and then we go back to your band? Will we have an almighty jump again?

Mr Maynard—The regulation that the Prime Minister has said in the House he proposes to bring forward would have an effect of impacting on the percentage of base salary relative to PEO reference salary A. At the moment it is 100 per cent. In effect, that percentage would be decreased by any percentage being proposed for the next financial year. It would then remain the same and, as such, you would be in lockstep continuing at the same relative percentage into future years.

Ms Paul—You appreciate that it was a proposal for a one-of effect, so once that effect is made the lockstep would proceed.

Senator Wong—The Prime Minister's statement on 14 February outlined two effects. One is the effect of not increasing, in other words, a wage freeze for members of parliament and senators, until the middle of next year; and the second being no clawback, which is the issue that you raised.

Senator PARRY—Has there been any modelling to work out the exact savings to the Commonwealth on this? I am sure it will save a huge amount with respect to inflation.

Mr Pratt—It is not possible to do that in advance of the Remuneration Tribunal's determination.

Senator PARRY—If it just went on CPI, has there been any CPI modelling or not?

Ms Paul—As we said, it is not possible to do that because it is a relativity matter, and some of the factors are not yet known. It is my understanding—and I am happy to stand corrected if I am wrong—that when a regulation is proposed the Remuneration Tribunal's advice would be sought. You said something a bit earlier on about a loss of independence. I

was not quite sure if I heard you correctly. I make the point that the Remuneration Tribunal's advice will be sought.

Senator PARRY—But not necessarily acted upon?

Ms Paul—Its advice will be sought.

Senator FISHER—Upon what criteria does the Remuneration Tribunal base its decisions to arrive at determinations?

Mr Gillespie—Can I direct senators to the tribunal's annual report, rather than my making a comment. I cannot speak for the tribunal, but in the presidential overview in 2005-06 it gave something of a statement about the sorts of considerations it takes into account. There are relativities and various indicia of movements in wages and costs and what have you. From a humble official perspective, I think there is some science and some art.

Senator FISHER—Does it take into account economic impact of the determinations it makes?

Mr Gillespie—Not as a direct factor. There is a fairly good account in that annual report.

Senator FISHER—What will be the next step in the timing of this? The Remuneration Tribunal makes a determination? Is that the next step for the process of the implementation of the proposal?

Mr Maynard—The process will be as required under the Remuneration and Allowances Act that, prior to any regulation being made under the act, the Remuneration Tribunal will be consulted. They will be consulted. A regulation will then be drafted that will be put before both houses of parliament for consideration and, subject to no disallowance motion, given effect.

Senator FISHER—When will the Remuneration Tribunal be consulted?

Mr Maynard—As soon as is practicable.

Senator FISHER—Is there a request that that occur? Has a request been made that that take place?

Mr Maynard—The process is in train.

Senator FISHER—What does that mean?

Ms Paul—It means a request is being developed. The Prime Minister only made his announcement a matter of days ago, so not surprisingly the request is under development.

Mr Pratt—I am aware that there has been some informal discussion with the Remuneration Tribunal, and the formal request will be developed fairly soon.

Senator FISHER—What would you expect would be the timing?

Mr Pratt—I would not like to speculate.

Mr Gillespie—The tribunal generally tends to make its decision about an annual adjustment with effect from 1 July each year. The present rate established by the tribunal in 2007 for the principal executive officer structure will not change at the earliest until 1 July.

Senator PARRY—Would you expand upon the sentence at the bottom of page 1 of the overview of the annual report for 2006-07? It commences 'It is relevant to note that the Tribunal, in its 1999 Report, observed that the base salary for SES Band 2'.

Mr Gillespie—I really cannot. That is the president's statement and I am not able to infer what else he might have had in mind.

Ms Paul—Mr Gillespie is the Secretary to the Remuneration Tribunal, not a member of the tribunal, so he is not able to—

Senator PARRY—Is it possible for that to be taken on notice and the president respond?

Ms Paul—We can seek a response from the president. The Remuneration Tribunal, of course, is an independent body.

Senator Wong—They are not an employee of the department.

Ms Paul—No, they are a statutory authority.

Senator PARRY—On what basis does the Remuneration Tribunal appear here?

Ms Paul—They are appearing here because the secretariat is located within our department. The members of the tribunal, who make the considerations, are statutory appointments, and the tribunal is a statutory body.

Senator PARRY—So, we cannot ask for a comment from the board, only from the office bearers, so we cannot get a comment on that statement?

Ms Paul—No, I am happy to pass on your question to the president.

Senator PARRY—But we cannot formally request?

Ms Paul—Not here now, no. We do not have those people.

Mr Pratt—It is an independent tribunal, like a court, for example.

Senator Wong—It is analogous to the Australian Industrial Relations Commission, from memory, that appears before this estimates committee, but you do not get the president of the commission.

Ms Paul—I think that is right, because it has the nature of a tribunal. Anyway, I am more than happy to pass on the question to the president and seek any response he may wish to give.

Senator WATSON—Is the structure of the tribunal also under review?

Ms Paul—No.

Senator GEORGE CAMPBELL—The next item on the agenda is International Labor Organization. Do you have with you a list of the conventions that remain outstanding in terms of ratification by the Australian Government?

Mr Pratt—I do not have those with us, but we can attempt to get them over lunch.

CHAIR—Are there any further questions of the Remuneration Tribunal? If not, thank you. We will now break for lunch and resume at 1.30 pm.

Proceedings suspended from 12.28 pm to 1.30 pm

CHAIR—The committee will resume. We are taking questions and receiving answers in outcome 9.

Mr Pratt—Just before the break Senator Campbell asked some questions about ILO conventions. We have got some information for Senator Campbell.

CHAIR—I think it is appropriate to do that now.

Mr Kovacic—What I can table is a list of conventions that Australia has ratified and similarly a list of conventions that Australia has not ratified.

CHAIR—You can table those documents. Do you have any follow-up questions?

Senator GEORGE CAMPBELL—No.

CHAIR—Senator Fielding.

Senator FIELDING—Thank you. I would like to follow up a little bit further on a different issue but with the National Employment Standards again. Does anyone know how many site awards there are across Australia?

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

Senator FIELDING—Can you tell me what the site awards are?

Mr Kovacic—I presume that they would be a euphemism for project awards in the sense that they probably apply to a particular building project, building site or something of that nature.

Senator FIELDING—They are not industry wide for that site?

Mr Kovacic—No. They would be quite specific in terms of their application.

Senator FIELDING—I am thinking about people who work in industries where the employees do not have much muscle or bargaining power, and just remembering that 80 per cent of the private sector is not unionised, how would they negotiate their site award which may change, which includes penalty rates and meal breaks, knowing that the NES does not have a bare minimum on meal breaks and penalty rates?

Mr Kovacic—I am not sure I understand the process. As a result of the award modernisation process, it will be the Australian Industrial Relations Commission that makes modern awards, and going through that process there will be an opportunity not just for the traditional stakeholders in terms of employer and employee organisations to contribute to the process, but for other interested parties and other interested stakeholders to also contribute to the commission's thinking as part of making modern awards.

Senator FIELDING—I do not want to spring the minister on this question, but is the government guaranteeing that every person covered by an award, whether it is a site award or some other award, will get penalty rates and meal breaks?

Senator Wong—We are guaranteeing that penalty rates and meal breaks will be the minimum standards in awards as we outlined prior to the election.

Ms Paul—You started by talking about negotiation and that sounded like a workplace negotiation. That is not the nature of an award.

Senator FIELDING—I understand collective agreements and how they work. They sit normally above an award, but there are some things called site awards that are very specific to a workplace. My question is: is the government guaranteeing that every person covered by an award will get penalty rates and meal breaks? This is in the backlight that only 80 per cent of the private workforce is unionised, so who is going to be bargaining?

Ms Paul—The question of union coverage does not have anything to do with awards. Awards are the foundation stone, as we have talked about before and there only a few people who are not covered in the minimum standard. It is not the NES here. It is the minimum standard that goes to those things and the government has committed to that through Forward with Fairness. That probably does answer your question.

Senator FIELDING—Is the government guaranteeing that every person on an individual contract will get penalty rates and meal breaks under the new proposed system? My concern is that the National Employment Standards do not have meal breaks and penalty rates as a minimum standard, so I am asking the question: will everybody be guaranteed penalty rates and meal breaks?

Mr Kovacic—In terms of certainty for employees who are covered by awards, bearing in mind the issue of what arrangements may apply to those low paid employees, following on from the discussion we had this morning in terms, who may not be award covered, they are issues that are yet to be worked through and are likely to be raised in the context of comments on the exposure draft of the National Employment Standards. Common law contracts will need to see employees better off than they are under the safety net, which as I mentioned this morning is a combination of both the legislative National Employment Standards and modern award provisions.

Ms Paul—The test is that they have to be better off.

Senator FIELDING—I do not want to go over old ground because we have said that there are some who are not covered by awards. We will not go back to that ground because we discussed it this morning.

Mr Kovacic—In terms of those low paid, award-free employees, the point I am making is that the process in terms of consultation around NES, together with the award modernisation process, are avenues where those issues will be further considered, and clearly the government will take into account those sorts of considerations in developing its more substantive reforms later this year.

CHAIR—I do not want to restrict you and I try to allow as much flexibility as possible, but I am a little bit concerned that we are asking questions about what will happen post legislation that has not yet been passed through the parliament. I do not want to restrict you but if we go too far down what we really do not know yet then I will start to pull you up.

Senator FIELDING—Thank you. The point I was trying to make is given that 80 per cent of the private workforce is not unionised and as far as the National Employment Standards you could negotiate down to the NES in an area that—

Senator Wong—No. As I understand that is what the officers are trying to explain to you. Union coverage bears no relationship to award coverage, so people are covered by awards, by

virtue of the industries in which they work, the occupations in which they work, the work they undertake as a matter of operation of law. Whether or not they are a union member is irrelevant to whether or not they have entitlement under the award.

Senator FIELDING—All right. I will try to clarify it this way. Could I negotiate or could there be a new industry and new award that has as its bare basics just the NES and nothing else in there?

Senator Wong—Not under our policy. Our policy under Forward with Fairness is very clear. We have 10 National Employment Standards and Deputy Prime Minister Gillard has issued those for consultation, and we have invited—given you have some concerns, you are welcome through that forum as well as through this one to make your views known. In addition there are 10 minimum standards, which are to be included in awards.

Senator FIELDING—This is a very black and white question. Could I arrange a so-called site award or something else that looked like that, that only had the 10 National Employment Standards conditions in there?

Mr Kovacic—There would be no need to do that because the National Employment Standards is legislated. It applies to all employees who are subject to the federal workplace relations system.

Senator FIELDING—I understand. That is the bare minimum or starting point, basically.

Ms Paul—The award will have in it the minimum standards, which are separate to the NES, as we discussed last time round, and those things will cover the matters you are interested in. If we are talking about an award those minimum standards will be covered and will satisfy your—

Senator FIELDING—I am talking about a potential new industry, new award, brand new area.

Ms Paul—If this legislation is enacted, according to the policy, any award would need to comprehend those minimum standards, including any new award.

Senator FIELDING—So that is the minimum 10 standards?

Ms Paul—That is right.

Mr Pratt—The safety net has two components.

Senator FIELDING—I understand.

Mr Pratt—The National Employment Standard and the modernised awards. All modernised awards will include the 10 allowable matters including penalty rates and rest breaks.

Senator FIELDING—What I am commenting on is the allowable matters. You could say that it is allowable to have penalty rates but they could be negotiated in a way to zero. You could have, say, zero penalty rates in a brand new award because the National Employment Standards, the 10, is the bare minimum.

Mr Kovacic—It is not a case of bargaining away. As I have mentioned before, in the sense of modern awards it will be the Australian Industrial Relations Commission that creates

modern awards and there will be a process leading up to that, and that process will take into account the views of stakeholders and others in terms of what are modern awards. Certainly penalty rates and meal breaks are allowable matters in the context of modern awards and I would think that it would be very unlikely. I would go further than that. I would be very surprised if the commission was to make a modern award which did not provide for penalty rates or meal breaks that related to the needs of the particular industry. It is not a bargaining process. It is a determinative process.

Senator FIELDING—It is technically possible.

Ms Paul—It is the commission's responsibility. It is not a matter for the particular employer on the site or their employees. It is a matter for the commission. So it is the commission that makes an award and so the commission must take into account the minimum standards. I think your question is well satisfied by the protections of the minimum standards and the fact that it is not a bargained matter making an award. The award is made by the commission.

Senator FIELDING—When you say minimum standards, it is the 10 minimum standards. It is the absolute guaranteed ones because the others are guaranteed in awards. What I am saying is that the 10 basic minimum conditions do exclude meal breaks and penalty rates. They are not there.

Mr Kovacic—As we said this morning and again this afternoon, the safety net comprises two components.

Senator FIELDING—I understand that.

Mr Kovacic—One is the National Employment Standards and in terms of modern awards. Now the point you have made is that with award-free employees there is a question mark as to what applies in respect of those employees, and the point I make there is that this is an issue for the consultation process in respect of the National Employment Standards, but also the award modernisation process itself, and they are issues that are likely to rise in that context and are matters which the government will consider and settle in the context of developing its more substantive reforms.

Senator FIELDING—I do not want to play a game of ping-pong. I am just saying that it is technically possible for somewhere down the track to have a new award for a new industry that may have zero penalty rates because they are not in the 10 national standards. You may say it is unlikely, but it is technically possible.

Mr Kovacic—If you look at current awards, putting aside issue-specific awards such as awards that might solely deal with long service leave and issues like that, I am not aware of any awards that do not deal with penalty rates or meal breaks.

Senator FIELDING—Thank you.

CHAIR—Did that require any further comment from the table?

Senator Wong—I would only refer you to the policy commitments we have made, which make clear the inclusion of the 10 National Employment Standards and the 10 minimum employment standards to be contained in awards.

Senator RONALDSON—I am sorry I missed that.

Senator Wong—I said I would only refer to the policy commitment prior to the election, which referred to the 10 legislated National Employment Standards and the 10 minimum employment standards in awards.

Senator FISHER—I would like to follow up on some of the discussion this morning when we had Mr Gillespie present. If I recollect correctly Mr Pratt indicated that the department had not provided any economic assessment of the impact of a pay freeze for members of parliament. Is that a correct recollection?

Mr Pratt—That was a question about whether or not we had done modelling on CPI, which we have not done.

Senator FISHER—Has the department provided any advice to the government about the quantum of money to be saved by the freeze on members of parliament's salary and secondly, the economic impact of it?

CHAIR—That question has been asked and answered already.

Mr Pratt—In any event I would not want to go to the nature and content of any advice.

Senator FISHER—I am not asking for that. I am simply asking whether you have provided advice of that nature.

CHAIR—The answer earlier this morning is that, until we actually know what the Remuneration Tribunal determines, how can you actually say—

Senator PARRY—Point of order. The question is really specific about whether advice has been provided and that was not asked this morning.

Ms Paul—We provided advice on this matter but the answer this morning said that, in terms of being able to model any potential saving, you actually cannot do it because one of the variables is not yet known and that is the determination which the Remuneration Tribunal will make later.

Senator Wong—You do not know the quantum of what is forgone yet because the determination has not been made.

Ms Paul—That is right.

Senator Wong—So how can you calculate it?

Senator FISHER—Some advice has been provided, albeit necessarily limited.

Ms Paul—Broad advice on this matter. That issue of potential savings is not able to be determined.

Mr Pratt—We have not done modelling, as asked by Senator Parry.

Senator FISHER—What is the purpose of the pay freeze for members of parliament?

Senator Wong—I would refer you to the statement made by the Prime Minister in the house on 14 February. I can read it to you if you would like but I do not have anything to add other than the statement that was made. Chair, this is obviously an issue for opposition senators. I seem to get questions about their pay freeze in every committee I walk into.

Senator FISHER—Can I continue, chair?

CHAIR—Yes.

Senator FISHER—The Deputy Prime Minister said on radio 3AW Melbourne, on 15 February—so essentially the day after the Prime Minister's indication—words to the effect that it is important that members of parliament lead by example. Obviously in terms of restraint, people who are already doing pretty well and can most easily show restraint—and we would want CEOs and people at management level, to think that through. So what would be the government's criteria for people who might consider a wages freeze? Is it people who are already doing pretty well? Is it CEOs? Is it people at management level?

Senator Wong—As the Prime Minister and the Deputy Prime Minister have said, we have come to government at a time where, as a result, if I may suggest, of your government's failure to invest in a great many long-term issues and other risks to the economic outlook, we clearly have a significant threat in terms of inflation. What the government has said and the Prime Minister has said in the house is that we believe it is appropriate that politicians demonstrate some modest restraint, given what is occurring in terms of inflation in the Australian economy. The Deputy Prime Minister's comments that you read out, and I do not have them in front of me, are perfectly reasonable. They are suggesting that those who are most able to exercise restraint are those who are on higher income levels and, given we have this inflationary risk in terms of Australia's economic outlook, we would encourage others in those circumstances to take that into account.

Senator FISHER—In terms of people who might be in those sorts of categories, take the approximate pay of a backbencher of some \$127,000, would that potentially be a cut-off for people who might be reasonably well off? You might have a few of them joining you around the table there.

Senator Wong—I hope we are not going to get into the rather unseemly discussion about salaries of people at the table. That is generally somewhere that we do not go in these committees but that is entirely a matter for you.

Senator PARRY—It is listed in the annual report.

CHAIR—Those matters are on the public record anyway but the minister has been asked a question and she will be allowed to answer.

Senator Wong—I am not sure what your question is. We have made a decision as a government in relation to politicians' salaries. I understand that appears not to be something that a number of opposition senators support. That is your right but that is the decision of the government.

Senator FISHER—I am simply asking questions at this stage. In view of the government's call that parties in the workplace show some restraint, and in view of the Deputy Prime Minister's reference to people at management level, will the government, for example, be calling upon people at management level say in the trade union movement to show the same restraint with their pay packets?

Senator Wong—Oh, dear.

CHAIR—Order! The senator has asked a question.

Senator FISHER—Let me elaborate. We have a trade union movement that is exhorting corporate Australia to show some responsibility in this respect. I am simply asking the question as to whether there may be some expectation that leaders in the management world, in the union movement, might similarly show some restraint.

Senator RONALDSON—It is quite a legitimate question.

CHAIR—Regardless of the opinion of other senators of whether it is a legitimate question or not, it is not something that needs to be blurted out to interfere with the running of this committee. I would ask there to be no running commentary.

Senator RONALDSON—I was simply making a comment. You are meant to be an arbiter, not a participant. You have already been participating. I have made a simple comment. If you are going to run this committee like that I think it is contrary to the way committees have been run in the past.

CHAIR—That is your bad luck. You are not permitted to interrupt so you will not do so.

Senator RONALDSON—I do not think I interrupted. If you want to be a participant and not an arbiter well that is your call.

CHAIR—Senator Fisher, are you still seeking the call?

Senator FIELDING—Yes, with your permission.

CHAIR—Yes.

Senator FIELDING—Thank you. I have not had a response to that proposition so I will put a further one and that is that given the federal government's election platform, including reference to unheralded cooperative federalism, will the government be calling upon state counterparts, in terms of members of parliament, to enjoy the same restraint? In that respect I believe I have seen comments reported to the effect that Premier Rann has indicated that South Australian MPs will follow suit, but if the *West Australian* of 15 February this year on the front page correctly reports Premier Carpenter, he said, 'The issue was one for the Independent Salaries and Allowances Tribunal to consider because it set the salaries of state MPs.' So in this era of unheralded cooperative federalism, are you going to call on your colleagues interstate to lead by example, in the words of the Deputy Prime Minister?

Senator Wong—There are some Grand Canyon like leaps of logic there. I am not here to answer for Premier Rann or Premier Carpenter. I am here to represent the Deputy Prime Minister in this portfolio. I have indicated to you the reasons that the government has placed on record for demonstrating some modest wage restraint. We place it no higher than as the Prime Minister said, 'modest exercise in wage restraint'. We determine that as a government. Obviously the opposition will make its decision about whether it wants to follow suit.

Senator FISHER—Do you consider parliamentary colleagues interstate as able to lead by example?

Senator Wong—That is a matter for them.

Senator FISHER—Will the government be calling upon members of parliament interstate to enjoy the same restraint?

Senator Wong—I am still not clear about the opposition's position on this. Are you intending to support the government on this or are you intending to disallow the regulation?

Senator FISHER—It is a process of asking questions.

Senator Wong—The point is if you want to get into a political debate and not ask questions which are about factual information for officers, we will have the political debate. What is the opposition's position on this or is it going to be like the AWAs, where a couple of days ago it was one thing and now you have back flipped?

Senator WATSON—Point of order!

CHAIR—Opposition senators are going to seek my intervention now, are they? Yes, what is your point of order?

Senator WATSON—It is for senators to ask questions of the minister and the bureaucracy. It is not for the minister to ask questions of opposition senators.

CHAIR—Thank you and I accept your point of order. I am very happy to conduct this meeting. If all senators will participate in that I will do so. Senator Fisher, can you ask your question, and, Senator Wong, you are not permitted to ask the senators questions.

Senator Wong—Thank you.

Senator FISHER—Will the government call upon parliamentary colleagues interstate to show the same amount of restraint that it is proposing federally?

Senator Wong—We have determined our position as a government in relation to members of parliament and senators. It is not up to us to determine a position in relation to state parliamentarians. That is a matter for them.

Senator FISHER—Will you request that they consider a wage freeze?

Senator Wong—That is a matter for them?

Senator FISHER—Whether you request one or not?

Senator Wong—The issue of their wages is a matter for those parliaments to determine.

Senator FISHER—So you will not be requesting them?

Senator Wong—I have not said that. I was simply making the point that that is a matter for them.

Senator FISHER—Thank you.

CHAIR—Senator Boyce.

Senator BOYCE—Has it been appropriate for the federal government to urge wage restraint on the private sector but you are saying in terms of state governments that is completely different?

Senator Wong—I do not have the comments in front of me from 3AW from the Deputy Prime Minister. I do recall, and I can ensure that I am corrected if I am wrong, the Deputy Prime Minister making public comments about those at the upper income end of the scale, without reference necessarily to it being private or public sector. The principle that the Deputy Prime Minister was articulating is that those who are most able to exercise modest wage

restraint are those at the upper income level. I would have thought that most Australians would be of a similar view.

Senator BOYCE—I would agree. However, in that case it should be relatively simple to state that it is not just the private sector. It is also the public sector that these comments were aimed at, that this urging was directed to.

Senator Wong—I am very pleased that the opposition feels it necessary to protect the interest of highly paid private sector executives. I will quote from what the Deputy Prime Minister said on the *Insiders*:

Barrie—

Mr Cassidy, I assume—

it is people at the upper income end who can most easily show restraint and one of the reasons that the Prime Minister decided this week on the wages freeze is politicians are in that category.

So that is clearly a statement that does not relate to public or private but is a general principle. That is out there, Senator Fisher. I am not sure that I can assist you any further with your inquiries.

Senator PARRY—On this issue, can I ask Ms Paul: of the 109 executive members of the department who are receiving remuneration of \$130,000 or more, has there been any direction from the minister for a freeze on those salaries?

Ms Paul—No.

Senator PARRY—How is the determination of those salaries made up? The band widths range from \$130,000 through to \$449,000? How are those salaries determined?

Ms Paul—They are determined by me under the Public Service Act.

Senator PARRY—Do you receive any assistance from the Remuneration Tribunal?

Ms Paul—No.

Senator PARRY—Is your salary determined through this process, or how is your salary determined?

CHAIR—Senator Parry, we are now moving back to cross-portfolio issues, which we did previously.

Senator PARRY—Thank you for reminding me.

CHAIR—Are you finished?

Senator PARRY—Yes. For the moment, thank you.

CHAIR—Senator Ronaldson.

Senator RONALDSON—You are looking for bipartisan support in relation to the wage freeze, which has already been given, as you are acutely aware, by Dr Nelson. I am wondering whether you are prepared to go and seek bipartisan support, whether you might also be happy to do that from your colleagues who are openly walking around this place, including drinking coffee at Aussies and speaking to others who are hostile about the wage

freeze. I am wondering in the interest of bipartisanship whether you would be prepared to discuss this matter with your backbench colleagues who are openly hostile?

Senator Wong—The government has made its decision on this issue and that has been announced by the Prime Minister and the Deputy Prime Minister.

Senator RONALDSON—So you are not prepared to counsel your colleagues who are openly hostile?

Senator Wong—I am always happy to have a discussion with my colleagues and they regularly have discussions with me. I have to say that the only people who have been complaining to me so far through these estimates processes have been members of your party.

Senator RONALDSON—That is why I have asked you the very question because you sought to make a political point this morning and I am just asking whether you are prepared to go and counsel as many of your backbench ALP colleagues who are openly hostile, but if the answer is no, then that is fine.

Senator Wong—As I said, I am always prepared to talk to my colleagues, and do so regularly.

Senator RONALDSON—You might want to raise it with them.

CHAIR—Senator Parry.

Senator PARRY—Just a comment to the minister. The minister made a statement earlier that we seem to be concerned about this. I think that you would find that the majority of members and senators are concerned about process and not dollar value.

Senator Wong—Senator McDonald's comments on Monday and Tuesday—

CHAIR—Senator Wong, please let Senator Parry finish his question.

Senator PARRY—Thank you. Our concern, and hence my questioning of the Remuneration Tribunal and Senator Fisher's earlier to day, is the process of how it is determined. For a long time this parliament has allowed an independent body—I thought the independent body had sole discretion—and it appears that the Prime Minister wants to now override that and bring back salary setting into the realms of the parliament, where we believe it should not occur. I think that is what needs to be cleared on the record. It is not the dollar value but the process.

Ms Paul—We have already said that this is a matter for regulation and that it has been a matter for regulation for some time.

CHAIR—We have covered that ground earlier. Senator Parry was making a point to put on the record. Are there any further questions on this matter? If not, we are still in outcome 9. Are there further questions in outcome 9? Senator Watson.

Senator WATSON—I have a particular interest in the textile, footwear and clothing issue as a former employee in that area. Is this essentially for outworkers or does it cover a range of special payments to struggling industries?

Mr Kovacic—What are you referring to?

Senator WATSON—Textile, footwear and clothing.

Mr Maynard—Yes. In the portfolio additional estimates for 2007-08 there is an initiative in relation to the Homeworkers Code of Practice, which was announced by the Deputy Prime Minister in the election process, which was to better inform outworkers as to their rights under the Workplace Relations Act.

Senator WATSON—Does that cover concerns that there was a degree of exploitation?

Mr Maynard—It is not clear to me all of the issues of concern that led to this but it is aimed to ensure that outworkers are made aware of their rights under the act.

Senator WATSON—Can you give us a copy of that document that is given to these homeworkers?

Mr Maynard—Yes. There is a code of practice in place. A program is developed to support the code of practice. We will get you a copy of the code.

Senator WATSON—Thank you. That follows concerns that there has been a degree of exploitation? Have you got some figures about employers who have been prosecuted?

Mr Maynard—The compliance process is one that is dealt with by the Workplace Ombudsman and I understand they will be subject to the committee's discussions later today.

Senator WATSON—The reference that I am referring to is a new initiative by the government to inform homeworkers of their rights.

Mr Maynard—Correct. It is an educative function.

Senator WATSON—So the payment does not cover anything wider than that?

Mr Maynard—To the best of my knowledge that is what it covers. It is an educative function.

Senator WATSON—Did your department prepare that code?

Mr Kovacic—No. It has been a code that has been developed by the industry. The funding is to assist the industry in terms of further spreading the understanding of the code and the promotion of the code throughout the industry.

Senator WATSON—Who was the secretariat that was involved in the preparation of this code? Was it your department?

Mr Maynard—It is administered by an independent incorporated committee, the Homeworkers Code of Practice Committee Incorporated.

Senator WATSON—Is that funded out of your department but completely independent of your department?

Mr Maynard—No. The line item listed in the portfolio additional estimates is to provide additional assistance for the educative function. However, this incorporated committee existed prior to this financial year. It has existed for some time.

Mr Kovacic—The Homeworkers Code of Practice is a self-regulatory system that monitors the production chain in the TCF industry from retailer to outworker to ensure that minimum legal standards are met. The code encourages manufacturers to stay informed of all the steps involved in the production of their garments and respond where they are provided with evidence that their suppliers are not meeting minimum legal standards. The code

provides a system to monitor, record and report what is being made, where it is being made, who is making it and what wages and conditions the workers receive. So it is really directed at ensuring that workers and outworkers, in particular in the textile, clothing and footwear industry, are paid their legal obligations in terms of wages and conditions.

Senator WATSON—I can understand the need for the code. Are you suggesting, in terms of this other independent authority, that there was not a code or there was not a process of helping people identify their rights prior to this code?

Mr Kovacic—It is an area that is quite difficult in terms of outworkers self-identifying, and it is also an area where manufacturers, for want of a better description, may not be fully aware of all the elements regarding the chain of manufacture. It is about addressing those shortcomings in terms of the way the chain operates at the moment.

Senator WATSON—Informing all the participants of how the chain operates.

Mr Kovacic—For instance, the wholesaler of a particular garment may not be aware of the chain that actually produced that garment. There may be a range of people who may be contracted to a provider, for want of a better description, who may similarly subcontract that work out to outworkers, and in terms of how many links there may be regarding the process that produced the garment, the wholesaler may not be aware of that. Similarly, he or she may not be aware of whether—

Senator WATSON—An essential part of that code is to inform these homeworkers of their minimum entitlements.

Mr Maynard—It is also about ensuring that manufacturers are aware of all of the links in the chain as well and that they can be assured that, at all of those steps of the manufacturing process, any employees have received their due entitlements in terms of wages and conditions.

Senator WATSON—Thank you.

CHAIR—Senator Boyce.

Senator BOYCE—This question relates to recent media coverage on the prospect of an extra 63,000 people coming into the workforce as a result of the tax cuts. Has your department carried out any modelling on the proposed tax cuts?

Ms Paul—I would imagine that would be a matter for Treasury. Usually tax matters are in the Treasury portfolio.

Senator BOYCE—Has your department been involved in any way with forward planning?

Ms Paul—Not that I am aware of.

Mr Pratt—To the extent that we would have been involved in such a thing, that would have been covered by this morning's questioning under outcome 8.

Senator BOYCE—Let us hope we get a solid understanding of outcomes at the moment.

Mr Pratt—I cannot comment on behalf of my colleagues in outcome 8. But, as Ms Paul has indicated, the modelling of this sort of thing would be done by Treasury.

Senator BOYCE—My other questions relate to the National Employment Standards, which I understand are to be part of the current transition bill.

Mr Kovacic—They will be finalised as part of the substantive workplace relations reform bill, which will be introduced later this year.

Senator BOYCE—Is there mention of the National Employment Standards in the transition bill?

Mr Pratt—The government has released an exposure draft of the National Employment Standards for comment over the course of the next month or so. The transition bill itself does not deal with the National Employment Standards in any substantive way, as far as I am aware.

Senator BOYCE—It does mention that the standards will exist, though, does it not?

Mr Kovacic—No, I do not think it does so explicitly. It refers to them indirectly in the sense that it is quite important to assist the award modernisation process that the Industrial Relations Commission is aware of what the National Employment Standards are likely to be. But in terms of the legislation, if there is a reference it may refer indirectly to legislated standards.

Senator BOYCE—Indirectly?

Mr Kovacic—I do not think there is a specific reference to the National Employment Standards in precisely those terms.

Mr Pratt—The explanatory memorandum at paragraph 25 on page 79 talks about the proposed National Employment Standards in terms of advising the Industrial Relations Commission about how it will undertake the award modernisation process.

Senator BOYCE—There were consultations to develop the draft for the standards.

Mr Pratt—That is correct. It was a very substantial consultation process.

Senator BOYCE—Can you tell me about that consultation process? How did people get to be consulted, so to speak?

Mr Pratt—The government consulted through a variety of fora. The first one was the National Workplace Relations Consultative Council. It is a council chaired by the Deputy Prime Minister that has on it representatives from the ACTU, ACCI, AIG, Business Council, NFF, AMA and MBA. It also consulted through a subcommittee of that committee known as COIL, the Committee on Industrial Legislation, which draws experts from the various representatives of the NWRCC. The government consulted with state ministers through the Workplace Relations Ministerial Council and through state officials. It is quite a comprehensive consultative process.

Senator BOYCE—Was it with a ministerially appointed task force, a subcommittee and state government ministers?

Mr Pratt—No. The NWRCC, the National Workplace Relations Consultative Council, is a very longstanding council. It has existed in Australia for—

Mr Kovacic—Since the mid-seventies.

Senator BOYCE—Who appoints its members?

Mr Kovacic—It is legislatively based so the legislation sets out who are members of the council.

Senator BOYCE—Are they seen as representative of groups/stakeholders?

Mr Kovacic—Stakeholders, yes.

Senator BOYCE—This has subsequently gone out for consultation and I think the deadline on that is 4 April.

Mr Kovacic—Submissions are due on 4 April.

Senator BOYCE—Is this being handled by your department?

Mr Kovacic—That is right.

Mr Pratt—That is correct.

Senator BOYCE—Have you received submissions on that?

Mr Kovacic—We have not received any at this stage, and that is not surprising given that it was only released as an exposure draft on the 14th, which is last week, so we would anticipate that it would be several weeks before we actually receive the first submission.

Senator BOYCE—What will be the process for dealing with and analysing those submissions?

Mr Kovacic—Clearly we will look at all of those, analyse the submissions and then provide advice to government in terms of what were the key issues and any suggested issues that the government may wish to take into account.

Senator BOYCE—Is this the second round of consultation on these standards in the sense that you had one group developing?

Mr Kovacic—That is correct.

Senator BOYCE—Is it a different group that are doing yours?

Mr Kovacic—This is open to any interested party.

Senator BOYCE—Yes. This is quite open, or we will see. Will the results of that submission go back to the initial bodies that were consulted?

Mr Kovacic—In the content of the consultation that is envisaged in the context of developing and settling the standard workplace relations reform bill.

CHAIR—Senator Fisher?

Senator FISHER—In the context of the government's Forward with Fairness policies at large and noting that the majority of the policy indications given in Forward with Fairness would amend the Workplace Relations Act, and given that the Workplace Relations Act has an object that talks about promoting economic prosperity and wellbeing, I am wondering whether the department has provided economic analysis of the impact of the Forward with Fairness policies, and in particular any economic impact on Australian jobs, inflation, industrial disputes and productivity. Perhaps you are getting some advice now.

Ms Paul—No. We have not undertaken that sort of analysis. I do not know whether my colleagues want to take that further.

Mr Pratt—In the three months since the change of government we have not done that economic analysis at this stage.

Senator FISHER—Have you performed any economic analysis in respect of the transition to *Forward with Fairness* bill that is currently before parliament?

Ms Paul—No.

Senator FISHER—Have you discussed the matter with your Treasury colleagues? Are you aware whether they are considering providing such analysis?

Ms Paul—I would not be aware of that.

Mr Pratt—I am not aware of what Treasury may or may not be doing in that area.

Senator FISHER—Given that it is an object of the Workplace Relations Act, which these proposals will amend, and as a department responsible for advising in respect of that legislation, is it not important to consider the impact on the objects of the act, which include the economic prosperity of the people of Australia amongst other things?

Senator Wong—Is that a question?

CHAIR—You are inviting the departmental officers to give an opinion on government policy, which I am a bit concerned about.

Ms Paul—You are asking me for my opinion about the importance.

CHAIR—I think you need to rephrase it in some way if you can.

Senator FISHER—How does the department implement its responsibilities in terms of fulfilling the objects of the act in the course of advising the government and in particular objects of the act that refer to the economic prosperity of Australians in the broad?

Ms Paul—Our responsibilities are exercised in a broad range of ways and at some points of course it could come to undertaking some modelling or whatever, but that is not what we have done. So, really the only question that I can answer at the moment is the first one you asked, which is have we undertaken any, and the answer is, no. It is probably not possible to take it further.

Senator FISHER—Has the government sought any advice about the economic impact of *Forward with Fairness* and the economic impact of the transition to *Forward with Fairness* bill in particular?

Senator Wong—I will take that question on notice, but I will make this point. Unlike your cabinet, I assure you our cabinet will actually turn its mind to the impact on workers of both this legislation and any proposed legislation.

CHAIR—I would prefer you to be responsive to the question asked.

Senator Wong—I thought I was.

CHAIR—Thank you. Senator Fisher?

Senator Wong—I am only quoting from your colleagues.

CHAIR—Senator Fisher has the call.

Senator FISHER—I am rather surprised that the minister needs to take that on notice but, if that is what she must do, then that is what she must do. My further question as a result of that is as follows. The Deputy Prime Minister's second reading speech on the introduction of the transition to Forward with Fairness states:

This Bill represents the start of the Government meeting a key commitment it made to the Australian people at the last election—to bring fairness and balance to Australia's workplaces. The next step, the next commitment to be fulfilled, is the development of our substantive workplace relations laws to create a new, simple, fair and flexible workplace relations system that works for all Australians.

She went on to say:

A workplace relations system that works for all Australians should be fair and flexible, simple and productive. It will not jeopardise employment, will not allow for industry wide strikes or pattern bargaining and it must not place inflationary pressures on the economy.

I am at a loss as to how a Deputy Prime Minister can say that a bill before the House will not jeopardise employment and must not place inflationary pressures on the economy if the government has not received advice as to the impact of that legislation on those two factors.

Ms Paul—I did not rule out any work we might or might not do in the future. I simply was commenting on work to date. The Deputy Prime Minister in the explanatory memorandum is talking about a future state, so there is nowhere further I can take our own work.

Senator FISHER—It is probably more a question for Minister Wong, because I fail to see how a government or a Deputy Prime Minister can make a promise in the parliament about legislation, albeit in the future, that has not been assessed in terms of its impact on employment. The Deputy Prime Minister feels able to make a promise that it will not jeopardise employment. On what basis is she equipped to say that the legislation before the House 'will not jeopardise employment'?

Senator Wong—I am sure you make many assertions, too, without the benefit of Treasury modelling. I would make a number of comments in response. Firstly, these are issues that have been well ventilated through the election, and your party through the election did attempt to portray Forward with Fairness as a policy that had a range of negative impacts. These issues have been well ventilated. We have made clear that under our policy approach pattern bargaining will not be permitted; that the focus of the system over and above the safety nets, which we discussed at length with Senator Fielding this morning, will be on enterprise based bargaining with productivity as the incentive for wage increases. I am sure there are plenty of economists who could talk at length about the benefit of such a system. I appreciate the political point you are making, but these are issues that were discussed in great detail prior to the election. I have taken the question on notice in relation to your specific question about modelling in respect of the specific bills, because I do not have that information with me. But, yes, we do maintain the position as a government that the policy parameters that we took to the election have the right balance between fairness and flexibility and the right emphasis on productivity as the incentive for wage increases at the workplace.

Senator FISHER—Then my further question on notice, if you wish, is: on what basis was the Deputy Prime Minister able to say that the bill before the House will not jeopardise employment?

Senator Wong—You want me to take on notice an issue that is one of the major philosophical and political differences between our parties. I appreciate you do not agree with the legislation. I am not sure if you do or do not, because Ms Bishop appears to have changed her position. Whatever your position is now in relation to the bill, this is the government's position and it is a position that was outlined in detail before the election. We put out two policy papers, one on implementation and one on the policy detail in which these issues were canvassed. We have made it clear that under our system we will not permit pattern bargaining. There will not be industry-wide pay claims or industry-wide industrial action. We have made it clear that we will have 10 National Employment Standards and a further 10 minimum standards in awards. We believe this is the right balance of fairness and flexibility. My recollection in relation to some earlier discussion is that these are also matters of terms of the bills that are the subject of stakeholder discussion.

Senator FISHER—My question remains: on what empirical basis is the Deputy Prime Minister able to say that the bill before the House will not jeopardise employment?

CHAIR—Perhaps I can make a suggestion. Can you put that question on notice?

Senator FISHER—Thank you.

CHAIR—It will then be dealt with.

Senator Wong—I would be interested to know on what empirical basis the previous government could describe award conditions as protected when they were not.

Senator FISHER—Of course, you are in government and my questions are of your government.

Senator Wong—Yes. And my point is what is good for the goose, et cetera. Your government put out advertisements at great expense to taxpayers that described things as protected that manifestly were not. On what basis were those commitments given?

CHAIR—The question actually asked for that response. I want to try to be fair to everybody, but if a question has deliberate political undertones we need to accept that we will get a political undertone answer. I am trying to get a balance and be fair to everybody.

Senator BOYCE—We also need to get on the record the fact that an unemployment rate is not a philosophical issue. It is an immensely and eminently measurable thing, and that is the claim that the Deputy Prime Minister was making.

CHAIR—I remind senators that we are on outcome 9. I have allowed it to go that way, much to the annoyance of the secretary sitting beside me. We have digressed somewhat outside outcome 9. We should not be debating legislation. This committee in fact is going to inquire into this very shortly so all of this can be ventilated in a much different form very soon. Do you have more questions?

Senator FISHER—Workplace reform is one of the items under this outcome and I would have thought that is precisely what we are discussing.

Senator Wong—I will firstly respond to Senator Boyce who said that unemployment is not a philosophical argument? She is correct.

Senator BOYCE—The unemployment rate.

Senator Wong—We absolutely want to see the unemployment rate as low as it can be. The point I was making about the political and philosophical differences between the parties was on the issue of the best structure of a workplace relations system, and I would have thought it was self-evidently the fact that we have different views around that; just as you went to the Australian people saying that AWAs were good things, we do not think they are. That is a fundamental difference between our parties.

CHAIR—Let us come back to questions and answers. Senator Fisher?

Senator FISHER—In respect of the looming Senate inquiry into the transition to Forward with Fairness bill, will the department be providing economic analysis of the impact of the bill as part of its submission?

Ms Paul—I cannot say that at this stage. Naturally, we have not determined the nature of what we might do there, so that would be a matter for us to consider. We have not completed that consideration yet.

Senator FISHER—Given that falls squarely within the terms of reference of the inquiry, I would hope that the department does provide that, but clearly if the department does not then the committee may need to consider looking elsewhere to obtain it.

Ms Paul—I understand your point. We just have not finished that consideration.

Mr Pratt—We will certainly address the terms of reference in our submission to the inquiry.

Senator FISHER—Thank you.

CHAIR—Senator Parry?

Senator PARRY—Can I ask a couple of questions under outcome 9, workplace reform secret ballots.

CHAIR—You can.

Senator PARRY—There was suggestion prior to the introduction of the secret ballots that industrial disputation would increase. Has that been the case since the introduction of secret ballots?

Mr Pratt—No.

Senator PARRY—Can you indicate whether the introduction of secret ballots has had an effect in decreasing industrial disputation?

Mr Pratt—No.

Senator PARRY—Do you have any data at all indicating anything since the introduction?

Mr Pratt—We have access to data on levels of industrial action which are published by the ABS, which we would be pleased to provide to you.

Senator PARRY—For the record, have they been trending up or down?

Mr Pratt—Industrial action over the last 20 or 30 years has been trending down generally, as it has across the western economies.

Senator PARRY—When were secret ballots introduced?

Mr Pratt—The secret ballots program that is run by the department was introduced in 2006.

Senator PARRY—Could you indicate whether industrial disputation has decreased since that time in 2006?

Mr Pratt—We will have to take that on notice. We will have to look at what the data is.

Senator PARRY—Thank you. Can you indicate whether there have been any negative effects from the introduction of secret ballots?

Mr Pratt—In what sense?

Senator PARRY—In any sense. Have there been any negative effects from the introduction in process or application? We have covered industrial disputes.

Mr Pratt—I am not aware of any.

Senator PARRY—Now that there has been a change of government, are there any changes afoot that you are aware of concerning the change in requirements for holding secret ballots?

Mr Pratt—The government's Forward with Fairness policy indicates that it will retain a secret ballot process but that the process will be streamlined.

Senator PARRY—What does streamlined mean?

Mr Pratt—It will be reviewed to identify some of the excessive bureaucratic aspects of the process to try to make it easier for the parties.

Senator PARRY—So the elements of the tenet of secret ballot will remain but the administrative processes may change. Is that a fair correct?

Mr Pratt—Correct.

Senator PARRY—Minister, will there be any direction given to the department to remove secret ballots?

Senator Wong—The department will be implementing the government's policy.

Senator PARRY—I am sorry?

Senator Wong—The government will implement its policies as outlined prior to the election.

Senator PARRY—Which does not include the removal of secret ballots.

Senator Wong—That is right. As Mr Pratt has just commented from Forward with Fairness—

Senator PARRY—The minister has placed that on record.

Senator PARRY—Thank you.

CHAIR—Are there further questions in outcome 9? Senator Fisher.

Senator FISHER—Under the government's Forward with Fairness plan for Australian workers will Australian workers be better off than they otherwise would have been?

Senator Wong—Is that for Ms Paul?

CHAIR—Is that a question to the minister?

Senator FISHER—I do not know that she should be made to—

CHAIR—I think that is a question for the minister really.

Ms Paul—I would just refer back to the policy statement obviously.

Senator FISHER—If the answer is yes, then how do you implement the policy?

Ms Paul—I am sure that the Deputy Prime Minister would draw your attention to the Forward with Fairness policy itself and take you through the elements of that. The minister has just referred to some of those in previous discussion, so it is a bit hard to know which elements you want to go to. Obviously the notion of the policy is have a strong safety net and a balanced system. There are a range of things that we have discussed in these hearings about it not permitting pattern bargaining and other things in order that people will be better off overall if there is a bargain and so on. There is quite a large number of different mechanisms and it is a bit hard to tell where you want to take that. We could go in to more detail.

Mr Pratt—At the risk of being a little bit glib, the government's Forward with Fairness policy will not be fully implemented until January 2010 and it may be better to ask us that question at that stage when we will be able to give you an analysis of what happens in terms of unemployment rates, industrial action, productivity, et cetera.

Ms Paul—We really now can only refer to the policy itself.

Senator FISHER—I am sorry. I could not quite hear you?

Ms Paul—As Mr Pratt says, now we are able to refer to the policy itself of course and talk about the elements and the range of elements. I am just agreeing with Mr Pratt really that in terms of implementation that does not happen until 2010, if the legislation is enacted.

Senator FISHER—On the assumption that the policies are implemented, the question is on what basis will it be that workers will be better off?

Ms Paul—The policy is clear about the range of safety nets and the importance of workers being better off over all. I do not know whether Mr Pratt and my colleagues want to go further.

Senator FISHER—Can you explain what that will mean, 'workers will be better off overall'?

Senator Wong—We passed the transitional bill through the Senate. As you know we are removing Australian workplace agreements. The policy commits to a genuine safety net of 10 National Employment Standards and 10 minimum standards in awards and commits to a system where collective agreements must ensure that employees are genuinely better off over and above those standards. That is a significantly greater set of protections than under the previous government and removes the unfair arrangements that your government put in place.

Senator FISHER—What does 'significantly greater' mean?

Senator Wong—I would simply refer you to the policy that we outlined prior to the election. I am sure that there will be plenty of discussion in the context of the legislation when it comes forward.

Senator FISHER—The policy, as expansive as it may seem, does not help me on that point. In what respect?

Senator Wong—In what respect what?

Senator FISHER—I will come back to the fundamental point. In what respect will workers be better off?

Senator Wong—I would refer you to my previous answer.

Senator FISHER—So are you saying that workers will be paid more money?

Senator Wong—I refer you to my previous answer. If the opposition actually sticks to its current position with Australian workplace agreements, we will be putting in place a comprehensive safety net of 10 National Employment Standards and 10 minimum standards in awards. There are a range of other matters, as you know, that the policy goes to. Really you seem to be having a political argument again about whether this is a good policy or bad policy, and my suggestion to you is that this is the policy that we were elected on; this is the policy that was poured over in detail by your side and it was certainly the subject of a lot of political debate in the lead-up to and during the election. If you want to keep ventilating that then that is obviously a matter for you but I would suggest to you that is really an issue not so much for estimates as for the chamber and for public debate.

Senator ABETZ—I am sure Senator Fisher appreciates your comments, but at the end of the day can you give an assurance that no worker will be worse off as a result of the abolition of AWAs?

CHAIR—Senator Fisher, have you finished your question?

Senator ABETZ—Don't we allow bouncing around?

Senator FISHER—Yes, indeed.

Senator ABETZ—Most committees allow inter-questioning but, if not, I apologise.

Senator FISHER—Will the minister rule out any worker being worse off over all?

Senator Wong—Again, I can only refer you to the policy and the statements that the Deputy Prime Minister has made. This is a system which we believe is predicated on both fairness and flexibility. We have committed to a decent safety net and bargaining above that safety net. Certainly when you compare it with the provisions of the Work Choices legislation, I would suggest to you that it is patently obvious that there are far more safeguards in respect of fairness in our policy than ever existed in yours.

Senator FISHER—Does that mean all workers will be better off?

Senator Wong—I would refer you to my previous answers. We could go on all day like this.

Senator FISHER—Yes, we could.

CHAIR—I can assure everyone we will not be.

Senator FISHER—Thank you.

Senator ABETZ—I do want to explore this area because one of the real issues at the last election to which the minister quite rightly referred to was how much workers would be better off. And of course one of the questions for which the former Prime Minister was pilloried was, when he was asked, ‘Can you assure that no worker will be disadvantaged or will they be better off under your scheme?’, he could not give them a categorical answer. That was used to condemn the former Prime Minister by everybody, including the minister sitting at the table. We are now asking this minister and this government are they able to give the assurance to the Australian workforce that they demanded out of the previous Prime Minister? We know the actual minister responsible, the Deputy Prime Minister, cannot but it might be interesting if the minister representing the Deputy Prime Minister can have a crack at it.

Senator Wong—I can say to you we believe the policy that we put forward prior to the election and that we will implement in government provides for far more fairness for employees than was ever provided for under your system.

Senator ABETZ—I know that is what you are saying. You may or may not be right on that and I do not want to debate that. What I want to drill down to is: can you give a guarantee that no worker in this country will be worse off as a result of your policy?

Senator Wong—I would refer you back to my previous answer. We put forward a policy which brings fairness back in to the workplace. We have a policy commitment which we are implementing in relation to National Employment Standards, the 10 minimum standards in awards, and bargaining when people are genuinely better off above that. That is a set of protections that were never present under your system. It is quite extraordinary that you come in here and demand a whole range of assurances from us when you were the government, the cabinet, which was not even aware that people’s entitlements could be taken away when they signed off on your laws that we have now been elected in part to remove.

Senator ABETZ—I only want one assurance, an assurance that you sought from the previous prime minister and for which you pilloried him. I must say I thought his obfuscation on the issue was a bit better than yours and the Deputy Prime Minister’s.

Senator Wong—So were you a Howard supporter and not a Costello supporter, were you?

Senator ABETZ—I think everybody knew where I stood. We will not go there.

Senator Wong—Plenty of your colleagues have.

Senator ABETZ—They have not, in fact. The question that you demanded the former prime minister answer specifically is one that you have not been able to answer in relation to your own policy. That is the truth of the matter, isn’t it?

Senator Wong—We believe our policy will bring fairness back into the workplace.

Senator ABETZ—For every individual worker?

Senator Wong—I will refer you to my previous answers.

Senator ABETZ—Can you give a guarantee that there will be increased fairness, better conditions and more of everything for every individual worker?

Senator Wong—I would refer you to my previous answers.

Senator ABETZ—In other words you cannot. So the test you sought to apply to the former prime minister you will not apply to yourselves. I will ask a question in relation to the AWAs that are in existence. You are aware that some of them have better conditions than they otherwise would have, so what assurances are going to be given in any transition from those AWAs that their conditions will not be worse off. For example, the minister was at the table at another portfolio where the secretary of a department indicated that there were about 600 AWAs in his department and all the workers, every single one of them he could guarantee, were better off because they were on the AWA. Now they are going to be phased out. I want to look after all those workers and the other hundreds of thousands of workers in Australia who are on AWAs to make sure that they will not be worse off when they come off their AWAs. That is not an unreasonable question.

Senator Wong—I will refer to officers for the detail of the transition bill, but perhaps you could have thought of the workers on AWAs before you passed the Work Choices laws.

Mr Kovacic—The effect of the transition bill is that AWAs will continue to operate until they are either replaced or terminated in accordance with the act.

Senator ABETZ—We know that but once they are replaced under the act or if they are terminated, what guarantees are there after that? That was my question and I think you knew that was my question. My question is: will the workers be better off? Can we be given a guarantee that each individual worker will be better off?

Ms James—I might just outline one of the changes to the framework that the bill makes that is relevant to your question. At the moment when an agreement is terminated and once an agreement reaches its expiry date, an employer can unilaterally terminate an individual agreement. Employees then revert to the Australian fair pay and condition standard and the protected award conditions. In the current system there is a vulnerability in terms of the nature of the safety net that people fall back on to. One of the changes that the bill makes is to reinstate the full award as the safety net that people revert to when their agreement is terminated. So in the event that a person's agreement is terminated they fall back to a higher safety net than they would under the current system.

Senator ABETZ—That is all very helpful for the minister but still does not overcome the question that many people on AWAs are in fact on above-award conditions.

Ms Paul—We have answered what we can answer, which is what does this legislation do and that is what are attempting to do.

CHAIR—I will intervene here. You may not have been in the room earlier, Senator, when I indicated that while I was prepared to allow some flexibility around this, this bill is in fact before the Senate and in fact it is before this committee. I know that there is a grey area if people want to ask about policy as opposed to the legislation, but I do not think we ought to be discussing this. There is continuing advice from the secretary that we ought not be discussing the bill itself. I understand the grey area between policy, but I ask senators to respect that and phrase their questions appropriately.

Senator ABETZ—Other than what is in the bill, and we know what is in the bill, would you agree with me that many AWAs provide for conditions well and truly above the award?

Senator Wong—I do not think that we can say that for the whole national scene. In response to your question all we can do is refer to the legislation—

Senator ABETZ—Are there some—

Senator Wong—Ms Paul has not finished her answer.

Ms Paul—In response to your question, the main response is to detail the differences in the safety net between the current legislation and what the transitional bill will achieve. I think Ms James has gone to that. She has talked about the enhanced safety net basically that would be available if the transition bill were enacted.

Senator ABETZ—I understand that to mean that, if this legislation is implemented and for the purpose of the argument I will accept the government's view on this, when you come off the AWA or it is terminated and you fall back to fair pay commission standards or the award you will be better off than you otherwise would have been. But it begs the question will you be as well off as you were before you came off the AWA? That is the question.

Ms Paul—That is very hard to answer on a generic basis. Really the best we can do is answer on the generic, and that is what we have done.

Senator ABETZ—That is why an assurance cannot be given to every individual worker that they will be better off. I think that makes the point.

Ms Paul—I did not say that.

Senator ABETZ—I know you did not and I would not want to put those words into your mouth.

Ms Paul—Thank you.

Senator ABETZ—That is a debating point between the minister and ourselves. Given the information that has now been provided I think that is very much the clear picture that has emerged.

CHAIR—I do not want the debate to go on. Are there any further questions?

Senator FISHER—On this outcome at large?

CHAIR—Yes.

Senator FISHER—Yes.

CHAIR—I call Senator Fisher.

Senator FISHER—A key component of Forward with Fairness is a commitment to a uniform national industrial relations system. I would like to ask a few questions about progress made towards that and what that might mean. Presumably others in this room know this better than I, but under the heading of a uniform national industrial relations system, page 6 of Labor's Forward with Fairness policy document these words follow:

A Rudd Labor Government will achieve nationally consistent industrial relations laws for the private sector. This will be achieved either by State Governments referring powers for private sector industrial relations or other forms of cooperation and harmonisation.

Is there a unit set up within DEEWR specifically to implement this election promise?

Mr Pratt—Yes, we have established a unit to work with the state and territory governments on achieving the government's objective of implementing a national system.

Senator FISHER—Can you tell me about that unit? How many people are in it and when was it set up?

Mr Pratt—Yes. It was set up in January. It is staffed with very high-level officers. It is headed up by an SES Band 2 officer and an SES Band 1 officer and they are supported by a director, and other staff are involved as necessary in their operations. The department has undertaken already quite a large number of consultations with state governments both face to face as groups and through teleconferences. There has been a meeting of the Workplace Relations Ministerial Council, which has considered these issues as well.

Senator FISHER—What sorts of goals are you setting in terms of timeframes to achieve this objective?

Mr Pratt—The government's intention is to introduce the Forward with Fairness substantive bill later this year, so we are operating to that timetable. We will be working with the states across 2008.

Senator FISHER—Can you be more specific, Mr Pratt?

Mr Pratt—I am expecting that we are going to have a great deal to do with our colleagues in the state and territory governments over this period. We have outlined to them a three-pronged strategy. We are focusing at the moment on high-level policy issues. Some time later in the year, probably around midyear, we will start dealing with them on fine detail issues that will go to the drafting instructions. At a later stage we envisage that we will consult with them on the draft legislation. That is essentially our program.

Senator GEORGE CAMPBELL—Would it be your intention to follow on with what the New South Wales government does? They produced that Williams report—

Senator FISHER—That is a good question.

Senator GEORGE CAMPBELL—with a set of options in it as to how it might be done. Some of them were way back to the early seventies. Would it be the intention to have an exposure draft so that it would be open to the public to be able to examine what the proposals are in trying to prepare the uniform strategy?

Mr Pratt—Certainly the government has indicated that it expects to consult very widely on the substantive bill. The Williams report, as you referred to, has been the subject of discussions between ministers and state officials and it is a useful contribution to the government's thinking on setting up a national system.

Senator GEORGE CAMPBELL—But you have not made any decision at this stage, I suppose, about whether or not, as a consequence of your consultations with all of the state governments, a similar type of document will be produced, an exposure draft, for broad public comment?

Mr Pratt—I would not want to speculate on what the governments may choose to do down the track, but that is something that will be worked on across the course of 2008.

Senator FISHER—Senator Campbell’s questions, I guess, went to process. I want to ask a more substantive question, coming off the back of his questions, about the Williams report. Again, simply to set the context, page 1 of the *Australian* newspaper on 25 January suggested that the Williams report was ‘under active assessment by the Rudd government as it prepares legislation to implement its Forward with Fairness agenda’. Has the department advised the government as to the wisdom or otherwise of proceeding with one or any or all of the recommendations made in the Williams report?

Mr Pratt—We have actually received a direct briefing from Professor Williams, which was very helpful, and we have briefed government on that.

Senator FISHER—In the context of the government’s policy being a uniform national industrial relations system, do you see that any of the options outlined in the Williams report achieves that goal? Minister, can I ask that question of you?

Senator Wong—As I understand it, we have received the report and government is being briefed. I am not sure I could take it any further.

Senator FISHER—Will the government be proceeding with any of the recommendations in the Williams report?

Ms Paul—There is no doubt the government will consider the implications of the Williams report and it already has been a matter for discussion, as Mr Pratt said, amongst state ministers at the Workplace Relations Ministerial Council in a broad sense. So, of course, it will provide one input for government’s consideration but we cannot go beyond that at this stage other than saying what Mr Pratt has already said; we have received a briefing and have started to brief government accordingly.

Mr Pratt—Indeed, when it was discussed at the Workplace Relations Ministerial Council, as the communique indicates, ministers endorsed Forward with Fairness as providing the basis for a modern, fair and flexible workplace relations system and in that context noted the Williams report.

Senator FISHER—In terms of the Williams report—if I can put this into my own words—a national industrial relations system will effectively only be achieved by the states referring their powers. That is one of the options outlined in Forward with Fairness. Of course, the other option is something different. A couple of the options suggested by the Williams report include either mirror state legislation or text based referral from the states to the Commonwealth of similar provisions. How do you see that Labor will achieve its promise of a uniform national industrial relations system absent agreement to refer powers from each and every one of your state colleagues?

Senator Wong—I do not think my opinion on this is what you are really seeking. As I understand Mr Pratt’s answer, he has indicated to you the status of the Williams report and the nature of the discussions with the states. I cannot really add to that.

Senator FISHER—Can you indicate whether you will rule out proceeding with any of the options outlined in the Williams report given the concerns raised by business about it increasing complexity, increasing red tape, doing the contrary to the government’s promise, which is to provide a system which is simpler and cuts red tape for business?

Senator Wong—This is a commitment, as you have identified, that was outlined in Forward with Fairness. Obviously, the minister I represent has not announced how the government will implement that. Accordingly, I have nothing further to add to the department's answer.

Mr Pratt—To reiterate what I said before: essentially these are issues that will be discussed across the course of 2008.

Senator FISHER—Across the course of 2008 will the government, as part of this cooperative federalism, be prevailing upon Premier colleagues interstate to refer their workplace relations powers to the Commonwealth to deliver the only truly national workplace relations system?

Ms Paul—I think Mr Pratt has been quite clear that this is a matter not only for consideration by government, which has not yet been determined, but also for considerable discussion amongst a whole range of players, including state governments, which obviously have the key interest in actual fact, and a range of other interested parties. So, it will be a topic for discussion throughout the year as the consultations and other processes lead up to the development of the substantive bill. That is the situation, so there is probably nowhere more we can go at this stage other than to say the report's status is well recognised and it will be part of the discussions on the national scene over the course of this year.

Senator ABETZ—So, you have not detected a breakout of cooperative federalism as you are embarking down this track as you are discussing with the states?

Ms Paul—Certainly the Workplace Relations Ministerial Council was an extremely cooperative forum.

Senator ABETZ—I thought Mr Della Bosca had a few words to say.

Ms Paul—The joint communiqué I think probably is the best reflection of the meeting.

Senator ABETZ—That is a very diplomatic answer.

Ms Paul—Thank you. The joint communiqué basically sets out the nature of the discussions through that half day.

Senator ABETZ—Is the government committed to using the corporations power?

Senator Wong—This is really going to the same issues that Senator Fisher went to, Senator Abetz.

Senator ABETZ—That is right; different senators can raise similar topics.

Senator Wong—I would refer you back to the commitments in the policy document and the answer by the department.

CHAIR—Are there further questions on this outcome?

Senator FISHER—Yes. Forward with Fairness refers to proposed awards flexibility clauses. I might not have the terminology right.

Mr Pratt—Page 11 of the implementation plan.

Senator FISHER—Thank you, Mr Pratt. Flexibility in awards. What is meant by the statement that Labor will enhance the scope for upwards flexibility by ensuring that as part of

the award modernisation process all awards contain a flexibility clause? What is meant by that commitment and in particular the use of the words 'scope for upwards flexibility'? I would have thought things are either flexible or they are not. What does 'upwards' mean?

Mr Pratt—At the risk of being superficial, the policy makes it clear that the government wishes to simplify the safety net as well as strengthen it, thereby allowing flexibility above it where people can negotiate arrangements without actually being at risk of breaching the safety net.

Senator FISHER—Does that mean more or less protection for workers?

Senator Wong—Than your system?

Senator FISHER—'Upwards' has to come from somewhere.

Mr Pratt—The safety net is of course, as we have covered at length today, the 10 National Employment Standards and the 10 allowable matters in the award system. My understanding of the government's policy on this is that it is a clear increase in the safety net for employees.

Mr Kovacic—I think the intention is that the award flexibility clauses not be used as a device to undercut the award. It is to provide maximum flexibility to enable individual arrangements to be met but in a way which does not see employees disadvantaged relative to the award.

Senator FISHER—Maximum flexibility is perhaps different from upwards flexibility, but I guess we wait to see how that unfolds. Will Labor's facilitative clauses, or flexibility clauses, sorry, require union involvement?

Mr Kovacic—This is an issue that is covered off in the award modernisation request. One of the issues that the Industrial Relations Commission has been asked to do, as part of that process, is to develop what might be a model award flexibility clause. Until the transition bill is passed and implemented that process cannot formally commence. So, really, we cannot speculate as to what the commission may or may not do in terms of what the ultimate shape of the flexibility clauses might be.

Senator FISHER—So that is in the lap of the commission?

Mr Kovacic—That is correct.

Senator FISHER—Forward with Fairness also talks about the concept of good faith bargaining. What does 'good faith bargaining' mean?

Senator Wong—Senator Fisher, you are a lawyer and you have industrial relations experience.

Senator FISHER—And I cannot work it out, Senator Wong.

Senator Wong—I am sure that you would know that there has been a long discussion in that jurisdiction about—

Senator FISHER—Capricious it may be.

Senator Wong—There has been a long discussion in that jurisdiction about what 'good faith' means, but if the department wants to assist you I am sure that they can do so.

Mr Pratt—If you bear with us we will get the official policy document, which describes the various elements of good faith bargaining.

Senator FISHER—I have read the policy document so I will save you that. Perhaps I will ask a specific question. If the policy were to be implemented as per *Forward with Fairness*, will unions be able to demand that employers go to Fair Work Australia?

Mr Pratt—Those are matters that will need to be considered in the development of the legislation over the course of 2008.

Senator FISHER—So that is clearly a possibility?

Ms Paul—That is not what Mr Pratt said.

Mr Pratt—I am not prepared to speculate on what may emerge from the substantive consultation process which is going to occur over the course of this year on the development of the legislation.

Senator FISHER—So, I presume the minister would not rule that out as a possibility?

Ms Paul—We cannot answer that, either.

Senator FISHER—No, but the minister can. Will you rule out with the introduction of good faith bargaining the possibility that employers could be required to go before Fair Work Australia?

Senator Wong—I think Mr Pratt has indicated that the good faith issue is something that will be dealt with in the subsequent bill, and in the absence of that I do not want to go into any detail of what might or might not be included.

Senator FISHER—You are not ruling it out?

Senator Wong—I have indicated an answer. You know the point at which we are at. At the moment this committee and the parliament shortly is dealing with the transitional bill. I understood Mr Pratt's answer. He was referring to the fact that this is an aspect that is likely to be dealt with in the substantive legislation, which the government foreshadowed.

Mr Pratt—That is correct.

Senator FISHER—Will employers be found not to be bargaining in good faith if they refuse to include a particular term in a workplace agreement?

Senator Wong—There is a range of hypotheses. Will Ms Bishop change her mind again on this issue? We have made it clear that there is a policy position, which is outlined in *Forward with Fairness* and the implementation policy. The substantive bill has not yet been introduced into the parliament and decisions about the form of that will be made in that context.

Senator FISHER—So, there is a possibility that an employer refusing to agree to one particular term or condition could render them failing to bargain in good faith?

Ms Paul—I think it is very difficult for us to comment on a substantive bill that has not yet been drafted when we are talking about a transition bill.

Senator FISHER—I am asking for comment on the government's policy.

Ms Paul—That is fine, sorry.

Senator FISHER—It is not about—

Senator Wong—The government's policy is as outlined in Forward with Fairness and I have no further detail on that for the reasons I have outlined.

Senator FISHER—Therefore, you cannot rule out that as a possibility?

Senator Wong—I cannot rule in or rule out a whole range of hypotheses, Senator Fisher, just as you cannot rule in or out what your position will be on that legislation.

Senator FISHER—Not until we have seen the legislation. Thank you. That is all on that particular issue. Does anyone else have some questions? I have more but I do not want to—

CHAIR—Do any other senators have questions? Senator Fisher, keep going on outcome 9.

Senator FISHER—I have some departmental management questions, if I may. That is what I call them. Are you able to indicate to the committee the cost, for example, of the creation of DEEWR?

Ms Paul—Those should have been questions for cross-portfolio.

Senator FISHER—I am in the wrong place, am I?

CHAIR—Yes, unfortunately. I was happy to be flexible about the agenda today, but I am very reluctant to go back into issues yesterday, and those officers are not actually here.

Senator FISHER—I am learning. Thanks for that lesson.

CHAIR—I understand that.

Senator FISHER—The Workplace Authority under Forward with Fairness remains in place for a period of time to process workplace agreements as we transition to Fair Work Australia; is that correct?

Mr Pratt—That is correct.

Senator FISHER—Has the department briefed the government on suggestions that the Workplace Authority be wound up earlier than committed to as part of Forward with Fairness?

Mr Pratt—We have certainly briefed the government on a whole host of matters relating to the substantive bill, including the creation of Fair Work Australia. However, a question of that sort really does go to the nature and content of advice.

Senator FISHER—I am just asking whether you have provided advice on the potential early windup.

Mr Pratt—Yes. The government's policy is that the Workplace Authority will process agreements until Fair Work Australia commences.

Senator FISHER—So, the minister can guarantee the continuation of the Workplace Authority until 1 January 2010, when Fair Work Australia is established?

Mr Pratt—The government has indicated in Forward with Fairness that that is when its arrangement will be fully operational.

Senator FISHER—Can the minister guarantee that the Workplace Authority will continue to carry out its current responsibilities, albeit as changed by the transitional bill, assuming it were to be passed, until 1 January 2010?

Ms Paul—It does need to continue, yes, because it has to be replaced by something.

Senator FISHER—That is it.

Ms Paul—So of course that is the basis—

Senator FISHER—I am checking there is something there, Ms Paul.

Ms Paul—That is right. That is the basis on which we are working; it continues until replaced by Fair Work Australia.

Senator FISHER—Will the minister guarantee that the Workplace Authority will continue in place until 1 January 2010?

Senator Wong—The way I have understood our policy—and I am sure Ms Paul or Mr Pratt will correct me if I am incorrect—is that the intention is the Workplace Authority will remain in place until Fair Work Australia commences, and that is outlined in the Forward with Fairness policy, the date of which is January 2010. That was in the election policy.

Senator FISHER—Indeed. I suppose that means that, if the government's commitments in terms of setting up Fair Work Australia are not able to be met by 1 January 2010, the Workplace Authority would continue beyond 1 January 2010 until such time as Fair Work Australia is established; is that right?

Senator Wong—With all due respect, Senator Fisher, that is a set of hypotheses that you may wish to pontificate upon yourself, but I am not responding to them. I have indicated to you what the policy position is. We work on the basis of the same policy.

Senator FISHER—Which is continuation of the Workplace Authority until Fair Work Australia is established?

Senator Wong—That is right.

Senator FISHER—Can you remind me of the life of the Australian Building and Construction Commission under Forward with Fairness?

Mr Pratt—The government's policy is that the Australian Building and Construction Commission will continue until the end of end of January 2010, when it will become a division in Fair Work Australia.

Senator FISHER—Has the department provided advice to the government on some discontent within the union movement about the continued life of the Australian Building and Construction Commission?

Ms Paul—Are you asking us for the nature of our advice?

Senator FISHER—No, I am asking whether the department has provided the minister with advice, or the government with advice as to—

CHAIR—But the difficulty was that you actually said what the nature of the advice was and whether it was provided.

Senator FISHER—As to the duration of the Building and Construction Commission.

Mr Pratt—Any discussions we have with the government on these matters relate to the government's articulated policy, which is that the ABCC continues until the end of January 2010 and then becomes a division in Fair Work Australia.

Senator ABETZ—Will it be continued in its current form and resourced as it currently is until that time limit?

Mr Pratt—It is my understanding that the government has indicated that.

Senator ABETZ—That is correct, is it, Minister? I do not want to put you on the spot, but Mr Pratt says he understands that to be the case. Are you suggesting that he might be vague or—

Mr Pratt—I apologise for the appearance of vagueness. My very clear understanding is that that is the intention of the government. In fact, I will now quote from the Forward with Fairness policy implementation plan to get rid of any vagueness here:

The current Australian Building and Construction Commission (ABCC) will remain in place until 31 January 2010. Specifically, the ABCC will retain all its current powers, personnel and full resources for this period.

Senator FISHER—The ACTU has threatened to run a public campaign against employers that continue to sign new Australian Workplace Agreements in the period before there may be a change to the laws. Is it against the law to coerce anybody to sign or not sign a workplace agreement?

Mr Pratt—Are you seeking legal advice on this matter?

CHAIR—I think you just need to rephrase that question somewhat.

Senator FISHER—If it were to be illegal to coerce a party to sign a workplace agreement, is it the job of the Office of Workplace Services, now the Workplace Ombudsman, to be the cop on the beat in that respect?

Mr Pratt—The Workplace Ombudsman has now the full range of compliance functions for this portfolio.

Senator FISHER—Including allegations of coercion in respect of workplace agreements?

Mr Pratt—Yes.

CHAIR—They are appearing later, and these questions might be more suited to be directed to them.

Senator FISHER—I will accept that guidance, yes.

CHAIR—Senator Abetz, did you have further questions in Output 9? Are there any further questions for Output 9? We will move to the Workplace Authority. We might take a 10-minute break while we wait for them. The committee will suspend for 10 minutes.

Proceedings suspended from 3.19 pm to 3.32 pm

Workplace Authority

CHAIR—Senator Wong has advised that she has a commitment just prior to the tea break. I have consulted with senators and it is agreed that, if there are then questions for the minister during that time, they will simply be delayed until the minister returns, so that is fine.

Senator Wong—Thank you.

CHAIR—I welcome Ms Barbara Bennett from the Office of Employment Advocate. Is that right?

Ms Bennett—Workplace Authority.

CHAIR—Sorry, old habits die hard. Yes, the Workplace Authority. Does that mean that you are not the advocate? What is your title?

Ms Bennett—Director of the Workplace Authority.

Senator ABETZ—You are not the CEO, which means that the wage freeze does not apply to you; is that right? I am just joking.

CHAIR—You looked terribly worried.

Senator ABETZ—In a previous committee we were told that it only applied to CEOs, so I inquired, ‘What if you were a director or managing director? Would it still apply?’, and I could not be given an answer. What can you tell us about the activities and the transition from the OEA to the Workplace Authority?

Ms Bennett—The Workplace Authority was established on 1 July and the OEA ceased operation on 30 June. The previous government announced changes to introduce the fairness test on 7 May, and all AWAs that were on hand at that stage were frozen subject to the introduction of the legislation and the establishment of the new authority. The Workplace Authority’s key functions are to assess all workplace agreements against the current legislative arrangements, which include the fairness test; to provide a contact centre, a workplace information line that people can ring, and the services that support that, in particular what we call knowledge services, which is the production of pay scale summaries, and a number of other issues, such as translating pay scales into current and existing awards.

Senator ABETZ—What is the level of the inquiry at the moment with these help lines?

Ms Bennett—The average number of phone calls received by the contact centre is 5,000 a day.

Senator ABETZ—Is that 5,000 a day average centralised from all around Australia?

Ms Bennett—We have contact centres in Sydney and Melbourne and in Perth and Brisbane, and that covers—

Senator ABETZ—That is the aggregated figure of the calls?

Ms Bennett—That is the aggregated figure.

Senator ABETZ—What can you tell me about the rate of inquiry in relation to the opportunity to still make AWAs?

Ms Bennett—Since 1 July the Workplace Infoline has received 500,000 inquiries. As I said, that estimates a daily average of about 5,000. Many of those calls are in relation to the application of the fairness test. Many of them are about wage translations, and 46,000 of those were for vulnerable workers. They would have been young people or apprentices or people who were uncertain about their terms and conditions. We are also the first point of referral to the Workplace Ombudsman.

Senator ABETZ—With respect to those 46,000 young/vulnerable workers, is there a satisfaction within the authority that they were able to assist those young/vulnerable workers?

Ms Bennett—I do not have the detail of work. But we have records that indicate if someone calls more than once or twice or if they are making a complaint about the advice they received. My recollection of the statistical information that we have on that is that there is a high satisfaction level on the information that is provided, and a lot of those issues do go to things like how do the fair pay decisions translate, at what point would someone move to second-year apprenticeship wages, how do outworkers get paid—those sorts of questions. The staff of the contact centre has been well trained and we have developed sophisticated scripts. For example, late last year there was an issue about petrol stations deducting from the wages of staff the cost of petrol for drivers who drove away without paying. We developed scripts so that those people could ask what their options were.

Senator ABETZ—Using that as an example, if somebody had wages or a part of a wage unfairly deducted and it seemed pretty clear on the face of it that that was their complaint and they had advised you of that, would you then be suggesting they go to the Workplace Ombudsman for that to be resolved?

Ms Bennett—We have two approaches. Some of our direct phone calls go to the Workplace Ombudsman and for some people we send out claims kits directly. To date this financial year we have sent out about 11,600 claim kits, which would then be forwarded to the Workplace Ombudsman.

Senator ABETZ—That is what I was meaning.

Ms Bennett—We have referred just over 5,300 calls directly to their own contact centre.

Senator ABETZ—When you refer them do you say to them, ‘Look, you have to ring this number’, or do you have a mechanism whereby you can flick a switch and say, ‘Look, I will just transfer you to the Workplace Ombudsman’?

Ms Bennett—My understanding is that telephony allows us to make a direct phone call that would refer them directly on.

Senator ABETZ—With one phone call, in other words?

Ms Bennett—In one call. My understanding is that we can do that. I will correct that if that is not the case. We can arrange for their kits that they have given us to be sent out directly from our clearing house.

Senator ABETZ—So, that helps the process and you do not have to wait on the Workplace Ombudsman to do that? That is very helpful. How many kits did you say had been sent out in that period?

Ms Bennett—From 1 July this year, 11,616 claim kits were sent.

Senator ABETZ—Are the ones that you send out marked in a particular way so that you can ascertain how many of those are returned to the Workplace Ombudsman?

Ms Bennett—No.

Senator ABETZ—I would imagine a lot more than that 11,000 kits have been sent out; not only you send them out. I imagine other bodies such as the Workplace Ombudsman would send them out. It would be interesting to see how many were returned. We might have to go elsewhere for that.

Senator FISHER—What is your current rate of processing workplace agreements?

Ms Bennett—At the moment we are processing more agreements that are coming in every day.

Senator FISHER—That will be here in that backlog?

Ms Bennett—From 7 May 2007 to 31 January, 278,275 agreements were lodged for assessment by the Workplace Authority. As at 31 January, 129,912 agreements had been finalised, which includes initial assessment and return to the employer and reassessing any variation or undertaking that was made.

CHAIR—Would you have a tabular form of the rate of agreements, et cetera, going back for a period? It might be easier to table.

Ms Bennett—I will just have a look to see if I do.

CHAIR—If you haven't, maybe you could take that on notice.

Ms Bennett—Over what time would you be looking at?

Senator FISHER—What period can you provide? It may be most convenient to start with the commencement of the authority.

Senator Wong—Are you proposing to have an afternoon tea break?

CHAIR—Yes, I was, but as I indicated—

Senator Wong—Could I suggest that perhaps Ms Bennett take the opportunity to find that information over that break and then she could respond afterwards.

CHAIR—I was going to delay the tea break slightly because we have just had a short break, so you should go to meet your commitment when you need to.

Senator Wong—Thank you.

Senator FISHER—If Ms Bennett can provide that data and we might return to discuss it?

Ms Bennett—We have a number of agreements, collective and AWAs?

Senator FISHER—Yes, both union and non-union collective and AWAs.

CHAIR—I think all the categories of agreements would be useful. Do you deal with the greenfields agreements, too?

Ms Bennett—Yes.

CHAIR—I think all the categories would be useful.

Senator Wong—Do you want lodgement periods?

Ms Bennett—Data of lodgements?

CHAIR—Numbers of?

Ms Bennett—Numbers of lodgements.

Senator Wong—Yes, and over what time frame?

Senator FISHER—Since the creation of the authority; prior to that is not necessarily comparing apples with apples, is it?

Ms Bennett—Are you talking about agreements lodged prior to the authority being established?

Senator FISHER—Yes.

CHAIR—We probably have figures from the May estimates, but we have not had estimates since. If you can update that information from whatever was provided in May I think it would be useful, but if you cannot because of when your authority was created then we understand that.

Ms Bennett—The way the information is collected, I can provide from the establishment of the authority on 1 July until 31 January. I can provide periods back to that, but I cannot stop from the last estimate dates—

CHAIR—Sorry, I was just suggesting that we probably had our last—

Ms Bennett—Because even though that information would have been collected by OEA and we would have access to that—

CHAIR—Whatever is most convenient will do, as far as I am concerned.

Ms Bennett—It might be helpful to know that, since our last release of statistics on 30 November 2007, which were comprehensive and are on our website, that was the last public release and it covers a whole lot of fields rather than just the fairness test. That will cover things like greenfields agreements and collectives and spread of industry. I could download that and get copies for you after the break and you could ask questions in relation to that, so that brings us up to 30 November 2007.

Senator FISHER—You indicated that you are processing more agreements than you are receiving and referred to the catch-up that you are able to achieve at the moment. Can you substantiate that in terms of how many agreements do you have to catch-up?

Ms Bennett—There has been some movement in the last 20 days in that catching up. It does take some time to clean that information so that it is not double counting. As at 31 January there were 278,275 lodged and we had almost 130,000. Working on that, there are about 140,000 depending on what has been processed between 31 January and in the last 20 days.

Senator FISHER—You have essentially processed about 140,000 of those sitting waiting?

Ms Bennett—The current legislation allows a preliminary assessment, then it goes back to the employer and they can make a variation or change that agreement, and it then has to come back and be reprocessed. There are multiple steps in the processing arrangement and multiple

handling. Usually the 'not processed in any aspect' is somewhere between 20,000 and 30,000 at a point in time; they will have received first advice and first information. But 'finalised' is somewhere just under 130,000.

Senator FISHER—The critical date, if legislation before the parliament were to be passed, becomes the date of commencement of the legislation that is passed, does it not, in terms of Australian workplace agreements in particular?

Ms Bennett—Perhaps you can check with DEEWR, but I will check it if I need to make an adjustment. My understanding of the legislation is that AWAs will cease to be able to be accepted by us on the day that the legislation is made. The current legislation allows 14 days for them to be lodged after they have been made, so we will still be receiving AWAs for 14 days after the passage of the legislation. At that point we will turn off the systems that allow the lodgement of AWAs.

Senator FISHER—How will the proposed changes in respect of commencement of agreements from approval as opposed to lodgement be affected? I know there is some difference between Australian workplace agreements and other agreements in that respect? What I am concerned to see is that you believe your authority will be able to cope with the natural demands being made upon your resources to process whatever agreements are lodged with you prior to a cut-off date that may happen some time in the near future. We do not know the date we are talking about yet, which makes it a little difficult. Hence the relevance of your backlog. But maybe, maybe not; to the extent that the backlog is comprised of agreements lodged some time ago and under previous rules, they will be dealt with in the course of.

Ms Bennett—AWAs that are on hand when the legislation is tabled will continue to be processed. At this point in time a rough estimate is that will probably take us about three months. The key issue of why it has taken longer than we would have liked to catch up with that is that from the time of 7 May to the time that the authority was established and able to operate there were more than 80,000 agreements sitting in the pile. They were lodged by employers and employees before the implications of the change in legislation were available. Many of those had to go back because there was insufficient information for the assessment or because they did not pass because of the new requirements, and the employers and employees had to make new arrangements to allow them to pass. The proposals under the transition bill will significantly reduce the potential for back pay because they will not be in effect until they have been approved by us. We will put arrangements in place that have a proportion of staff dealing with the backlog, and some staff set aside dealing with the new arrangements. And as that pile decreases, those staff will move to the new agreements, because they will be increasing in number. It is sort of a balance of one going down and, as it goes down, it is taken up in the other.

Senator FISHER—There are two reasons. One is exposure to back pay, which affects both employees and employers, which will be able to be dealt with albeit unfortunate that it might occur. But the other risk that I am trying to get a handle on is the risk that an agreement of some form or another might be lodged prior to whatever transpires to be, presuming it transpires to be, the commencement date of new legislation. An agreement is lodged with your authority yet perhaps due to resource issues is unable to be dealt with in sufficient time

to mean that it becomes a valid agreement under the new legislation. Is there any potential pool of agreements that could fall into that category?

Ms Bennett—No, my understanding is that the legislation is made in such a way that if it is with us we would process it under those rules. The reading is that there is not retrospectivity, so those agreements that are with us on hand would continue to be assessed against the current legislation.

Senator FISHER—The risk is simply but regrettably in terms of back pay?

Ms Bennett—For the current arrangements—

Senator FISHER—Yes.

Ms Bennett—under the transition bill very few are able to be in action or in effect from the date they are lodged. That diminishes after the transition bill.

Senator FISHER—Are you of the view that the authority has adequate resources to deal with the demands currently being placed upon the authority's time?

Ms Bennett—We are putting in place increasingly sophisticated processing arrangements. We have very large processing areas for agreements in Melbourne and Sydney. As I said, the staff are now processing more agreements that are coming in, so the effort that we have made in improvements to both the systems and training and support for the staff and their familiarity with the processes is starting to show through in output and productivity.

Senator FISHER—Given those good efforts, you are satisfied that you have the resources to cope with the demands being placed upon the authority, do you?

Ms Bennett—Yes. As I said, we believe that we will be dealing with those on hand depending on how many are there at that point in time as quickly as possible. Can I add that, at this point in time, if an agreement has all the information we are actually processing them in 20 working days. It takes longer if there is a variation or there is insufficient information. In my view, at the moment we have enough staff handling the current agreements on hand, and we have staff that have been taken up to work on the transition arrangements, mainly senior staff, to make adjustments to our processes to be ready for when the legislation is passed.

Senator FISHER—Are you aware of any suggestions that your resources should be reduced prior to the commencement of the transitional bill, presuming that it does commence?

Ms Bennett—We have had changes to our budget made as a result of this portfolio's estimates process. They are set out on page 153. It explains that our budget will be reduced this year and next year and a half year of operation for the expected establishment of Fair Work Australia on 1 January 2010.

Senator FISHER—Beyond that you are not aware of any suggestions that there be any diminution in your resources, either people or—

Ms Bennett—My understanding is that what has been proposed here for this year, next year and that half year of operation is a new base for us.

Senator FISHER—Thank you.

Senator ABETZ—In relation to lodgements, how many of them are lodged electronically? Can you lodge them electronically?

Ms Bennett—Ninety per cent of agreements are lodged online. And ten per cent are mailed or faxed.

Senator ABETZ—For those that are emailed and faxed you would get some record of receipt for the person sending them to you? I am wondering about the ones that are mailed to you. Have you ever had situations where the agreement has been dated, et cetera, been put in the mail, but it has arrived after the 14-day threshold? Don't you have to lodge within 14 days of signing?

Ms Bennett—Yes.

Senator ABETZ—So, it has been stuck in the mail because of a wrongly addressed GPO box number, or the postman was a bit asleep and stuck it into the wrong post office box, or somebody took it away with them and could not be bothered to put it back in the mail for a few weeks.

CHAIR—We get your point.

Senator ABETZ—Do you have records of those?

Ms Bennett—I do not have the numbers—

Senator ABETZ—We are looking to the future like that.

Ms Bennett—The process at the moment is that those electronically lodged goes through a computer system; Phoenix automatically triggers a receipt.

Senator ABETZ—Yes, so the fellow knows—

Ms Bennett—And you get a number. Those that arrive through the post and fax are scanned and they are given a number as well. We do have occasions where someone has said, 'But I mailed it.' We look at what is reasonable and apply commonsense. Sometimes if it is not reasonable then it has not complied and they have to resend it.

Senator ABETZ—Do you tell them in advance that they will be sent a receipt in the mail as they make contact with you?

Ms Bennett—Depending on which way they are lodged. But on our website on how to make an agreement, they can get all the paperwork and forms needed to be completed and information about how to make an agreement. It does set out the process including, 'You will hear from us at this point' and 'We will let you know this' and that sort of thing.

Senator ABETZ—But if I am electronically challenged—and I have many challenges, this is just one of them and that is why I can empathise—and I ring up your office and say, 'I want to enter into a workplace agreement, can you send me out a hard copy to fill out the bits and pieces', will that happen?

Ms Bennett—Yes, somebody in our contact centre will send them a package.

Senator ABETZ—And so does that material say, 'Expect a receipt when you lodge it within a certain period of time'?

Ms Bennett—It is sent out in the information that comes with our agreement making.

Senator ABETZ—Given the fortnight deadline after the legislation comes into play and you are going to close down your systems, what happens to those—and I imagine it would be a handful at the most—where somebody has put it in the mail and, using your reasonable test, you say, ‘Yes, it was reasonable; it was mailed off’, et cetera, but it has now arrived after that 14-day deadline? Are there any proposed mechanisms to cater for that?

Ms Bennett—We have not yet finalised our arrangements to that level of detail in terms of what we will do in every situation. I must say we would have to be very convinced that somebody did actually send it to us in that 14 days given the amount of awareness that is—

CHAIR—Is the office just going to be closed/shut down?

Senator ABETZ—We were told that the systems would be, I think—and I do not want to verbal you—shut down and that is why I am wondering—

Ms Bennett—The system’s electronic arrangements would cease so that you could not lodge an AWA, and for those that are received we would write to people and explain to them that the legislation had changed in the transition bill; this is what the arrangements are and that we are returning their AWA to them and that they will need to look at what options are available, such as a collective agreement, returning to the award or doing an IT if they are eligible. We will set out those arrangements in correspondence to them. All of that will be on the website and those sorts of things.

Senator ABETZ—I do not think you have answered this before, but what have been the number of lodgements for January 2008 in comparison with January 2007?

Ms Bennett—I would have to take that on notice, but I can tell you that in November 2007 it was pretty consistent with November 2006.

Senator ABETZ—Can you tell me about December 2007 and December 2006?

Ms Bennett—There were some suggestions in the media that there had been a spike in AWAs in November. We looked at it and we looked at the pattern, and that was not the interpretation that we put on the data; November is a time where there is seasonal work and there are a lot of additional staff dealing with Christmas arrangements, businesses closing down for December. December this year and December last year were very low agreement lodging periods.

Senator ABETZ—But comparatively the seasonal situation that you are talked about occurring in November would have applied in November 2006 just as much. That is why I am trying to get the comparisons year to year. I might try my luck for it daily, as to whether lodgements died off in the last week of November given the election result?

Ms Bennett—Sorry?

Senator ABETZ—I was asking another question while you were looking. Can you take on notice for us a comparison between November 2006 and November 2007; December 2006 and December 2007 and then, if your figures allow for it—

Ms Bennett—That is just lodgements, you are looking for?

Senator ABETZ—Yes. And if your figures are able to get down to that detail, whether the lodgements after the 24th died off in November and December in comparison with the previous year? Just see what information you have got.

Ms Bennett—We have cut-off information that relates to a monthly arrangement. We couldn't do it as at a date. You asked the same question at the last Senate estimates. We could not pick it up from that date. As to the reason we can tell you what 7 May was, the arrangements changed and they were frozen at that point in time, when the legislation was introduced.

CHAIR—You have obviously looked at some of the last Senate estimates. I have always been particularly interested in statistics. Do you have any statistics about the make-up of AWAs, what sorts of protected award conditions have been removed from AWAs, and any percentages? Can you give me any sampling or any analysis that you may have done, if you have done that or had it transferred from the predecessor organisation? If you have that and can make it available to the committee I would appreciate it.

Ms Bennett—We already provided some information to the Deputy Prime Minister that she tabled in the House.

CHAIR—We have been busy here.

Ms Bennett—I can provide that information to you. It looked at the agreements that we referred to at the last Senate estimates with the former OEA. On the basis of the public interest in this matter I asked for that analysis to be undertaken. We analysed 1,700 agreements between April and October 2006. We looked at that point in time at how many removed or modified one or more protected award condition, and what were the most commonly amended or modified protected award conditions. I can talk you through that if you wish?

CHAIR—Are you able to table that?

Ms Bennett—This briefing for estimates has been provided in the form of your previous questions.

CHAIR—You had better just table the folder.

Senator Wong—That does mean Ms Fisher will be left sans brief, I suppose.

Ms Bennett—They were the previous questions that were asked from the last hearing. They are numbered to bear a relationship to the questions that were asked.

CHAIR—So, you are able to provide that. Thank you.

Senator FISHER—Does that analysis go to removal of protected award conditions and one other aspect?

Ms Bennett—Removal or modification.

Senator FISHER—Does that data also go to agreements in which workers received higher pay?

Ms Bennett—No, that is not—

Senator FISHER—Can you provide that?

Ms Bennett—We cannot do that because that snapshot in time was the change in March 2006 between when Work Choices was introduced and the fairness test. There was no assessment or requirement to provide that financial information. The role of the OEA at that point was only lodgement. The information just is not available, because it was not a requirement. We cannot say whether someone received more money for something or less money. That was not requested and it was only a lodgement. It was literally just a registering arrangement.

Senator FISHER—It may well be fair to conclude that in many of the cases that showed a reduction or modification in protected award conditions the worker in point also received an increase in pay? You would not know?

Ms Bennett—We do not know.

CHAIR—Equally I do not suppose you would know if they received a reduction in pay?

Ms Bennett—We have undertaken some analysis of agreements since the fairness test of what the reduction in pay was that resulted in their not passing. Under the current arrangement an agreement will come to us and an assessment is made as to whether compensation has been paid for a modification or a removal of a protected award condition—the seven that are listed—and a monetary value is given to that. And if the employer and the employee have not met what our assessment as to the value of that they are then advised that they need to up the pay rate by a certain amount of money. Because that is a requirement, we have been able to do a sampling that shows what we had sought the employer to up the AWAs to make them pass the fairness test.

CHAIR—How many were actually in that situation? Was that a significant percentage? You can provide that on notice.

Ms Bennett—Fifty four thousand AWAs were lodged between 7 May and 1 July. Of these, 5,259 were assessed as not passing the fairness test, so just under 10 per cent. For a further 4,000 we had insufficient information to be able to make an assessment. That 5,259 has to be manually sampled. The system that we have is a patchwork from the previous arrangements, so we cannot download data fields. Six hundred and seventy AWAs were used in that analysis. Approximately 45 per cent did not pass the fairness test because they offered between \$1 and \$49 per week below the required rate. Fifty per cent offered between \$50 and \$199 per week below the required rate. Five per cent offered between \$200 and \$499 per week, and half a per cent offered more than \$500 below the required rate.

CHAIR—Are you able to table those figures?

Ms Bennett—We also separated out the analysis post agreements lodged from the passage of the fairness test legislation. They are relatively consistent with those figures where we did the larger sampling.

Senator Wong—It is a very odd flow chart.

Senator ABETZ—Can I ask you about the industry partners? Did you inherit them from the OEA? I am interested to know what they are doing now. Are they still out promoting AWAs?

Ms Bennett—The funding for the industry partners ceased on 1 July 2007. The nature of the contract that was referred to the OEA from the then DEWR and then transferred to the Workplace Authority under the machinery of government, some of those contracts only expired while no further money was given on 31 December 2007. As to the final analysis, which is a requirement of those contractual arrangements, the evaluation will be finalised at the end of this month.

CHAIR—In terms of AWA making, is your office providing any assistance to people to make AWAs at the moment? I mean outside of lodgement and your duty to lodge; in terms of the promotional aspect?

Ms Bennett—Due to lodge and our contact centres and questions that people have about their interaction with us, we are not funding any third party marketing campaign or information campaign. The tools to make an agreement are there because that is what is available under the legislation, and the advice and assistance that we provide to people at the contact centres remains until the transition bill is passed.

CHAIR—It does occur to me we did have that 10-minute break and we were still going to have the afternoon tea break, but I have forgotten and we have gone well passed it.

Senator ABETZ—I suppose in the excitement of the—

CHAIR—It has been. If we are not going to go on too much long with this witness we will then have a 10-minute break at the end. Do you have a lot of questions?

Senator ABETZ—No.

CHAIR—We will continue on and see how we go.

Senator ABETZ—Correct me if I am wrong but earlier on you referred to the classification of conditions either being removed or modified. Are they separate classifications or in the same category or the same classification?

Ms Bennett—I did not talk about classification, I talked about protected award conditions.

Senator ABETZ—Yes, being either removed or—

Ms Bennett—Or modified? In that piece of paper that you have the question that was asked in previous Senate estimates was what was the most commonly removed protected award condition—that is question 11—and then—

Senator ABETZ—I haven't got that far yet.

Ms Bennett—And question 13, which was previously asked at estimates, was what was the most common modified. So, they have been set out in the two tables based on the questions that were asked at the May estimates and I think the previous estimates before them.

CHAIR—And 'modified' could be either upwards or downwards?

Ms Bennett—I could be.

Senator ABETZ—You gazumped me.

Senator FISHER—That is good information.

CHAIR—That is an observation we have made several times.

Senator ABETZ—That is why when I heard the term ‘removed or modified’ I wanted to know whether they were all bulked in together. But I am now being told that when you said ‘removed or modified’ —

Ms Bennett—They are two separate assessments.

Senator ABETZ—They are two separate assessments, and ‘removed’ means ‘removed’, of course, that is easy. But we do not have any advice as to what they might have been replaced by?

Ms Bennett—No.

Senator ABETZ—And when we have ‘modified’ we do not know whether it goes up or down?

Ms Bennett—No, we do not.

Senator ABETZ—Of course that was why your predecessor was concerned about the probative value of this sort of evidence; it allows just one side of the coin but is unable to turn over the other side of the coin.

Senator Wong—I admire your persistence in defending the previous government’s refusal to—

Senator ABETZ—Senator Wong, we were getting on very well before your return. There was not actually a question asked and I was about to pull up Senator Abetz. Given that there was no question asked, there is no need for a response. Do you have a question?

Ms Bennett—Can I just make a correction?

Senator ABETZ—Yes.

Ms Bennett—You asked about the partners. I got confused. We never funded partners. We funded something called the Employer Advisory Program, an EAP program. Partners was a voluntary arrangement that the OEA entered into with the OEA. That ceased on the OEA ceasing to exist on 30 June. It was not taken up by the Workplace Authority. I was talking about the remains of something called an Employer Advisory Program, just to correct the record.

Senator ABETZ—Thank you for clarifying that, because I was actually talking about the Partners Program.

CHAIR—Do you want to have a 10-minute break now?

Senator ABETZ—Yes, I would not mind.

Proceedings suspended from 4.19 pm to 4.34 pm

Workplace Ombudsman

CHAIR—We will resume. I think through the break we have actually worked out we do not have any further questions for you, Ms Bennett, so thank you for your appearance today. The next witnesses are the Workplace Ombudsman, formerly the OWS. While the witnesses are taking their places, after consultation with senators who have been participating in this part of the estimates, I can advise that senators have indicated we have no questions for ComCare. If ComCare wishes to do something else, they are free to do so. They can stay, but

they do not have to. Mr Wilson, welcome. Did you wish to make an opening statement or shall we go straight to questions?

Mr Wilson—No, we are going to take the questions. We do not have an opening statement.

Senator ABETZ—You continue to do very good work in pursuing injustices in the workplace, and in recent times you seem to have had targeted campaigns. Your annual report for 2006-07 tells us about some of those areas. I suppose you are not in a position to tell us what future campaigns might be undertaken because that might give the game away for certain people. But since this annual report have you had other targeted campaigns that are well and truly under way or have proceeded that are not mentioned in this report, say, focused on a particular sector such as the clothing trade or fast food that you outlined? Are there any others?

Mr Wilson—Perhaps I will provide a brief overview about our targeting activity and then Mr Loizides can elaborate on that if he wishes. We have a strategy that means somewhere between 30 per cent and 40 per cent of our numerical activity is related to our targeted campaigns in the financial year to date.

Senator ABETZ—You said something about ‘campaign’; the word in front of it? Was it ‘numeric’, did you say?

Senator FISHER—Numerical.

Mr Wilson—Numerical.

Senator ABETZ—Numerical. What does that mean?

Mr Wilson—In the period July 2007 to the present we have dealt with probably about 12,000 matters, of which about 3,000 are what we call targeted campaigns. The other 8,900 would relate to people who have come to us in that period for rectification of a problem in the workplace. We undertake those targeted campaigns at two different levels, one of which is the national campaigns that are rolled out in all states or variety of states and then we also supplement those with activities in a regional area or it can be on a state-by-state basis. We have targeted four national campaigns over the 2008 period. They include the human services industry, incorporating aged care and child care. We also have work associated with the transport industry, with long-distance drivers, couriers and bus transport. That will not be commencing until May. We have work programmed in respect of the hospitality industry, in particular accommodation, bars and clubs, which will be later in 2008. And, lastly, the food services industry, which includes restaurants, cafés and things of that nature. So, they are the national campaigns. The way that we go about doing those is to endeavour to work up the exact strategy and the locations in conjunction with the industry associations and the relevant unions. But of course the ultimate decision making about the nature and style of the campaigns is left up to our individual officers. Mr Loizides, did you wish to add anything about our campaign program?

Mr Loizides—I can inform the senator that in the 2007 year to date we have recovered approximately \$3.9 million during those targeted campaigns.

Senator ABETZ—For how many individual workers?

Mr Loizides—I do not have that number, unfortunately.

Senator ABETZ—Can you take that on notice. It would be interesting to know, because you have been able to recover over the years now substantial millions of dollars for many thousands of workers, which is a great outcome of this office. I forge the percentage for the numerical activities. You indicated a certain amount were the targeted campaigns. In respect of the individual complaints that you might receive, how much of your numerical activity would that be? In rough terms, half?

Mr Wilson—It is a little bit misleading. I should not have opened up, I suppose, with that numerical reference. About 30 per cent to 40 per cent of the total number of matters coming through our doors would be targeted matters. The actual time spent by our inspectorate staff is probably not the same as that. But in addressing the question, we have over the period from July 2007 we have recovered about \$16.6 million and that relates to about 13,800 employees. As to the people who came directly to us, we recovered about \$12.7 million, and that was on behalf of about 7,800 employees.

Senator ABETZ—That is great work. Well done. You undoubtedly categorise complaints. If somebody has been short-changed \$100 you would try to resolve that, but you have the capacity to pursue matters right through to legal proceedings and prosecutions; is that correct?

Mr Wilson—That is correct. The first process that we try to do with the claimant and also the employer is to achieve voluntary compliance by providing people with information about what their rights might be. In probably 47 per cent of the matters would be resolved through voluntary compliance. That obviously is providing information to people and encouraging them to finalise the matter before further intervention is required. The other 53 per cent of matters would require an inspector to undertake more detailed work, and of course that more detailed work ranges from fairly low level activity which gets the matter finished through to of course the full court matter. The full court matters are very significant for us because they give us the opportunity to demonstrate that compliance is required but also numerically they are fairly small in the totality. In this financial year, for example, we have commenced 58 prosecutions and finalised 27.

Senator ABETZ—I want to ask some specific questions about specific matters. If they are still before the courts—I understand they have been finalised—please pull me up. The first one is about an Allison Adkins from Devonport who worked for Video City in Burnie, in my home state of Tasmania. Are you aware of that case?

Mr Wilson—No, we are not. That does not mean that we are not dealing with it.

Senator ABETZ—I do not think anyone at the table is aware of that matter.

Mr Wilson—We will take it on notice.

Senator ABETZ—Yes, if you can take that on notice.

Mr Wilson—I guess, having said that, I need to understand the nature of the query.

Senator ABETZ—Whether a prosecution was undertaken of Video City, Burnie, in relation to workers Allison Adkins and Ellen Speed, from Burnie.

Mr Wilson—I defer to Mr Johns.

Mr Johns—Certainly, I can indicate that there are no current proceedings before the courts involving an entity by that name. That might be its trading name. It might be that it has another proprietary limited name, under which the proceedings are known by us. It does not ring a bell in terms of matters that have been concluded through the civil penalty and litigation process.

Senator ABETZ—What about the Granada Tavern in Hobart? Surely you would be aware of that one?

Mr Johns—Yes.

Senator ABETZ—Good. And Emily Wills; you took an action on her behalf?

Mr Johns—Yes, but civil penalty proceedings commenced by the Workplace Ombudsman are not so much brought on behalf of individuals but where there are breaches of the Workplace Relations Act they are brought on behalf of the Commonwealth for breach of both acts.

Senator ABETZ—Thank you for that correction. You are right and I accept that. Did the Commonwealth take an action against the Granada Tavern for what was believed to have been a breach of the law in relation to Emily Wills?

Mr Johns—It did.

Senator ABETZ—Was that action successful?

Mr Johns—Yes.

Senator ABETZ—The court determined that the activities of the Granada Tavern in relation to Emily Wills was unlawful behaviour and not allowed?

Mr Johns—Yes. I ought to issue one caution; that is, some of those matters are under appeal.

Senator ABETZ—Is this one under appeal?

Mr Johns—I would have to know exactly which claim involving Granada. Some of the matters involving that defendant are under appeal.

Senator ABETZ—I will hold off on that. What can you tell us about United Petroleum, on Hobart's eastern shore?

Mr Johns—There were no civil penalty proceedings commenced in relation to that employer.

Senator ABETZ—What about the Mornington Inn?

Mr Johns—Those matters have been litigated through the courts and there has been finding from the court in relation to that matter.

Senator ABETZ—In fact, did they score the highest penalty ever, at that stage?

Mr Johns—At that stage, yes.

Senator ABETZ—The activity that they were engaged in was found to be unlawful by the court?

Mr Johns—Yes.

CHAIR—I think the committee needs to know how much the highest penalty is.

Mr Johns—There were 10 findings and it was \$17,000 per matter.

Senator ABETZ—So, that activity engaged in by the Mornington Inn was clearly held to be illegal?

Mr Johns—Yes, but again that matter is under appeal.

CHAIR—Senator Fisher?

Senator FISHER—Mr Wilson, I am quoting from the *Australian Financial Review* on 14 February, page 11, in which an article by Mark Skully suggests:

Unions have threatened to run public campaigns against employers that continue to sign new AWAs in the period before the legislation is passed.

That was in reference to the government's transition to Forward with Fairness bill, which of course will remove AWAs. In that context, whilst you will not be able to comment on any specific cases that may be before the ombudsman, are you able to comment on whether you are aware of this practice in general and, if so, whether your organisation might be placed to deal with it in some way?

Mr Wilson—I think the best way to answer that would be to say that it would depend very much upon the circumstances of the individual workplace and what might have been said or not said or threatened or not threatened in that workplace. It would be, I think, not appropriate for us to try and draw inferences from fairly generalised press statements of that nature.

Senator FISHER—Indeed, and presumably you cannot take action unless and until you receive a complaint of some form or another, which presumably would have to come from an employer singled out for this sort of, let me call it, approach.

Mr Wilson—If I can just maybe correct you in that respect. We do act, I suppose, on our own motion if we think that there is commentary or what have you that implies there is a breach of the Workplace Relations Act. In fact, we can and have in the past operated on that basis and it is a matter for our inspectors to be then satisfied about what is going on in the individual workplace. But, again, if I could reiterate that it comes down to the circumstances of particular employers, employees and unions and the other representatives in the workplace.

Senator FISHER—I guess it could be one of your targeted campaigns, I suppose, albeit not necessarily directed to an industry. In terms of setting the context with press reports, there have been numerous, for example, concerning the ACTU warning that it 'will target corporations that continue to offer AWAs allegedly singling out Telstra and the Commonwealth Bank'. In the *Canberra Times* on Thursday, 10 January, page 3, Sharan Burrow from the ACTU of course is quoted as saying, 'It is clearly unethical for employers to push people on to individual contracts when they know AWAs are to be banned shortly.' More than unethical; it has always been illegal to push people on to individual agreements, irrespective of any banning. But equally it is not only unethical but I would suggest illegal for someone to push a party against entering into an individual workplace agreement for so long as AWAs remain possible under the current legislation.

CHAIR—Senator, I am hoping you come to a question.

Senator FISHER—It was reported on 31 January in the *Australian*, page 1, that the ACTU is also vowing to pursue companies that continue to offer the Howard government's Australian Workplace Agreements until they are abolished by parliament. Minister, what strategies does the government have in terms of ensuring that the law is observed and enforced for so long as it remains in place in respect of Australian Workplace Agreements, and in particular in respect of prohibitions against coercion against entering into or not entering into Australian Workplace Agreements?

Senator Wong—In terms of the Workplace Ombudsman's approach, as I understand the evidence Mr Wilson gave a few moments ago, he indicated there is a range of ways in which matters come before him. I think you said, Mr Wilson, you can act of your own motion?

Mr Wilson—We can.

Senator Wong—Alternatively, people can put claims to the ombudsman and the ombudsman presumably would investigate in accordance with its obligations and powers under the act. But a broader point: if your question is whether this government is determined to implement our election commitment to pass the transition bill to remove AWAs, it is.

Senator FISHER—No, Minister, that is not my question. My question is—

CHAIR—I think your question was about what powers the ombudsman has.

Senator FISHER—It was.

Senator ABETZ—Whilst we fully accept and understand the government's policy position is to abolish AWAs, it would be a very sad situation if the minister's answer that has just been provided is in some way seen in the community as providing comfort to anybody trying to use standover tactics against those people who are still legally trying to enter into AWAs.

CHAIR—I do not think the minister has answered—

Senator ABETZ—That is why I said that it would be concerning and that is why we need the clarity.

Senator Wong—I would prefer not to be verbaled.

CHAIR—But I do want to make the point that it was a very, very long question that had some undertones and the response you got is not unsurprising. We will just come back to questions and answers and we will all get on very well.

Senator Wong—If Senator Abetz is asking me if that is what I said, the answer is: no.

Senator ABETZ—Just so we are clear, the minister was asked about Sharan Burrow's comment.

Senator Wong—I was asked about a range of matters, actually.

Senator ABETZ—Yes, and people using standover tactics to stop the signing of AWAs, which, as we speak, is legal. The minister's response was: is our policy to stop the AWAs? Yes, it is. I think it may have been open to interpretation that a blind may be cast to that, and I trust that the minister is able to give an assurance that she is of the view that, whilst AWAs are legal, there should be the full enforcement of the law against all those trying to force people

into AWAs just as much as anybody who is trying to use standover tactics to stop the entering of AWAs.

CHAIR—I think the minister has answered the previous question, but I think this is a new question that is somewhat different, so I would ask the minister to respond to Senator Abetz.

Senator Wong—The first point is the point I made in answer to the first very lengthy question. I outlined the compliance mechanisms the ombudsman has in the act. Obviously, those are matters for the ombudsman. The second point, which is on the suggestion of standover tactics, is that this government has made it very clear that we will come down hard on inappropriate behaviour in the workplace, and we have made that clear in terms of the parameters of the Forward with Fairness policy and statements prior to the election. On the third issue, that of AWAs, we are committed through the transition bill, as you know, Senator, to removing AWAs in accordance with the policy commitments we made prior to the election.

Senator ABETZ—Undoubtedly you will need to take this on notice, but has the Deputy Prime Minister written to or had any communications with the ACTU requesting them to moderate the language and to not engage in language such as the ‘ACTU is vowing to pursue’—which I must say has very nasty overtones—‘companies that continue to offer AWAs’?

CHAIR—Is that a quote, Senator Abetz?

Senator ABETZ—Yes.

CHAIR—I just want to be clear.

Senator ABETZ—That is from page 1 of the *Australian* on 31 January 2008.

CHAIR—Is it an attributed quote to somebody or is that what the journalist has said?

Senator ABETZ—That is what Mr Marris has written as being the situation, but I would have thought, if you want a harmonious industrial environment, those sorts of comments should be pursued to see if they are a correct report, and we would all be very relieved if it were an incorrect report. But she is quoted, of course, as saying that ‘it is clearly unethical for employers to push people on to individual contracts’. So, she is being out there—‘she’ being Sharan Burrow, of course—and I just want to know what follow-up the Deputy Prime Minister has had with Sharan Burrow and the ACTU in relation to some of this intemperate language, which has certain overtones, I must say.

Senator Wong—Can I say in response that we have made clear what our policy is and we are seeking to implement the policy. I am unclear, given your defence of AWAs again today, whether you actually agree with Ms Bishop’s backflip on this or not, but that is a matter for you. In response to your question, I have to say it is interesting that you are choosing to use estimates as a vehicle to essentially have a political debate. Generally these are—

Senator ABETZ—No, I am asking you a question: was a letter written; yes or no?

Senator Wong—I had not finished.

CHAIR—Senator Abetz, I think the tone of your question warrants this response.

Senator ABETZ—It does not, but we will see.

Senator Wong—I appreciate that opposition senators can ask probing questions and I appreciate that they can go through questions in detail, but it appears that estimates simply has turned for this opposition into a forum where you put political propositions persistently. I know you have a difficulty—

Senator ABETZ—That is just simply nonsense.

Senator Wong—You appear to have a difficulty with the government's position on industrial relations, Senator Abetz. I appreciate that. You are entitled to that. But that is the policy position of the government. We clearly outlined these policies prior to the election and we are progressing those. We have a bill in the parliament, as you know, which directly relates to the transitional arrangements on AWAs. I understand Mr Wilson can provide some advice in relation to Telstra, which was one of the companies raised I think by Senator Fisher in this context.

Senator ABETZ—That is interesting and that is all very nice and I hope that your liver has got some therapy out of that speech, but the question that I asked was: has the Deputy Prime Minister communicated with the ACTU about this threat of pursuing companies?

Senator Wong—The Deputy Prime Minister is implementing Labor's policy.

Senator ABETZ—We know that.

Senator Wong—The Deputy Prime Minister has introduced into the House the bill that deals with Labor's policy. It is an interesting approach, Senator Abetz, to demand to know what a particular minister has or has not said to a member of the public. I will pass that information on to the Deputy Prime Minister and that is a matter for her to respond on.

Senator ABETZ—That is very good. I asked you to take it on notice.

Senator Wong—I have to say one could equally ask whether or not you have spoken to employers in your area who put up AWAs that were rejected by the Workplace Authority, contrary to the fairness test. Are these matters that you, Senator, have raised with these employers who were acting inappropriately?

Senator ABETZ—Chair, the intervention that might be—

Senator STERLE—Senator Abetz—

Senator ABETZ—I am not a minister, unfortunately, and here to answer questions. But I would be more than willing to reverse roles with Senator Wong in that regard. But having asked the question, she has squibbed it yet again until she finally said that she would take it on notice. I prefaced my remark by saying that I doubted that she would know and perhaps she could ask the Deputy Prime Minister. She has finally agreed to take it on notice, and we could have had that resolved about 10 minutes ago.

CHAIR—Minister, did you wish to respond to that?

Senator Wong—I do not think there is anything that requires a response.

CHAIR—Are there any further questions? Thank you, Mr Wilson, and others.

[5.05 pm]

Australian Building and Construction Commission

CHAIR—Welcome to the officers. Did you have an opening statement?

Mr Lloyd—No.

Senator ABETZ—Could Mr Lloyd please provide us with a general overview of the commission's operations? We have the benefit of an annual report, but since then can you provide us with the number of investigations, let us say in the last six months or so, that you have carried out, the number of prosecutions that have been commenced and finalised, any penalties imposed, and any cases that you may have lost or won, et cetera? Where do you want to start with that?

Mr Lloyd—In the last few months it has been very much business as usual. We are continuing with our roles of investigating any complaints and, where necessary, commencing proceedings. Also importantly, the other function of informing and educating the industry goes ahead. I have some data here on the number of prosecutions. These are not broken down to the last few months but the ABCC since it commenced operation in September 2005 has initiated 28 proceedings and if you add in the activities of the former task force that number comes up to 70. Since 1 October 2005 we initiated 28 proceedings. Of those 28 there have been 12 decisions handed down, 10 have been successful, one was unsuccessful and one was discontinued. In the last year or so there have been two legal challenges to the ABCC's compulsory interview powers in the federal court and both of those challenges were dismissed. One of those—

Senator ABETZ—Are they in the 28?

Mr Lloyd—No, they are not the 28, no, they are two additional cases taken by other parties. In relation to the compulsory interview powers, since the power came into being, that is the figures as at 13 February, we have issued 83 invitations to requirements to attend to answer questions and we have conducted 75 examinations of witnesses using those powers. Most of those examinations have taken place in Victoria and 42 of the 75 took place in Victoria, 19 in Western Australia, six in Queensland, six in Tasmania and two in New South Wales. That is essentially it. We continue to receive complaints, investigate them and as, I say, it is very much business as usual.

Senator ABETZ—Of the six in Tasmania, how much detail can you provide there?

Mr Lloyd—We are unable to disclose very much information about those because we have fairly strict disclosure requirements about what we—

Senator ABETZ—Sorry, they are investigations, did you say?

Mr Lloyd—No, these are compulsory interviews.

Senator ABETZ—Sorry, I withdraw the question. Your funding has been guaranteed by the current government until 2010. Are you given a block or a bucket of money which then is up to you to disburse within the ABCC?

Mr Lloyd—Yes. We have to, of course, comply with all the requirements of the legislation. We are accountable to ensure that money is spent appropriately and wisely but yes we spend it—

Senator ABETZ—It is not given to you in separate allocations, a certain amount for investigations, a certain amount for prosecutions—

Mr Lloyd—No.

Senator ABETZ—That is completely at your discretion?

Mr Lloyd—Yes.

Senator ABETZ—You may or may not be in a position to comment on this, but have you had any feedback from industry or elsewhere in relation to certain projects finally coming in on time, on cost. There was a Sisters Hills road project in Tasmania. I understand there was big expressway project in Western Australia which also came in under cost. I am advised that some people put this down to the existence of the ABCC.

Mr Lloyd—The impression and the information that we get from the industry is that the environment is sound—it is good and better—and that projects are tending to be completed on time and within budget. That is information we regularly get. That is not every project, but that is certainly what the industry is conveying to us. One notable case is the East Link project in Victoria, a major road project, which looks like it will commence well ahead of scheduled time.

Senator ABETZ—In Victoria of all places, my goodness. Things are changing and improving. Can I ask about the prosecution involving Kevin Harkins, the former Labor candidate for Franklin? Is that matter now completely resolved by his plea of guilty; is that correct?

Mr Lloyd—Yes.

Senator ABETZ—Are there any other outstanding matters that are before the courts? I do not want to know whether there are investigations or other matters, but are there matters on the public record with Mr Harkins that I may have missed but are on the public record so that you can divulge them to me?

Mr Hadgkiss—There is only one matter and that is in the penalty. The union agreed to undertake training and as we speak a date is being arranged for the ABCC to deliver that training. I understand the penalties have been paid to the court.

Senator ABETZ—Those penalties go into consolidated revenue; is that correct?

Mr Hadgkiss—Yes.

Senator ABETZ—The issue of freedom of association has always been one close and dear to my heart. How many prosecutions have you undertaken in relation to the issue of freedom of association out of the total number that you have given us?

Mr Lloyd—I do not have that number in front of me.

Senator ABETZ—If you do not, take it on notice.

Mr Lloyd—I will take it on notice.

Senator ABETZ—I do not wish to delay unnecessarily in relation to that. Can you advise the committee as to when the legislation you operate under came into effect?

Mr Lloyd—It was September 2005. It could be 1 October. It was September-October 2005.

Senator ABETZ—You operate for the benefit of both the workers and the employers, or employees and employers, in the building and construction industry?

Mr Lloyd—We certainly do. We ensure that the law is observed by everybody in industry, which includes clients, contractors, head contractors, subcontractors, unions and employees.

Senator ABETZ—Are you able to indicate to us how many individual employees have made representations to the ABCC?

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

Senator ABETZ—Has the ABCC been receiving representations that workers are sick and tired of the ABCC's interference in bringing the rule of law back onto the work sites?

Mr Lloyd—It has not come to my attention? The parties have made their positions known in the media.

Senator ABETZ—But we have had the benefit of yesterday's media with somebody telling us, 'Workers are getting sick to death of not being able to take action over their conditions.' That is a quote from that person who loves the application of the rule of law, one Kevin Reynolds. I was just wondering whether those sorts of complaints had been lodged with the ABCC?

Mr Lloyd—Not to my knowledge by individual employees. Of course, people can still take action so long as it is lawful.

Senator FISHER—The federal government has warned unions that it will strictly enforce a zero tolerance policy against industry wide strikes, which is very good news, seeking better wages and conditions. To the extent that that would concern the building and construction industry your outfit is the cop on the beat, is it not?

Mr Lloyd—It is.

Senator FISHER—Have you seen evidence of any threats of increased industrial action in the construction sector in recent times?

Mr Lloyd—No, I would have to say there has not been. The figures for industrial action show a stark reduction since the ABCC has been in existence and recently there has been no evidence of any increase in that.

Senator FISHER—I am sorry, maybe I did not say it clearly enough, what about increased threats of industrial action as opposed to actual action?

Mr Lloyd—I have not discerned any increased threats, no.

CHAIR—I have a few questions. There are a number of press reports dating back to last year about the Eureka flag and the ABCC ordering the removal of the Eureka flag or stickers or other paraphernalia. Can you just explain to me your position on that?

Mr Lloyd—Our position is that the implementation guidelines of the national code say that it is inconsistent with the code if there is the display of union stickers, posters, paraphernalia which in any way clearly imply that freedom of association is not respected on the site. On a couple of occasions we have been required to advise the sites that a display a lot of such material, including the Eureka flag, conveying that message is inappropriate and that the site should be cleaned up. That is the basis on which we do it. We are not in any way taking issue with the display of the Eureka flag by itself but if it is part of a display of stickers and posters generally, then—

CHAIR—Stickers of what?

Mr Lloyd—Posters, paraphernalia. It was customary in the past for there to be a lot of signs around on sites such as ‘No ticket, no start’, signs like that. At some sites you would find there are union posters and stickers all over the work shed and on the fences. It is taking issue with those matters that has led to us taking that position.

CHAIR—What about clothing?

Mr Lloyd—No.

CHAIR—Can you just explain to me again how the flag actually gives that impression itself? You may be aware, I actually moved a private members bill seeking parliamentary recognition of the Eureka flag as a recognised Australian flag, so I have a particular interest in why you would be removing the Eureka flag.

Mr Lloyd—As I say, in the past—and it has occurred on occasion during the period of the ABCC—the union has sought to convey the impression that it controls the site and that union membership is a condition for entry and freedom of association is not respected. I do not have the national code with me but the gist of the national code is that there should not be the display of material at a site which in any way infringes that right or conveys a message that that right is not respected and guaranteed at that site. The union has at times adopted the Eureka flag. It is flown on a lot of building sites. And what we have said is that where there is a site with all this material and paraphernalia around, it should be rectified and that may involve not flying the Eureka flag in those circumstances.

CHAIR—How do you determine whether it is conveying that message or not? Do you have an internal test?

Mr Lloyd—Sometimes it is drawn to our attention. We would obviously sight it.

CHAIR—You have to make the decision whether or not to order people to remove it, don’t you?

Mr Lloyd—No. We advise people that the continuation of a display of this material may mean that they are not complying with the national code and that could have ramifications for them.

CHAIR—What ramifications?

Mr Lloyd—Sanctions under the national code range from advice from the minister, a letter, or ultimately the withdrawal of the ability to tender for government building contracts for a period.

CHAIR—The penalty is to the contractor or the builder?

Mr Lloyd—Yes.

CHAIR—What do they do? They then have to remove the paraphernalia?

Mr Lloyd—Yes.

CHAIR—Even though it may not belong to them?

Mr Lloyd—Yes. They are in charge of the site.

CHAIR—And if they do not they can be removed from all government contracting ability?

Mr Lloyd—Yes, there is a machinery of government process to look at breaches of the guidelines that reports to a code monitoring group which is a group of officials and they report—

CHAIR—What if the contractor or builder disagrees with your assessment?

Mr Lloyd—They may be cited as being not in compliance with the implementation guidelines.

CHAIR—So you are the final arbiter on whether the flag conveys an inappropriate message?

Mr Lloyd—No, we are a party or a member of a code monitoring group which is chaired by the DEEWR and it has a number of agencies on it including ourselves. That is where the matter would be considered. Mr Hadgkiss is on that code monitoring group.

CHAIR—If a contractor disagrees with your assessment, what do they do, go and complain to this group and would you have a little excursion up to have a look and make a final decision?

Mr Lloyd—No, there would be a report from officers about the matter and if the contractor decided not to comply to the request there would be a report about it and this code monitoring group ultimately would consider whether it warranted a recommendation for a sanction under the national code.

Mr Hadgkiss—Can I add that sitting on that monitoring group there has never been an occasion of a report coming to the attention of the group of a builder offending the code in that way.

CHAIR—You mean they have never complained about your decision.

Mr Hadgkiss—No. It has never been brought to the code monitoring group's attention.

CHAIR—Why would it? Unless they do not want to comply with your order, they do not go there, do they?

Mr Hadgkiss—Most builders who are code compliant do, but the fact is that the flying of the flag is known in the industry as 'this is a union only site' and you have to be a member of the union to come on this site.

CHAIR—That is obviously the conclusion that the ABCC has come to. You are saying that the flying of a flag—

Mr Hadgkiss—No, no. That is the conclusion of the industry.

CHAIR—Okay. So you say the flying of a flag conveys that message?

Mr Hadgkiss—If it is flown on high, that is the general impression that workers are told and it is known as a union site—

CHAIR—I thought Mr Lloyd said to me earlier a single flag is not a problem. You are saying a single flag is, depending on where it is?

Mr Hadgkiss—It is not against the law. It is a provision of the code that that kind of memorabilia offends the code.

CHAIR—So the code actually says you cannot fly a Eureka flag, does it?

Mr Lloyd—No, it does not. I think Mr Hadgkiss is saying that the accepted view in the industry is that flying a flag means it is a union controlled site; that is what the flag is trying to impart. But the guidelines state that a site which displays paraphernalia, posters, stickers and flags and the intention is to convey that view that union membership is required to work there, then that is potentially in breach of the code and we would take the matter up if it were drawn to our attention.

CHAIR—Is Mr Hadgkiss's evidence then correct that a single flag is a problem, or not?

Mr Hadgkiss—It would be brought to the builder's attention and it is up to the builder to have voluntary rectification.

CHAIR—Who would bring it to their attention?

Mr Hadgkiss—The officers conducting current audits or site visits.

CHAIR—When you say 'brought to their attention', they would be told to have it taken down?

Mr Hadgkiss—No, they would be told that this offends the code and it is a matter for you to rectify it.

CHAIR—So they have to rectify it, otherwise they could face a sanction?

Mr Hadgkiss—As I say, there has never been an occasion where anyone has been sanctioned or it has even be suggested—

CHAIR—No, because the builders have always complied with what you have told them to do.

Mr Hadgkiss—To be totally code compliant, yes, they would, if they want to be totally code compliant.

CHAIR—Yes because you can remove them from the contract list from all Commonwealth government—

Mr Hadgkiss—No, that is not the case.

CHAIR—I do want to be clear. Mr Lloyd, you told me a single flag would not convey that message. Mr Hadgkiss says it does and his officers would bring a single flag to the attention of the builder and when he says 'bring it to the attention of the builder' he means saying to them, 'You are not code compliant.'

Mr Hadgkiss—No, that is not my evidence.

CHAIR—Tell me your evidence again.

Mr Hadgkiss—My evidence is that if during the course of an audit and it was seen that flags were flying or other industrial graffiti which breached the freedom of association—

Senator STERLE—You said ‘a flag’?

Mr Hadgkiss—I am sorry?

Senator STERLE—You said ‘one flag’?

Mr Hadgkiss—A flag on its own, yes.

Senator STERLE—A flag?

Mr Hadgkiss—Yes.

Senator STERLE—You have just changed it now to ‘flags’. I am totally confused.

Mr Hadgkiss—One flag flying on high indicating this site is union only, you have to be a member of the union to come on this site, it would be brought to the attention of the builder—

CHAIR—So you cannot raise a flag?

Mr Hadgkiss—It is in breach of the freedom of association provisions of the code.

CHAIR—So the code actually says you cannot fly a Eureka flag?

Mr Hadgkiss—I do not think it says that.

CHAIR—It is your interpretation that a single flag being flown breaches the code?

Mr Hadgkiss—It would be brought to the attention of the builder.

CHAIR—Mr Lloyd, is one flag a problem?

Mr Lloyd—The implementation guidelines provision which I do not have in front of me, unfortunately, states, to my recollection, that the display of material, meaning union paraphernalia, posters, stickers and flags, which conveys that message is in breach of the code; it is not permitted.

CHAIR—But you did tell me earlier that a single flag would not be seen as a problem.

Mr Lloyd—The Eureka flag is flown in many areas and my view is that the guidelines state that it is a range of material clearly conveying that message.

CHAIR—Mr Hadgkiss is the man on the ground and he says something different.

Mr Lloyd—I think Mr Hadgkiss was saying that the accepted view in the industry is that the flying of a flag may connote that type of condition on the site but the guidelines, in my view, talk about industrial graffiti, as Mr Hadgkiss mentioned, posters, stickers, et cetera conveying the message.

CHAIR—But he says a single flag flying high would be brought to the attention of the builder or contractor that that was a breach of the code?

Mr Lloyd—It may be brought to their attention if they are concerned about it but my view is that—

CHAIR—No, it would be brought to the builder's attention by your officers that it is a breach?

Mr Hadgkiss—For voluntary rectification.

CHAIR—But you are telling them that it is a breach?

Mr Hadgkiss—It would offend the code, yes.

CHAIR—So, one flag? Regardless of anything else on site, a flag flying high would be in breach of the code?

Mr Hadgkiss—In conjunction with other matters.

Senator STERLE—You said 'a flag'—

Mr Hadgkiss—A flag of a union nature flying on high is an indication to people visiting the site or expecting to work on a site is that there is an expectation they have to be a member of that union.

CHAIR—Regardless of any other paraphernalia, you say a single flag flying on high conveys that message and that is in breach of the code?

Mr Hadgkiss—That is what the industry tells me, yes.

CHAIR—No, I am not interested in what the industry tells you. You are the one telling the industry whether or not they are in breach of the code. That is your evidence.

Mr Hadgkiss—It would be brought to the attention of the builder concerned along with—

CHAIR—By you or your officers.

Mr Hadgkiss—But there is a whole—

CHAIR—No, no, by you or your officers.

Mr Hadgkiss—By my officers, yes.

CHAIR—Amazing! I just want to go to some of the court cases. I understand there was a recent decision of the federal court which was *Cruse v Multiplex Constructions (Vic) Pty Ltd* and others. Are you aware of that?

Mr Lloyd—Yes.

CHAIR—I understand the court dismissed an application for the imposition of a penalty on the union and a number of individuals involved in the case and in doing so it made comments about the proceedings and the decision to pursue the matters through the courts. Is that one of your 28 cases that you talked about?

Mr Lloyd—Yes. That case is under appeal.

CHAIR—Is that one of the ones you have got in the successful list?

Mr Lloyd—No.

CHAIR—Is it one of the ones you have got in the decisions list?

Mr Lloyd—I would have to check on that. I will take it on notice.

CHAIR—You say you have had 12—

Mr Lloyd—It is under appeal, so it is probably one of the ones which I think would be still continuing. That would be my expectation from those numbers that I gave you.

Mr Hadgkiss—It is partly successful in that other parties are already pleaded in respect to that proceeding.

CHAIR—I understand the judge said in the decision that it is unlikely that the public would regard such costs to the community as well incurred. In spite of these criticisms the ABCC has elected to take the matter further by appealing the decision; is that right?

Mr Dalgleish—Yes, that is right. There was a decision by His Honour Mr Justice North previously in Cahill to a similar effect when, despite a plea of guilty, the proceedings were dismissed and no declarations were made. An appeal then went to the Full Court of the Federal Court and Mr Justice North's decision was reversed on appeal and penalties were imposed.

CHAIR—So you are holding out for that. How much did that case cost and how much do you predict the appeal will cost?

Mr Dalgleish—I will take the cost of Cahill and the subsequent—

CHAIR—No, *Cruse v. Multiplex*; that is the case I was asking about.

Mr Dalgleish—We would have to take that on notice because the matter is still before the Full Court.

CHAIR—There are costs now and you have now appealed it, so I would like to know how much you have spent on it and how much you predict the appeal will cost. If you cannot predict that, give me the costs up until now.

Mr Lloyd—I can help you with the 28 numbers. When I gave you those figures of the 28 proceedings, 12 were handed down and 10 were successful, one unsuccessful. That one did refer to *Cruse v. Multiplex*.

CHAIR—Thank you. In your most recent report of the use of your coercive powers under section 52 you have indicated that 16 out of the 36 interviewees had no legal representation during the interview; is that correct?

Mr Hadgkiss—That is correct. That is the choice of the individual.

CHAIR—At what time was that figure, because you only had 36 interviews at that time. You have now told you have had 75?

Mr Hadgkiss—That was as at late January—

CHAIR—Can you update me on those figures till now?

Mr Hadgkiss—I think they would still be current.

CHAIR—They are not current because you have already told me there are 75 coercive power interviews?

Mr Hadgkiss—Yes, that is the figure, 75.

CHAIR—Mr Hadgkiss, you might want to listen to my question. The latest report says 16 out of 36 interviewees had no legal representation during that interview, so it indicates that at the time of that report you had only done 36 interviews under your coercive powers; yes?

Mr Hadgkiss—Correct.

CHAIR—Can you update me now on how many people have had no legal representation up until now?

Mr Hadgkiss—I will take that on notice, but the majority have elected to be represented in my experience and others have decided not to be—

CHAIR—It might be just the majority up until the last information you have provided but there is only 16 out of 36.

Mr Hadgkiss—That is their decision, yes.

Mr Lloyd—We will take it on notice.

CHAIR—What positive measures do you take to advise people of their right to representation?

Mr Hadgkiss—There is a three or four page letter that I sign that accompanies the notice to attend pointing out their right to legal representation.

CHAIR—Have you provided that to the committee before?

Mr Hadgkiss—No.

CHAIR—I would like you to provide a copy of that letter to the committee.

Mr Hadgkiss—I am told that out of 75 examinations conducted up to the present, 48 of the witnesses chose to be legally represented.

CHAIR—In how many of the interviews has the questioning been conducted by legal counsel on your behalf, as opposed to your own officers or the deputy—

Mr Hadgkiss—Always with a legal practitioner.

CHAIR—So the coercive interviews are always done by a lawyer on your behalf?

Mr Hadgkiss—Yes.

CHAIR—In every instance?

Mr Hadgkiss—Yes.

CHAIR—And you always have an officer there?

Mr Hadgkiss—An officer of the ABCC, yes.

CHAIR—How many members of the general public—and that is people not considered building industry participants within the meaning of the BCII Act—have been the subject of compulsory interviews?

Mr Hadgkiss—One.

CHAIR—Just one. I have read some press reports on that. Have there been complaints in relation to that?

Mr Hadgkiss—No.

CHAIR—No complaints at all?

Mr Hadgkiss—Not to the ABCC, no.

CHAIR—In the matter of Broad Construction Services of WA v. CFMEU, an ABCC inspector, Mr Clarke, swore an affidavit annexing a copy of video footage of various CFMEU officials on Perth building sites and provided that affidavit to the legal representatives of the company. The Supreme Court of Western Australia subsequently ordered that the video footage be publicly released. Can the ABCC confirm that neither Mr Clarke nor any other ABCC inspector, employee or contractor, et cetera provided that footage or discussed the details of that footage with any journalist or media outlet or representatives of those prior to the date on which the court made the footage publicly available on 20 June?

Mr Lloyd—The video was released strictly in accordance with the ruling of the judge of the Supreme Court. It became known that the video was in the evidence once proceedings were on foot. Media organisations then started to seek access to it. Any contact we had was strictly said there was nothing we could do about it; it was a matter for the court. So it was only released strictly in accordance with the directions of the judge of the Supreme Court.

CHAIR—Can you give me the assurance I asked for?

Mr Lloyd—Yes.

CHAIR—Thank you. In that case, on what basis did you decide to make material gathered by your organisation in the course of your operations available to one party of a private litigation?

Mr Hadgkiss—It was at the request of the ABCC by the legal representatives of the parties before the Supreme Court.

CHAIR—Was there any request from anyone else?

Mr Hadgkiss—Not from my recollection. It was from their legal representative.

CHAIR—That was the only request made of you?

Mr Hadgkiss—Yes.

CHAIR—Is that generally the case? If a request is made you would release the information?

Mr Hadgkiss—If it is a bona fide matter before a court of relevant jurisdiction.

CHAIR—So any of the parties were free to apply for information that you have gathered in the course of your investigations?

Mr Hadgkiss—It would be considered, yes.

CHAIR—Not considered; is it available?

Mr Hadgkiss—If it is a proceedings before the court we would hand it to the relevant party if it was to be produced in the court—or parties. Indeed, I understand that all parties received copies of the video.

CHAIR—From you?

Mr Hadgkiss—No. Before it was aired in the Supreme Court I understand that the parties—

CHAIR—I am not just talking about the video, I am talking about other information you gathered during the course of that investigation. I understand some material that your organisation gathered in the course of investigation was made available to one party in a private litigation and not the other; is that right?

Mr Hadgkiss—It was made to the requesting party in order that it could be tabled before the Supreme Court.

CHAIR—On what basis?

Mr Hadgkiss—On the basis it was an action before the Supreme Court.

CHAIR—That is not the basis on which you make things available. So you are saying the policy position of the ABCC is to make information available to interested parties on request?

Mr Hadgkiss—No, it is done on a case-by-case—

CHAIR—Tell me the test that you apply to make information available?

Mr Hadgkiss—It is done on a case-by-case basis. In this case it was a building industry participant in question which was the subject of the Supreme Court proceedings which involved evidence that the ABCC had in its possession and that was provided to the court via the party seeking it.

CHAIR—Did the other party request any information from them?

Mr Hadgkiss—It was given by right by the judge.

CHAIR—Before that?

Mr Hadgkiss—Not to my knowledge.

CHAIR—Was it provided to the other party before that?

Mr Hadgkiss—Yes, before it was aired to the public. That is my understanding.

CHAIR—Taking into account your present responsibilities under the Independent Contractors Act, does the ABCC have any plans to investigate or audit the industry for the use of sham subcontracting arrangements in the building and construction industry?

Mr Hadgkiss—Yes. We are already investigating matters under that provision of sham contracting.

CHAIR—Can you tell me about that? You are investigating the issue or you are investigating particular issues that have come to your attention?

Mr Hadgkiss—Matters have been brought to our attention, from recollection in the state of Queensland, and it is an active investigation.

CHAIR—That is from complaints. What about an audit of the industry in respect to that issue?

Mr Lloyd—No. We are not doing an audit.

CHAIR—Are you doing a campaign against sham contracting?

Mr Lloyd—No. We have put on our website information about independent contracting and about the act, our role under the act and what the rights and obligations of the parties are.

CHAIR—Do you acknowledge that it is a widespread practice in the industry?

Mr Lloyd—No, we do not. The website material and basically the fact sheets we have state what the legislation is and what the rights and obligations are and that they can contact us if they have any inquiries or complaints.

CHAIR—You do not accept that sham subcontracting is a problem in the industry?

Mr Lloyd—There is obviously some problem. There has been a couple of cases, as Mr Hadgkiss referred to, and we will thoroughly investigate any complaint which is made to us about it.

CHAIR—Do you accept that this is an issue in the industry? I asked you earlier whether you accepted that it is widespread practice and you said that you did not.

Mr Lloyd—There have been two cases referred to us since the legislation came in; therefore I am not qualified to say how widespread it is. We do assure the parties that we will investigate any complaint thoroughly.

CHAIR—I understand that. I thought you said earlier in answer to my question that you do not accept that it is widespread practice. Now you are actually saying you do not concede either way, that you do not know.

Mr Lloyd—No.

CHAIR—I just wanted to be clear on what you were saying. How many cases of breach of awards and alleged under payments of wages have you referred to the Workplace Ombudsman?

Mr Lloyd—We will take that on notice.

CHAIR—In respect to each of your legal matters that you have, can you outline the cost per case of each matter concluded?

Mr Lloyd—I do not have those figures today, so we would have to take that on notice.

CHAIR—I think these are questions that I have asked before.

Mr Lloyd—Yes.

CHAIR—You have not brought the information? Ms Bennett went to a lot of trouble to pre-empt my questions based on last estimates hearings and had it all ready for me.

Mr Lloyd—We have some figures on legal costs as in the amount that is incurred by legal firms and issues like that and the totals for various, but we do not have costs per case in various years.

CHAIR—Have you obtained legal advice about the operation, the application or the proper construction of section 67 of the BCII Act which deals with the capacity of the ABCC to publish non-compliance reports?

Mr Lloyd—I have issued two of those non-compliance reports and in the preparation of those we have carefully considered the power. There has obviously been legal advice given

about the particular cases. I would have to take on notice as to whether we got actual legal advice about how the section is applied.

Mr Dagleish—We have counsel's advice in respect of those two cases but your point is slightly different.

CHAIR—My question is about the operation of that particular section.

Mr Dagleish—Counsel was consulted in the context of the section 67 report.

CHAIR—Take it on notice to see if you have and, if you have, could you provide to me the date on which that advice was sought, when it was obtained and what was the cost of that advice. The 2005-06 financial report showed that your budgeted income of \$19.805 million exceeded actual expenditure of \$12.072 million by some \$7.773 million and, similarly for the 2006-07, income of \$32.915 million exceeded expenditure of \$22.892 million by \$10.023 million. Are those figures right?

Mr Lloyd—They sound right and the size of the differences sounds right to me.

CHAIR—Do you require the present budget allocation to continue to effectively operate given the surplus over the last two preceding financial years?

Mr Lloyd—In the last couple of financial years we have been staffing up. We started in 2005. We are continuously recruiting staff. We are funded to 155 staff. At this stage we have got to the 130s. That is one reason why we are running surpluses, but we are still recruiting and in the coming year the surplus will be less than what it has been in the last few years.

CHAIR—Do you still expect a surplus?

Mr Lloyd—I cannot say.

CHAIR—You said the surplus will be less.

Mr Lloyd—Yes. You do not want to ever spend more than you are allocated so you always aim to spend as close as possible. Prudent management if you are fully staffed should be to come in at around the budget figure, and it is certainly a matter of great concern if you are going over that. That is why I mentioned that I expect the surplus to be less because I have never as a manager budgeted to spend more than I am allocated.

Another factor in this is legal expenses, which are a big expenditure and are difficult to predict. Obviously when we budget we put aside a certain amount for legal expenditure and in the last year there has been a tendency, particularly in Victoria, for some of the cases that we thought would go through to be contested to be settled. Also we had a major case in Perth on the Perth to Mandurah railway. We thought that might be a protracted case—it was a very complex case—but again there was essentially a settlement with the parties pleading to the offences and we did not have a protracted trial about the facts; it was just a short trial about the level of penalty. They are two main reasons why we have come in under the budget.

CHAIR—You are still staffing up. What if you have protracted legal issues next year?

Mr Lloyd—We will have to manage it. We manage our budget very carefully. We have an executive that is reported to every month. We very carefully track how we are going. So if that eventuated we would have to think of some strategies to cope with it, like any organisation.

CHAIR—You will be able to do lots of flag spotting, I am sure. I understand Mr Hadgkiss went to address the HR Nicholls Society in 2007. Was that as a personal individual or was that on behalf of the ABCC?

Mr Hadgkiss—I was invited on behalf of the ABCC to talk about the ABCC activities.

CHAIR—Was that authorised and approved by you, Mr Lloyd?

Mr Lloyd—Yes. I addressed it myself in the previous year.

CHAIR—Was the speech an authorised speech?

Mr Lloyd—Yes.

CHAIR—Can we have a copy of that?

Mr Hadgkiss—There is a PowerPoint presentation which I am happy to make available. In fact, I think it is on our website.

CHAIR—Are you aware of the recent investigation by the Workplace Authority which concluded that John Holland had lodged AWAs that had not been properly approved by the relevant employees, who were 457 visa workers, in contravention of the Workplace Relations Act?

Mr Hadgkiss—Not to my knowledge.

CHAIR—Are you not aware of that at all?

Mr Hadgkiss—It has not been brought to the ABCC's attention.

CHAIR—In terms of interviews under your coercive powers, are people actually able to complain?

Mr Hadgkiss—Yes.

CHAIR—Who to?

Mr Hadgkiss—They can complain to the Ombudsman, as in the federal government Ombudsman. They can complain to the Commissioner of the ABCC.

CHAIR—Is that outlined in your letter that you give everyone?

Mr Hadgkiss—No.

CHAIR—How do they know about that?

Mr Hadgkiss—I do not know how people ordinarily complain. If they wish to complain about government officials it is normally referred to the Ombudsman or the Public Service Commissioner.

CHAIR—The difference in this case is that people are not allowed to reveal to anybody that they have been interviewed, are they?

Mr Hadgkiss—Yes. There is often on a case-by-case basis a restriction on publication of their evidence until the investigation is complete or the matter appears before the court.

CHAIR—Can you outline for the committee the process of a coercive interview?

Mr Hadgkiss—First of all it is a last resort for the ABCC.

CHAIR—Can you explain the process of the coercive interview?

Mr Hadgkiss—The people who are witnesses to unlawful activity are invited by the inspectors to assist them in their inquiries. If there is a refusal on their part or in the majority of cases people are reluctant to get involved for fear—

CHAIR—Can you just tell me the process?

Mr Hadgkiss—I am try to explain it from the beginning. If a request is then made to the executive, as only three of us can exercise those powers—

CHAIR—A request made by who?

Mr Hadgkiss—By the three of us.

CHAIR—You request yourself?

Mr Hadgkiss—No. We receive it from the inspectors. In conjunction with team lawyers a request is received, it is examine and if it is deemed appropriate and there has been a refusal to assist, then a notice is produced that is signed by ourselves. It is delivered to the individual personally. There is an accompanying letter with the notice giving them 14 days minimum before they appear. They are advised that if they wish to be legally represented, they can, and they attend examination.

CHAIR—Just before we go on to that, what else are they advised?

Mr Hadgkiss—They are advised of all of the legal consequences that if they wish to have a delay or they wish to put the matter off for whatever reason there is process they can go through.

CHAIR—Are the legal consequences all outlined?

Mr Hadgkiss—Yes, failure to comply.

CHAIR—Do you also provide that?

Mr Hadgkiss—They are told what happens if there is a failure to comply.

CHAIR—Can you provide that information to the committee?

Mr Hadgkiss—It is in the act.

CHAIR—I would like to see the letter that you provide to people under these circumstances.

Mr Hadgkiss—I can give you a standard letter. It is a template.

CHAIR—Is that the only letter that goes out?

Mr Hadgkiss—There is one letter that accompanies it. My recollection is that it is about three or four pages long.

Mr Dagleish—That accompanies the notice.

Mr Hadgkiss—It is about two pages long and specifies the nature of the unlawful activity we are investigating, when it occurred, where it occurred and who we suspect of unlawful activity. Again, if there are any concerns, they are advised to ring contact officers within the ABCC.

Mr Dalglish—The notice is in a statutory form and the covering letter refers to the guidelines, which are on the website.

Mr Hadgkiss—They attend an examination, at the conclusion of which a decision is made whether or not to restrict the publication of their evidence. A number of witnesses request that it is restricted for fear of reprisal and then the investigation continues. When the investigation is concluded or the matter goes to court, that non-publication direction is lifted. They are advised by us in writing of that having been lifted.

CHAIR—When you say the restriction on the publication of their evidence, does that mean that they are not allowed to talk about it?

Mr Hadgkiss—Except with their legal practitioner.

CHAIR—Are they allowed to tell people that they have been interviewed?

Mr Hadgkiss—Yes. They invariably discuss it. In the case of a worker they can discuss it with their union.

CHAIR—You can discuss it with anyone, can't you?

Mr Hadgkiss—Yes.

CHAIR—Are you allowed to discuss it?

Mr Hadgkiss—Yes.

CHAIR—We will not guess who people discuss it with. The point is that you can discuss the fact that you have been interviewed?

Mr Hadgkiss—With respect, unlike other bodies that have compulsory powers, we do permit that. Other bodies forbid them to even tell people they are coming in for a hearing.

CHAIR—But if the evidence is suppressed are you allowed to tell anybody that you have been interviewed?

Mr Hadgkiss—Yes, of course you can. You can tell people you have been interviewed.

CHAIR—But you cannot tell them what you were asked?

Mr Hadgkiss—No, not the nature of your evidence except obviously with a legal representative.

CHAIR—Do you get the pick who the legal adviser is?

Mr Hadgkiss—That is a matter for them.

CHAIR—And you have no say in that?

Mr Hadgkiss—There is a discretion if there is a propensity for a legal representative to undermine the investigation. There has only been one such occasion to date out of the 75 examinations.

CHAIR—Who makes that decision?

Mr Hadgkiss—The person holding the hearing.

CHAIR—What hearing?

Mr Hadgkiss—The examination.

CHAIR—The examination or the interview?

Mr Hadgkiss—Yes.

CHAIR—Is that the ABCC officer or the lawyer?

Mr Hadgkiss—It would be one of the three of us.

CHAIR—Do you conduct the interviews in every instance?

Mr Hadgkiss—Yes.

CHAIR—You are always there with a lawyer?

Mr Hadgkiss—Yes. Unlike other bodies it is only the executive.

CHAIR—I thought you were talking about officers. I did not know you were just referring to the three of you.

Mr Hadgkiss—No.

CHAIR—So the three of you are always in an interview using these powers with a legal practitioner?

Mr Dalgleish—One of us.

CHAIR—Yes. Thank you. That is all I have.

Senator FISHER—Can I ask a further question?

CHAIR—Yes, you can.

Senator FISHER—How do your so-called coercive interview and investigative powers compare with the likes of the Australian Taxation Office or the ACCC?

Mr Hadgkiss—They were modelled on the ACCC. They are akin to Taxation, Australian Securities and Investment Commission and other bodies, with the great exception, which I explained to the chair, that the delegation stops with us. In other bodies they go down to much lower people in the organisation; in the case of the ABCC's powers they remain only with the executive. But to all other intents and purposes they are modelled on those, but unlike other bodies that have compulsory powers, as I just explained, we do permit people to tell employers or other persons that they are coming in for an interview.

Senator FISHER—Would you agree that the bottom line is that your powers are not dissimilar with those of arguably similar bodies?

Mr Hadgkiss—A number of federal agencies and indeed states—I think New South Wales Workcover also has compulsory powers.

Mr Dalgleish—They are quite different. The Workcover Authority powers are much stronger than ours in the sense that people can effectively, by not taking a privilege, have the answers used against them. Whereas in our legislation the answers to questions cannot be used against the witness except for the purposes of perjury or something like that. So you do not have to claim the privilege. Often in a Workcover Authority context if somebody does not take the privilege then it is used against them in the prosecution.

Mr Hadgkiss—From recollection the Australian Securities and Investment Commission has the same provision. They must claim privilege if they do not wish their answer to be used against them.

Senator FISHER—Clearly in an industry such as this where there has been a history of lawlessness it is appropriate that there be powers of this sort to ensure that the rule of law applies in the industry.

CHAIR—Is there a question coming at some time?

Senator FISHER—Yes, there is. In that respect I am very relieved that the government's Forward with Fairness plan involves commitments such as that under a Rudd Labor government there will not be a single moment where our construction industry is without a strong cop on the beat. In terms of the transition that would appear to be part of Forward with Fairness to Fair Work Australia and the government's commitment that the current ABCC arrangements, according to Forward with Fairness 'will remain in place until January 2010' and that 'the ABCC will retain all its current powers and its full resources for this period as outlined in the budget forward estimates, whereupon those responsibilities will be transferred to a specialist division within the inspectorate of Fair Work Australia,' what are your expectations in terms of that transition?

Mr Lloyd—It would be inappropriate for me to comment very much on that as it is government policy and at this stage there has been nothing indicated about Fair Work Australia. So as I said at the start, at this stage it is business as usual for the ABCC and that is what we will keep doing.

Senator FISHER—Have you had any discussions with the government about implementation of that transition?

Mr Lloyd—No.

CHAIR—I just have one last question for Mr Hadgkiss about the flag issue. When you say it is what the industry thinks, what do you define as industry?

Mr Hadgkiss—Talking to union people and employees—

CHAIR—The union people will tell you that flags should not be—

Mr Hadgkiss—Even state secretaries have said themselves that it is the symbol of their union, but most contractors are aware that if the flag is flying on high there is an expectation that the union will decide who comes on.

CHAIR—I should not have interrupted. Can you just give me your definition of the industry?

Mr Hadgkiss—Industry stakeholders; talking to union officials, employees or members of the unions, builders, subcontractors and independent contractors.

CHAIR—When you told me the industry thinks the flag should not be flown—

Mr Hadgkiss—They are not saying that. They are telling me that the flying of the flag is an indication that the union will decide who comes on the site and not the site management.

CHAIR—Thank you for clarifying that. Are there any other questions? Thank you. The next witnesses are the Australian Industrial Registry.

[6.07 pm]

Australian Industrial Registry

CHAIR—Thank you Mr Williams and other officers. Do you have an opening statement, Mr Williams?

Mr Williams—No, I do not.

Senator FISHER—The government's Forward with Fairness policy talks about an award simplification process and about it commencing in January 2008, which is quite soon. Can you tell me about the steps that the commission has been able to take at this stage in terms of that process?

Mr Williams—As evidence has indicated earlier today the commission has not yet formerly received its directions for award modernisation although for practical purposes we have a good idea of what is likely to come in substance, albeit it may change before the legislation is passed. Therefore, yes, we have been able to do preparatory work. We have installed in the registry a small team which is the beginning of our award modernisation team and it is doing some preparatory work of the character of data collection. As you would understand, the commission is also considering what options it might be considering in order to design an approach to get through the agenda by both scope and timetable.

Senator FISHER—You referred to a small team. You will need a pretty big team to achieve this significant project within the timeframe envisaged, won't you? Forward with Fairness talks about the process starting on 1 January 2008 and that 'Labor aims to have the process of modernising and simplifying awards overwhelmingly'—I am not sure what 'overwhelming means—'completed within a two year period'. What are you able to do to shape the resources to prepare the commission and the registry for the task ahead?

Mr Williams—As I said, at this juncture we have a small team in place right now. There are four on a full-time equivalent basis that are dedicated to it and we are already drawing on a part-time basis other experienced staff from around the registry. Yes, we know that the team will grow as the award modernisation process continues and, yes, it is almost certainly going to be materially and indeed substantively larger than it is now. However, what we have now is precisely the resources that we need to do the preparatory work that we can do at this stage. In my view we are neither underresourced nor overresourced for this stage of it.

Senator FISHER—You have some 4,000 awards. How many awards will you have to deal with?

Mr Williams—The information that I have is that there are some 3,300 awards. It might help the committee if I broke that down so you have a sense of which awards we are talking about. Federally it is a little over 1,600 awards and that breaks down by state with around 700 in New South Wales; Queensland, 320 odd; South Australia at 160; Western Australia, 350 odd; and Tasmania around 130. We can provide this information so you can have the precise data if you want. That is the federal and state awards and they are about equal. So there are about 1,600 federal awards and around 1,600 or 1,700 state awards, making up the 3,300 odd.

I have just been reminded that there will be a proportion of those awards which are single enterprise awards which will fall outside the scope of the award modernisation process.

Senator FISHER—Are you familiar with the experience of some of the state jurisdictions to attempt to simplify or modernise, whatever you call it, their awards? Are you drawing on their experience and, if so, how?

Mr Williams—Not at this juncture. Our primary driver will be the precise scope of the award modernisation direction that the commission gets. The registry's role in that, if I could speak colloquially, will be to provide the back office support the commission is doing. It is not the registry's task, it is the commission's task. But at this juncture questions about that character of the methodology will be for the commission to determine and they have not yet done so.

Senator FISHER—Will the process involve calling for submissions and public consultation?

Mr Williams—I think you will see that in the bill there are a number of elements of the proposed direction that relate to what I would describe as extensive consultation throughout the process.

Senator FISHER—Can you give me some more detail around that?

CHAIR—Again, I am reluctant to actually discuss the bill. The bill is before the Senate now so it is not appropriate for the committee to discuss the bill.

Senator FISHER—What will be the involvement of the union movement and employer groups in the rationalisation process?

Mr Williams—Again, it is a matter for the commission how they would wish to run the consultation. We would do that under direction from them but it would be my expectation that all parties would have full involvement in the consultation process.

Senator FISHER—Where there is consideration of notional agreements preserving state awards and therefore consideration of state awards and a state award in a particular sector has an arguably higher standard in one respect than a federal award, what will happen?

Mr Williams—Mr Nassios may want to come in on this. I think at this level of questioning we are back to the specifics of the method or the approach that the commission will take and at this juncture to my knowledge the commission has not settled that so I am frankly not in a position to help you.

Senator FISHER—Thank you.

Mr Williams—To show that there is no element of obfuscation there, I have not volunteered to take it as a question on notice because again I think there would be nothing to provide on a question on notice because the commission has not reached that point.

CHAIR—No-one thinks that. You are going very well. Senator Fisher.

Senator FISHER—Has the commission taken on certain tasks that have been performed by the Australian Fair Pay Commission, particularly in respect of youth wages?

Mr Williams—No.

Senator FISHER—What about the publishing of pay scales?

Mr Williams—Again, no.

Senator FISHER—What work have you been doing as the registry to support the commission in the expectation of the commission becoming colloquially referred to as ‘flying squads’ for unfair dismissal cases, that is going to regional centres to deal with things? What sort of work has been done in that respect?

Mr Williams—Nothing. The reason for that is I believe what you are referring to is media commentary about what is intended by the government. That does not provide a motivation or a driver for me to respond. In terms of what might be required in implementing Forward with Fairness, that will be a matter for the main bill later in the year, so at this juncture I am in no position realistically to have a good grasp of what the implementation requirements are. I do not have resourcing to pre-empt that either, so on either count we wait.

Senator FISHER—There will need to be some pretty quick work done to achieve the government’s desired time frame. Thank you, gentlemen. I do not have any further questions.

CHAIR—No further questions. Thank you officers and that is all we have for you.

Mr Williams—Thank you. The next witnesses are from the Australian Fair Pay Commission Secretariat.

[6.19 pm]

Australian Fair Pay Commission Secretariat

CHAIR—Welcome Ms Taylor. Do you have any opening comments?

Ms Taylor—No.

CHAIR—We will go straight to questioning. Senator Fisher.

Senator FISHER—What are the tasks that remain to be performed by the Australian Fair Pay Commission leading into January 2010?

Ms Taylor—The task that the commission will continue to perform is its core functions of setting and adjusting minimum wages and it will do that by conducting reviews as we are conducting at the moment.

Senator FISHER—Are there any tasks that were within the province of the commission that you have shed recently?

Ms Taylor—Yes. The secretariat had been given additional funding to undertake work in terms of creation and publication of pay scales that it is no longer undertaking, and the commission had instituted two reviews in terms of a general review of pay scale and a review relating to junior wages and training wages.

Senator FISHER—Do you know to where those tasks have gone? Are they being performed by anybody to your knowledge?

Ms Taylor—The two reviews that I referred to, the general review of pay scales and juniors and training wages, will be assumed into the award modernisation process, so when those tasks commence the issues that were going to be dealt with by the commission will be

taken up, as I understand, by the Australian Industrial Relations Commission. The creation and publication of pay scales has not been taken up anywhere else.

Senator FISHER—The creation and publication of pay scales as far as you aware is in abeyance?

Ms Taylor—Yes. That is the creation and publication of new pay scales.

Senator FISHER—Can you put in your words again if you do not mind which parts of the review have moved to the Industrial Relations Commission?

Ms Taylor—The reviews that the commission had commenced by the issuing of issues papers related to a general review of pay scales and a review of junior wages and training wages. The issues that were to be addressed in those where the commission had called for submissions are indeed the issues that will be taken up with the award modernisation process, or similar issues will be dealt with in that process.

Senator FISHER—Thank you. It becomes an even more monumental task.

Ms Taylor—It does.

Senator FISHER—With the creation and publication of pay scales and your expectations of the Forward to Fairness proposals, would that still be a job that needs to be done?

Senator Wong—Is that asking Ms Taylor for her opinion?

CHAIR—That is a difficult question for the witness.

Senator FISHER—Thank you. I have no further questions.

CHAIR—Are there any further questions. On that basis, thank you Ms Taylor.

Ms Taylor—Thank you.

CHAIR—That concludes this estimates round. I would like to thank all of the witnesses that have appeared before us and thank them for their cooperation. Thank you minister and my fellow senators for their cooperation through this hearing, and also Hansard and the parliamentary and committee staff. This committee is now adjourned.

Committee adjourned at 6.24 pm